IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.06.2019

CORAM:

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.R.P.(NPD) No. 2012 of 2019
and
C.M.P.No. 13049 of 2019

M/s. Kiran Global Chems Limited,
Represented by its Director
Mr.R.Desikumar,
Vanjur, Karaikkal Taluk,
Karaikkal District. ... Petitioner

Vs.

1. M/s. Syndicate Bank,
   Represented by its Branch Manager,
   T.Nagar Branch, Chennai – 17.

2. M.Balasubramanian,
   Represented by his Power Agent
   Mr.K.Selvam

3. M/s.Sankar Traders,
   Registered Company,
   51, Cathedral Road, Chennai – 86.

4. V.Subramaniyam

5. P.Maitili

   S.N.Nadar (Died) Represented by Legal Heirs

   Sathiyaseelan (Died) Represented by Legal Heirs

   Rajasekaran (Died) Represented by Legal Heirs

6. N.Rettinamani

7. N.Sivagaminathan

8. D.Navaneethammal

9. D.Jayamammal

10. Shenbagapushpagathammal

11. Ramesh Babu

12. Senpagarajan

13. Nadarajaprabu

14. Pradeep

15. Prasanna

16. Dr.Samrat Asokan

17. Vijayasundar

18. Vijayasundari

19. Rethinamala ... Respondents

(***Respondents 3 to 19 are ex parte***)

20. D.Moorthy ...Auction Purchaser

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the proceedings in the Docket Order dated 06.06.2018 in EP.No.39/1997 in OS.No.2/1982 by the learned Additional Subordinate Judge, Mayiladuthurai and declare it "null and void".

For Petitioner : Mr.P.Wilson
Senior Counsel for
Mr.P. Raja

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed by the subsequent purchaser from the Judgment Debtor.

2. Originally a suit for recovery was filed by the Bank/1st

respondent on the basis of Mortgage Deed, against one S.N. Nadar. The 2nd respondent herein was impleaded as 2nd defendant in the suit as he claimed right over the properties through an agreement for sale. The suit was decreed in the year 1991 and the same was confirmed by this Court in Second Appeal.

3. The 2nd defendant discharged the debt to the Bank and got the decree assigned in his favour. He filed an execution petition in the year 1997 arraying the said S.N. Nadar as judgment debtor.

4. During the pendency of the execution petition, it appears that there was some sale transaction, through which, the petitioner purchased certain properties from the Judgment Debtor in the year 2003. The said S.N. Nadar died and his legal heirs are impleaded as Judgment Debtors and they remained exparte in the execution proceedings. The execution Court ordered proclamation of sale and fixed the upset price at Rs.1,90,90,000/- on 19.09.2016. Since the sale could not fructify, on the petition filed by the decree holder, the upset price was reduced to Rs.1,10,00,000/- on 2.4.2018.

5.The relevant portion of the proceedings of the Execution Court is extracted hereunder;

02.04.2018
EA.242/17 is pending. Upset price fixed at
Rs.1,10,00,000/-.
Proclamation of sale on 4.6
further hearing-6.6
Batta within 3 days.
06.06.2018
Sale proclamation - Proclaimed by beat of Tom Tom
Order to Nazir - Court notice board affixed
sale warrant - property SL.No.1 to 10 sold for
Rs.1,11,00,000/-
No sitting, hence posted to 07.06.2018
07.06.2018
sale proclamation - proclaimed by beat of Tom Tom
Order to Nazir - Court Notice Board affixed
Sale warrant - property Sl.No.1 to 10 sold for
Rs.1,11,00,000/- (One Crore and eleven lakhs only)
Claim petition and stay petition filed. Taken on file as
per EA.139/2018, EA.140/18.'

6. The proclamation was made by beat of Tom Tom and affixed on the Court notice board and the property was sold for Rs.1,11,00,000/- to the 20th respondent herein. At that juncture, the petitioner filed two execution applications viz., E.A.No.139 and 140 of 2018. Both the applications were dismissed holding that the petitioner is not a bonafide purchaser, against which, he filed an appeal and the same is pending.

7. Learned Senior Counsel appearing for the Revision Petitioner has vehemently contented that no order of attachment was made pending Suit or pending Execution Proceedings nor it was entered in

the registers of the Registrar office. Therefore, being a bonafide purchaser, the petitioner shall not be dispossessed of the property by irregular procedure adopted by the Court. He filed a petition under Order 21 Rule 58 CPC, claiming his right title and interest over the property and the same was dismissed against which he has already filed an appeal.

8. Now under Article 227, he has chosen to challenge the irregularity of the procedure adopted by the Execution Court in proclamation and sale of the property before this Court. According to the petitioner, the execution is in excess of the decree, violative of procedure laid down under Order 21 Rule 64 and also the issuance of proclamation does not conform to the statutory provision and therefore, it is irregular. Therefore, he seeks interference of this Court under Article 227 of the Constitution of India to stall the Execution Proceedings.

9.Learned counsel for the petitioner would rely on the various judgments of the Honourable Apex Court and this Court as follows;

(i) ***1977 SCC(3) 377 (Takaseela Pedda Subba Reddy vs. Pujari Padmavathamma & others)***, wherein, it is held as follows; (P 1 to 6);

'In this appeal the facts are more or less undisputed and the only serious point argued by the appellant is that the High Court was in error in setting aside the sale

because even if the entire decreetal amount was not mentioned in the sale proclamation, that was at best an irregularity which did not cause any prejudice to the judgment-debtor. It was also argued by learned counsel for the appellant that the judgment debtor did not raise any objection before the Executing Court against continuing the sale of other proper- ties situated in village Gudipadu. It was next submitted that the 5th respondent/decreeholder had obtained another decree in O.S 19 of 1953 and the total amount under the two decrees fully justified the selling of the properties in village Gudipadu also, particularly when the decree-holder had taken an order from the Executing Court for rateable distribution of the sale proceeds. It is true that the High Court has not considered this aspect of the matter, but in our opinion the contentions raised by the appellant are wholly untenable. It is not disputed that the warrant of sale was prepared long after the 5th respondent/decreeholder had obtained the second decree in O.S. 19 of 1953 and yet no attempt was made by the decree- holder to approach the Court for amending the decretal amount mentioned in the sale proclamation, so as to include the decretal amount not only of the decree in the first suit No. O.S. 15 of 1949 but also of the decree in the second suit in O.S. 19 of 1953. In these circumstances, therefore, under the provisions of 0.21 r. 64 of the Code when the amount as specified in the sale proclamation was fully satisfied by the sale of the properties in village Devanoor, the Court should have stopped the sale of further items of the properties. It is manifest that where the amount specified in the proclamation of sale for the recov- ery of which the sale was ordered is realised by sale of certain items, the sale of further items should be stopped. This, in our opinion, is the logical corollary which flows from O.21 r. 64.of the Code which may be extracted thus:
"Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shah be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same."

Under this provision the Executing Court derives jurisdic- tion to sell properties attached only to the point at which the decree is fully satisfied. The words "necessary to satisfy the decree" clearly indicate that no sale can be allowed beyond the decretal amount mentioned in the sale proclamation. In other words, where the sale fetches a price equal to or higher than the amount mentioned in the sale proclamation and is sufficient to satisfy the decree, no further sale should be held and the Court should stop at that stage. In the instant case, we have already indicated that the sale of lands in village Devanoor alone fetched a sum of Rs. 16880 which was more than sufficient to satis- fy the amount of Rs, 16,715-8-0 mentioned in the sate proclamation. It is true that the decree-holder had ob- tained another decree in O.S. No. 19 of 1953, but there is nothing to show that the decree-holder had approached the Court for including the second decretal amount in the proc- lamation of sale. In these circumstances, therefore, we are clearly of the opinion that the Executing Court was not justified, in the facts and circumstances of the present case, in selling the properties situated in village Gudipa- du. The fact that the judgment-debtor did not raise an objection on this ground before the Executing Court is not sufficient to put him out of Court because this was a matter which went to the very root of the jurisdiction of the Executing Court to sell the properties and the non- compliance with the provisions of O. 21 r. 64 of the Code was sufficient to vitiate the same so far as the properties situated in village Gudipadu were concerned. For these reasons the contentions raised by counsel for the appellant must be overruled.'

(ii) **1994 SCC (1) 131 (Desh Bandhu Gupta Vs. N.L.Anand & Rajinder Singh)** , wherein, in para 17, it is held as follows;

17. Under Section 47 all questions relating to execution, discharge or satisfaction of the decree should be determined by the Executing Court alone. The pre-sale illegalities committed in the execution are amenable to the remedy under Section 47. Post-sale illegalities or irregularities causing substantial injury to the judgment-debtor are covered under Order 21 Rule 90. Sub-rule (1) thereof covers the field of material irregularities or fraud in publicity or conducting the sale. Desh Bandhu Gupta vs N.L.Anand & Rajinder Singh on 17 September, 1993 Indian Kanoon - http://indiankanoon.org/doc/1362442/ 11 Sub-rule (2) enjoins proof thereof and the court should find that by reason thereof the applicant sustained substantial injury. The total absence of drawing up of the proclamation of sale and settlement of its term by judicial application of mind renders the sale a nullity being void. It is covered by Section 47. The non- application of mind whether sale of a part of the property would satisfy the decree debt is a material irregularity doing substantial injury to the appellant attracting Order 21 Rule 90. In either case the sale is liable to be set

aside. It is true that there is distinction between mere irregularity and material irregularities and the sale is not liable to be set aside on proof of mere irregularity. It must be material irregularity and the court must be satisfied that on account thereof substantial injury was sustained by the appellant. The sale of 550 sq. yards for recovery of a paltry sum of Rs 7,780.33, without selling a portion thereof, caused substantial injury to the appellant.

(iii) **1989 SCC Supl.(2) 693 (Ambatti Narasayya Vs. M. Subba Rao and another)**, wherein, it is held as follows;

The principal question that has been highlighted before us relates to the legality of the sale of 10 acres of land without considering whether a portion of the land could have been sold to satisfy the decree. It is said that the total sum claimed in the execution was Rs.2,395.50. The relevant provision which has a bearing on the question is Rule 64 Order XXI of the Code of Civil Procedure and it reads as follows:
"Order XXI Rule 64: Power to order property attached to be sold and proceeds to be paid to persons entitled--Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same."

It is of importance to note from this provision that in all execution proceedings, the Court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the Court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This, in our opinion, is not just a discretion, but an obligation imposed on the Court. Care must be taken to put only such portion of the property to sale the consideration of which is sufficient to meet the claim in the execution petition. The sale held without examining this aspect and not in conformity with this re- quirement would be illegal and without jurisdiction. In Takkaseela Pedda Subba Reddy v. Pujari Padmavathamma and Ors., [1977] 3 SCC 337 at 340; this Court after examin- ing the scope of Rule 64 of Order XXI CPC has taken a simi- lar view:

"Under this provision the executing Court derives jurisdiction to sell properties attached only to the point at which the decree is fully satisfied. The words 'necessary to satisfy the decree' clearly indicate that no sale can be allowed beyond the decretal amount mentioned in the sale proclamation. In other words, where the sale fetches a price equal to or higher than the amount mentioned in the sale proclamation and is sufficient to satisfy the decree, no further sale should be held and the court should stop at that stage."

We may again hark back to the case of the appellant. The amount claimed in the execution petition was about Rs.2,400. To realize that amount the land measuring 10 acres was sold for Rs. 17,000. The appellate court has stated that the land being one, could not have been divided. Shri Ganesh, learned counsel for the respondent sought to justify that view. But we find it difficult to appreciate that reason. It seems to be against common sense. The land is not indivisible. Nor division is impracticable or undesirable. Out of 10 acres, the Court could have conveniently demarcated a portion and sold it. Unfortunately, no such attempt was made and it was not even thought of. The Court has blind fold sold the entire property. This is a usual feature which we have noticed in most of the execution cases. We must deprecate this tendency. There is a duty cast upon .the Court to sell only such property or a portion thereof as necessary to satisfy the decree. It is a mandate of the legislature which cannot be ignored. We cannot, therefore, sustain the im-pugned sale. It must be set aside being in contravention of the provisions of Rule 64, Order XXI CPC.'

(iv) **2015 SCC Online Hyd 464 (Kamireddy Sumathi and another Vs. C. Mallikarjuna Reddy and others)**

22. In Takkaseela Pedda Subba Reddi v. Pujari Padmavathamma , the decree holder obtained decrees in two suits. He filed Execution Petition in respect of one decree for selling the properties belonging to the judgment debtor and he also applied for permission to bid at the auction sale. The sale was held in respect of the lands

situated in two Villages. The sale was set aside as there was some delay in payment of the sale price. A second sale took place. In the second sale, the decree holder purchased the lands in one Village, whereas the auction purchaser purchased the lands in another Village. But, the sale price in respect of the lands in one Village where the decree holder became the successful bidder was sufficient to satisfy the decree. In spite of the same, when the sale of lands in another Village was held and the auction purchaser became the highest bidder, the judgment debtor objected to the sale of lands in another Village. But, the objection of the judgment debtor was rejected. However, the High Court upheld the contention of the judgment debtor based on the provisions of Order 21 Rule 64 of CPC. That is how the matter went to the Supreme Court. The Supreme Court observed that the absence of objection by the judgment debtor before the Executing Court is not sufficient to put him out of Court because the matter went to the very root of the jurisdiction of the Executing Court to sell the properties and non-compliance with the provisions of Order 21 Rule 64 of the Code was sufficient to vitiate the sale.

23. In S.S.Dayananda v. K.S.Nagesh Rao the Supreme Court upheld the order of the High Court setting aside the sale for non-compliance with the procedural requirements of Order 21 Rule 64 of CPC.

24. Thus it is clear that the Executing Court has a duty to comply with the procedural requirements of Order 21 Rule 64 of CPC and the record does not disclose whether such compliance was made in this case. No doubt it is true that the present application is filed under Section 151 of CPC without quoting proper provision of law but that should not deter this Court from directing the Executing Court to comply with the mandatory provision of Order 21 Rule 64 of CPC. The learned Counsel for the third respondent relied on a decision of Madras High Court in Saminathan v. Manager, State Bank of India . The High Court of Madras relied on a decision of this Court in Vummethala Somamma v. Thameeru Balanagamma and held that when the Executing Court was not asked to act under Order 21 Rule 64 of CPC by exercising its discretion to sell only part of the property attached, it is not open to the petitioner/judgment debtor to raise that point in the Civil Revision Petition. But that case arose after confirmation of sale and in the present case, the confirmation of sale did not take place.'

(v) In the judgment of this Court reported in Pavayammal (deceased

Vs. Thangammal (deceased) i rendered on 25.9.2014 in CMA.No.342 of 2003, it is held as follows;

> 21(11) In a simple money decree, if the property is attached and to be sold, the Execution Court is under the obligation to consider the fact as to whether the sale of a portion of the property itself would be sufficient to meet the claim under execution petition or not? If the same is not considered by the Executing Court and if the property is sold, which value is more than that of the claim made in the execution petition, it is nothing, but the material irregularity in conducting the sale and against the Order 21 Rule 64 of CPC. If such sale is questioned by a person whose interest in the property was affected, then the said sale is liable to be set aside on the ground of material irregularity. In the instant case, auction sale was conducted not in accordance with Order 21 Rule 64 of C.P.C. Hence, the auction sale is liable to be set aside on the ground of material irregularity.

10. The Honourable Supreme Court in all these above judgments has considered the validity of the order passed by the execution Court in the applications filed under Order 21, Rule 90 CPC, whereas , the petitioner has come out with the above Revision under Article 227 of the Constitution of India without approaching the execution Court under the relevant provisions of Civil Procedure Code.

Rule 64 of Order 21 CPC read as follows;

> **'64. Power to order property attached to be sold and proceeds to be paid to person entitled**.- Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and

> that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.'

11. Rule 64 mandates that the execution Court should apply its mind as to the extent of property necessary to satisfy the decree and out of the sale proceeds sufficient portion shall be paid to the decree holder. It need not sell all the properties. If sale is ordered for all the properties without considering the sufficiency to satisfy the decree, it amounts to excessive execution.

12. Rule 66 specifies the procedure of proclamation of sale by public auction. If there is irregularity of procedure by execution Court, it can also be challenged by the person interested under Rule 90 CPC. If a person wants to set aside the sale, he can approach the Court under Rule 89 on depositing the sum equal to 5% of the purchase money and these procedures were clearly laid down under Order 21 of CPC. Any person having interest or aggrieved over the execution proceedings should approach the execution Court at the first instance to redress his grievances for the reliefs he seeks for.

13. In the present case, the upset price was fixed at Rs.1,90,90,000/- at the first instance, but there were no takers for the

same. On application by the decree holder, the upset price was reduced to Rs.1,10,10,000/-. Even though the petitioner claims to have mortgaged the properties for more than 25 crores with the Bank, he has not approached the Court with relevant documents, nor taken any steps to set aside the sale under Rule 89 of Order XXI of CPC. As far as irregularities of procedure contrary to Rule 64 is concerned also he has not filed any application under relevant provisions of the Act. On the face of it the execution court appears to have followed the procedure. If there is any flaw, it is open to persons interested to challenge the same, as stated supra, by filing appropriate application under relevant provisions of law. But seeking interference, without exhausitng the available remedies, under Article 227 of Constitution of India is not sustainable.

14. This Court does not find any striking irregularity or patent illegality in the course adopted by the executing court warranting exercise of superintending power under Article 227 of Constitution of India.

15. Therefore, this Court is not inclined to entertain the Civil Revision Petition. It is open to the petitioner to take steps as claimed by him under appropriate provisions. On such application being filed, the

Execution Court can decide the issue on merits subject to preconditions, limitations and restrictions specified in the relevant provisions.

16. Accordingly, this Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, the connected civil miscellaneous petition is closed.

27.06.2019

Speaking Order/Non Speaking Order
Index : Yes/No
Note : Issue Order Copy on 05.07.2019
sni/msr

To

The learned Additional Subordinate Judge,
Mayiladuthurai

M. GOVINDARAJ,J.

sni/msr

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