

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.2810 of 2017

ORDER:

The petitioners/JDRs 1 to 4 filed the instant CRP challenging the order dated 31.12.2016 in EA No.109 of 2016 in E.P.No.119 of 2003 in O.S.No.393 of 1998 on the file of III Additional Junior Civil Judge, Kadapa, dismissing their petition filed under Order 21 Rule 90 CPC (wrongly mentioned as Order 21 Rule 19 CPC).

2) The 1st respondent/DHR obtained money decree against 1st petitioner—P.Nagi Reddy and filed Execution Petition against his LRs for realization of Rs.1,05,557.50ps by sale of house property belonging to the JDRs. The JDRs remained *ex parte* and the house property was sold in public auction on 19.08.2015. The petitioners/JDRs filed EA No.109/2016 to set aside the sale on two main grounds. Firstly on the ground that as per sale proclamation, the date of auction was 26.08.2015 but the DHR played fraud on the Court and saw that auction sale was conducted on 19.08.2015 putting the JDRs in darkness. Secondly, it was contended that the house was sold at a very low price causing prejudice to the JDRs. The DHR brought Advocate's clerk and made him to participate in the auction and the bid was knocked for a low price. The 1st respondent/DHR filed counter and opposed the petition and the Executing Court dismissed the petition after full-fledged enquiry.

Hence the instant CRP.

3) As per the direction of this Court dated 22.09.2017, the auction purchaser is added as 4th respondent.

4) Heard arguments of Ms. Sodum Anvesha, learned counsel for petitioners and Sri Shaik Mohammed Ismail, learned counsel for 4th respondent. Notices sent to respondent Nos.1 to 3 were not yet returned.

5a) Challenging the impugned order, learned counsel for petitioners firstly argued that the petitioners inadvertently filed the petition under Order 21 Rule 19 CPC and later they filed petition to amend the provision of law to Order 21 Rule 90 CPC and without deciding the said petition at first, the Executing Court dismissed EA No.109 of 2016 and also dismissed the amendment petition on the same date.

b) Secondly, learned counsel argued, as per the copy of the proclamation affixed on the conspicuous part of the District Court building, the auction was scheduled to be held on 26.08.2015. However, curiously the auction was conducted well in advance on 19.08.2015 itself keeping the JDRs and other concerned in darkness. The JDRs suspect foul play on the part of the DHR in this regard. Due to the said material irregularity and fraud in the matter of mischievous advancement of the date of sale without the knowledge of the JDRs, the entire sale proceedings were vitiated by fraud and hence liable to be struck down.

c) Thirdly, learned counsel argued that the scheduled house property is worth more than Rs.50 lakhs and the Executing Court in violation of the procedure contemplated under Order 21 Rule 64 CPC, sold the

entire schedule property without considering whether sale of a portion of the property would be sufficient to satisfy the E.P amount, since the E.P amount is a meager sum of Rs.1,05,557/- only. Learned counsel vehemently argued, the sale is vitiated on that count also and placed reliance on the decision reported in *Ambati Narasayya vs. M.Subba Rao and another*¹.

d) Nextly, she argued that the sale was vitiated also for the reason of knocking down the bid for a throw away price inspite of the fact that the schedule property is worth more than Rs.50 lakhs.

She thus prayed to allow the CRP.

6) Opposing the CRP, learned counsel for 4th respondent argued that the auction date was indeed fixed as 19.08.2015 and auction was also held on the same date and therefore there was no fraud or mischief as alleged. He further argued that the sale was held for a valid and reasonable price and hence the petitioners cannot plead any prejudice. He contended that the petitioners ought to have followed the procedure prescribed under Order 21 Rule 89 CPC and deposited the amount specified therein for setting aside the sale but they followed a different and untenable procedure. He thus prayed to dismiss the CRP.

7) The point for determination is:

“Whether there are merits in the CRP to allow?”

¹ 1989 Supp (2) SCC 693

8) **POINT:** In *Chandala Veera V.Satyanarayana @ Babulu, E.G.Dist. vs. Chandala Sesha Ratnam (died) E.G.Dist. and others*², a learned Judge of this Court dealt with Order 21 Rule 90 CPC in the context of when a sale can be set aside. It was held thus:

Para 12: *From the above, coming to Rule 90 of Order XXI C.P.C., which deals with application to set aside sale on ground of irregularity or fraud, reads as follows:*

(1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a ratable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under the rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Para 13: *So far as invoking of the provision supra concerned, there must be plea and proof as to the injury suffered by objectors to the auction sale (be it judgment-debtor or any person claiming through or otherwise) in showing said sale arising out of alleged material irregularity or fraud, as the case may be, as held by the Apex Court in **Ram Maurya v. Kailashnath**³.*”

² 2018 (1) ALT 1

³ AIR 2000 SC 3402

Thus the JDR or any person whose interests are effected by the sale, can, seek to set aside sale if he could establish the material irregularity or fraud in publishing or conducting the sale. Hence it has now to be seen whether the petitioners could establish the aforesaid elements of irregularity or fraud in the matter of publication or conduction of sale to deserve any order.

9) The first ground raised is concerned, the petitioners filed EA No.109 of 2016 under Order 21 Rule 19 CPC apparently by mistake, instead of Order 21 Rule 90 CPC. They also filed EA No.110 of 2016 under Order 6 Rule 17 CPC seeking permission to amend the provision of law to Order 21 Rule 90 CPC. Both the petitions were disposed of on 31.12.2016. The Executing Court noted that since E.A.No.109 of 2016 was dismissed, the amendment petition was also dismissed. The contention of the petitioners is that the Executing Court ought to have allowed EA No.110 of 2016 and permitted petitioners to amend the provision of law to Order 21 Rule 90 CPC in EA No.109 of 2016 and then decided the said petition by giving an opportunity to the petitioners to let in evidence. In the considered view of this Court, the simultaneous disposal of both the petitions did not cause any prejudice to the petitioners for, in Para 6 of its order, the Court observed that an amendment petition was filed to amend the provision of law and the essence of the petition was vital to decide the petition and quoting of a wrong provision will not have any effect. Thus, the Executing Court was aware of the fact that amendment petition was pending. In fact, the Court considered EA No.109 of 2016 in the lines of Order 21 Rule 90

CPC and decided. Hence the petitioners cannot clamour any injustice in that regard.

10) The next argument is the date of proclamation. As can be seen from the copy of the proclamation under Order 21 Rule 66 CPC attached in the office of District Collector, Kadapa, a copy of which is filed along with material papers, the auction date was mentioned as 19.08.2015. In the paper publication made in Prajasakthi Telugu paper dated 22.07.2015 also, the date of auction was mentioned as 19.08.2015. However, in the copy of proclamation attached in the District Court Building, Kadapa, the date of auction was mentioned as 26.08.2015. The said date was apparently a mistake. Therefore, the petitioners cannot harp any material irregularity or fraud in publishing or conducting the sale.

11) The third ground urged is that the Executing Court did not follow the procedure contemplated under Order 21 Rule 64 CPC. Learned counsel argued that the Executing Court did not make an endeavour to see whether sale of a portion of the house property would be suffice to discharge the E.P amount. I am afraid this argument is not available to the petitioners because the petitioners remained *ex parte* and in E.A.No.109 of 2016 except taking the plea that the auction was knocked down for a low price, the petitioners did not put-forth the plea relating to non-observation of the procedure under Order 21 Rule 64 CPC. For the same reason, the cited decision *Ambati Narasayya* (1 supra) is of no avail to the petitioners.

12) Fourth argument is concerned, learned counsel for petitioners would argue that whereas the property is worth more than Rs.50,00,000, it was sold for an abysmally low price and thereby injustice was meted to the petitioners. Deprecating the said argument, learned counsel for respondents would argue that Ameen valued the house property at Rs.25,00,000/- and the Court accepted 4th respondent's bid at Rs.25,50,000/- and therefore, no injustice was caused to the petitioners. At any rate, the said argument is not available to them since they remained *ex parte* in E.P and further, they did not produce any evidence in E.A.No.109 of 2016 to buttress their contention that the house was worth more than Rs.50,00,000/-. I find force in the said argument. The petitioners have not produced any evidence either before the Executing Court or in this Court to establish that the house is worth more than Rs.50,00,000/-. On the other hand, they remained *ex parte* in E.P and only made a bald contention in E.A.No.109 of 2016. Hence the said contention does not hold water.

13) For the above reasons, no merits are found in the CRP to set aside the sale. However, in view of the facts peculiar to this case i.e, even according to Ameen's value the property is worth Rs.25,00,000/- and the E.P amount was only Rs.1,05,557.50ps, in the considered view of this Court, interest of justice requires an opportunity should be given to the petitioners/JDRs to deposit the E.P amount and seek to set aside the sale.

14) Accordingly, this C.R.P. is disposed of with the following directions:

- i) The petitioners/JDRs are directed to deposit the E.P amount and other incidental amounts as laid down under Order 21 Rule 89 CPC within one(1) month from the date of this order before the Executing Court, failing which, this order shall be deemed cancelled and the sale shall be confirmed.
- ii) Upon such deposit, the Executing Court shall set aside the sale.
- iii) No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 22.01.2018
scs

U. DURGA PRASAD RAO, J

