



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD)No.1239 of 2011

and

M.P (MD) No.1 of 2011

Govindan

... Petitioner/Petitioner  
Auction Purchaser

**Vs.**

1.Nagendran : 1<sup>st</sup> Respondent/1<sup>st</sup> Respondent/Respondent/  
Defendant/Judgment Debtor

2.Alagumalai : 2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent/Petitioner/  
Plaintiff/Decree Holder

**PRAYER:-** Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 16.09.2010 passed in unnumbered E.A. - of 2010 in E.P.No.90 of 1999 in O.S.No.533 of 1998 on the file of District Munsif Court, Thirumangalam.

For Petitioner : Mr.R.Subramanian

For R-1 : Mr.M.Gnanagurunathan

For R-2 : No appearance

**ORDER**

The interesting question that arises for consideration in the above civil revision petition is whether the non payment of the sale certificate charges / sale certificate would render the entire auction sale null and void and give rise to a situation contemplated under Order 21 Rule 86 of Code of Civil Procedure.

2.It is necessary to briefly allude to the facts of the case for appreciating the issue in question:-

(i) The petitioner herein is the auction purchaser. The second respondent had filed a money suit against the first respondent, which was decreed on 23.06.1999. To execute the said decree, the second respondent had filed E.P.No.90 of 1999 seeking to attach the property belonging to the judgment debtor/first respondent and bring it for sale. The said execution petition was moved on 29.11.1999 and by an order dated 27.03.2000 the property was attached. 'B' diary which has been appended to the typed set of papers would indicate that the property was brought to sale several

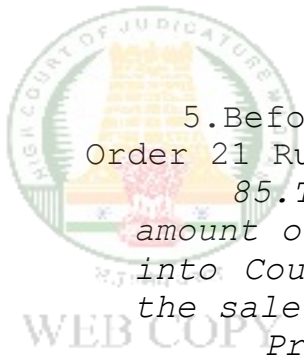


times, but however there was no bidder and the upset price has been reduced. Ultimately, On 19.06.2003 auction sale ended in favour of auction purchaser/revision petitioner. Immediately, thereafter, the first respondent/judgment debtor has filled E.A.No.115 of 2003 to set aside the sale auction. The said application had been pending till 05.08.2008. Ultimately, the said execution application was dismissed. Thereafter, on 12.02.2009, the Court below namely, the learned District Munsif, Thirumangalam, noted that the sale certificate charges has not been paid as directed by an order dated 19.06.2003 and the matter was adjourned for clarification.

(ii) The petitioner herein had filed unnumbered execution application invoking the provision of Order 21 Rule 94 of the Code of Civil Procedure to condone the delay of 2156 days in depositing the sale certificate charges. The said application was dismissed without being taken on file by an order dated 16.09.2010. The learned District Munsif, Thirumangalam, dismissed the said application on the ground that under the provision of Order 21 Rule 85 of the Code of Civil Procedure, it was mandatory on the part of the auction purchaser to deposit the purchase money as well as sale certificate charges within 15 days from the date of sale and the provision being mandatory, the Court is not vested with the jurisdiction to extend the time. On this ground the learned District Munsif, had dismissed the said application as not maintainable. Challenging the same, the revision petitioner is before this Court.

3.Mr.R.Subramanian, learned counsel would argue that the provision of Order 21 Rule 85 of the Code of Civil Procedure is only directory and not mandatory and therefore, the view taken by the learned Judge is erroneous. In support of his argument, he would rely on the following judgment reported in **AIR 1962 Pat 221** in the case of **Harnandan Singh Vs. Aditya Narain Singh and others** and submit that the language of Order 21 Rule 86 of the Code of Civil Procedure is purely directory. Therefore, he would argue that it cannot be said that the auction purchaser can not file a petition to condone the delay in payment. He would also bring to the notice of this Court that the petitioner had attempted to make the deposit on 23.06.2003, but however the Head Clerk had informed him that since the application in E.A.No.115 of 2003 to set aside the auction sale is pending, the said amount could be deposited after the application is dismissed. Therefore, he would state that the petitioner has immediately taken steps to abide by the said order dated 19.06.2003 and therefore, the order impugned deserves to be set aside.

4.Mr.M.Gnanagurunathan, learned counsel for the first respondent would submit that the time period prescribed is mandatory and the Court cannot extend the time for making the deposit, as the same is clear from the language of the provision. He would therefore argue that the order should be sustained.



5.Before assessing the issue, it is necessary to extract the Order 21 Rules 85, 86, 92 and 94 of the Code of Civil Procedure:-

85.Time for payment in full of purchase money:- The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property;

Provided, that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

**High Court Amendment (Madras): Substitute the following for the existing rule:**

85.Time for payment in full of purchase money and of stamp for certificate of sale:-The full amount of purchase-money payable and the general stamp for the certificate under rule 94 or the amount required for such stamp, shall be deposited into Court by the purchaser before the Court closes on the fifteenth day from the sale of the property.

Provided, that, in calculating the amount of purchase money to be so deposited, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

86.Procedure in default of payment:-In default of payment within the period mentioned in the last proceeding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

92. Sale when to become absolute or be set aside- (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:

[Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.]

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, [or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale]:

Provided that no order shall be made unless notice of the



application has been given to all persons affected thereby.

(Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.)

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

(4) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.

(5) If the suit referred to in sub-rule (4) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court directs, be revived at the stage at which the sale was ordered.]

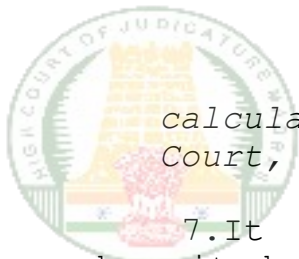
**High Court Amendment (Madras); Amend sub rule (2) as follows:-**

(2) Where such application is made and allowed, and where, in the case of an application under Rule 89, the deposit required by that rule is made within thirty days from the date of sale, (and in case where the amount deposited has been diminished owing to any cause not within the control of the depositor such deficiency has been made good within such time as may fixed by the Court) the Court shall make an order setting aside the sale"

94 . Certificate to purchaser- Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale of is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

6. From the perusal of the 'B' diary extract, it is seen that on 19.06.2003, the learned District Munsif, Thirumangalam had passed the following orders:-

Property sold Govindan s/o Alagumalai Seeli-Naickenpatti, Peraiyur Taluk, Sale held on 16.06.2003 Plot No.I for Rs.26,100/- Lot-II Rs.21,100/- Lot-III for Rs.9,100/- Lot IV Rs.26,100/- Total for Rs.82,400/- -1/4<sup>th</sup> sale amount Lot-No.I for Rs.6525/- Lot No.II for Rs.5275/- Lot -III for Rs.2275/- Lot-IV for Rs.6525/- Total Rs.20,600/-. Deposited into the court on 16.06.2003. Poundage Collected for Rs.2592/- for Item I to IV by way of Court fees the balance of the sale Amount, sale certificate charges,



*calculation memo, as per Rules Deposited and filed in this Court, confirmation of sale by 19.08.2003.*

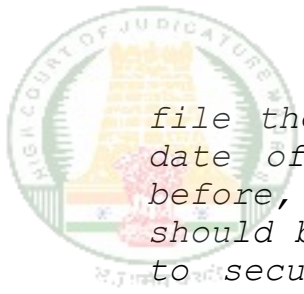
7.It is also evident that the entire purchase money was deposited on two dates namely 17.06.2003 and 01.07.2003. On 18.08.2003, the judgment debtor/first respondent had filed E.A.No.115 of 2003. It appears that the judgment debtor had taken time to settle the issue with the auction purchaser on several occasions. However, ultimately on 05.08.2008, it was represented that no settlement was possible since the judgment debtor had remained *ex parte* and ultimately, on the same date his application to set aside the auction sale held on 19.06.2003, was dismissed. As soon as the said application in E.A.No.115 of 2003 was dismissed, the matter was posted for confirmation of sale and for filing calculation memo. The learned District Munsif had observed in the order dated 12.02.2009 that the deposit of the sale certificate amount had not been done. Ultimately, the application was moved on 22.04.2009, which has been impugned in the present proceedings.

8.The only issue that has to be considered is whether the Court can extend the time for making the deposit. Rule 85 of Code of Civil Procedure as amended by the Madras High Court would indicate that the entire purchase amount payable and the stamp charges required for the sale certificate has to be deposited before the Court closes on the 15<sup>th</sup> day from the sale of the property. The word used in Rule 86 contemplates that the consequence of such non-deposit is that the property should be resold. Admittedly, the auction purchaser has paid the entire purchase money within a stipulated time including the poundage charges and it is only the sale certificate charge, which was kept pending.

9.The affidavit filed in support of the application would indicate that on 23.06.2003 (which was within 15 days period) the petitioner/auction purchaser has approached the Court for making deposit and he was advised by the Head Alerk not to make deposit, since the application to set aside the auction sale was pending. This explanation appears to be genuine as the statement has not been refuted by the judgment debtor. As soon as the application for setting aside the auction sale in E.A.No.115 of 2003 was dismissed, the present application has been moved.

10.The judgment referred to supra viz.,AIR 1962 Pat 221 has extensively dealt with this issue, in fact one of the crucial questions which was answered in the said judgment is whether the provision for filing sale certificate stamps within fifteen days as provided by the amended Rule 94 of Order 21 of the Code of Civil Procedure, is mandatory or directory. Answering the said question the learned District Munsif has held as follows:-

*31.In this view of the matter, in my opinion, the word, "shall", used in the expression, "the auction purchaser shall*

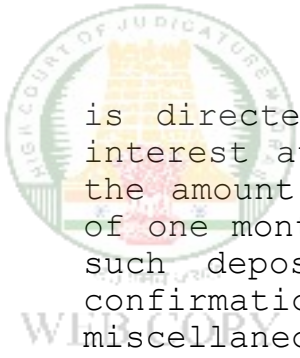


file the sale certificate stamp within fifteen days from the date of confirmation of sale", occurring in Rule 94, read before, must be deemed to be directory, and not mandatory. It should be borne in mind that this provision has been made only to secure the revenue of the State. If the word, "shall", referred to above, is given its ordinary and natural meaning and construed to be mandatory it "will lead to absurdity, and to a manifest contradiction of the apparent purpose of the Code, which undoubtedly was not intended by it. How can the title of the auction-purchaser, when the sale has become absolute under Rule 92 (1) of Order 21, and title in the property sold has vested in him under Section 65 of the Code from the date of the sale, be defeated and negated for non-preparation of the sale certificate for not filing the sale certificate stamp within the time allowed by the said Rule 94? By the default of the auction-purchaser in not filing the sale certificate stamp, the only person affected is the auction-purchaser himself and none else, because of his default there is the consequential delay in the issue of the sale certificate to him. By such default, neither the decree-holder, nor the judgment-debtor, if a stranger is the auction-purchaser, is in any way prejudicially affected, and, consequently, the non-filing of the sale certificate stamp, within the required time, does not make any difference in the matter of the sale that has been validly held and when the full amount of the purchase-money payable as required by Rule 95 of Order 21, has been paid by the auction-purchaser, within the time allowed, and the sale has become absolute and the title has vested in the auction-purchaser.

33.For these considerations, therefore, in my opinion, it is only reasonable and correct to conclude that the word "shall" used in the amended Rule 94 of Order 21 of the Code, in connection, with the filing of the sale certificate stamps within fifteen days from the date of the confirmation of the sale, must be held to be directory.

38.---It is clear that the true interpretation of provision indicates that the Court has a power to accept the filing of sale certificate charges beyond the prescribed period and the Court can direct the sale certificate to be preferred.

11.Hence, considering the above judgment which is akin to the provision of Order 21 Rule 85 of the Code of Civil Procedure as per High Court Amendment (Madras), I am of the view that the order of the learned District Munsif, Thirumangalam, deserves to be set aside. Accordingly, this Civil Revision Petition is allowed and the order dated 16.09.2010 passed in unnumbered E.A.No.-- of 2010 in E.P.No.90 of 1999 in O.S.No.533 of 1998 on the file of District Munsif Court, Thirumangalam, is set aside. The revision petitioner



is directed to deposit the sale certificate amount together with interest at the rate of 6% per annum from the date on which the amount become payable till the date of deposit within a period of one month from the date of receipt of a copy of this Order. On such deposit, the court below shall proceed further with the confirmation of sale. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS )

cp

To

The District Munsif,  
Thirumangalam.

+1 CC to M/s.R. SUBRAMANIAN, Advocate SR-90916.

+1 CC to M/s.M. GNANAGURUNATHAN, Advocate SR-90963.

**C.R.P. (NPD) (MD)No.1239 of 2011**

**and**

**M.P(MD) No.1 of 2011**

CS (30.10.2019) 7P 4C