Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4512 OF 2015

Dnyandeo Dadu More & Anr. … Petitioners
V/s.
Akkatai Pandurang More & Ors. … Respondents

Mr. Pramod R. Arjunwadkar, for petitioner.
Mr. Abhijit M. Adagule for respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 4, 2024

P.C.:

1. The petitioners filed an application under Order 21, Rule 90 of the Civil Procedure Code, 1908 (CPC) for setting aside the auction sale of land bearing Block No. 1445 on the ground that the auction sale was initiated through fraud. The petitioners alleged that the process was vitiated by fraudulent actions of the decree-holder and auction purchaser.

2. The Appellate Court, while accepting the petitioners' contention on the maintainability of appeal, dismissed the petitioners' application filed under Order 21, Rule 90 of CPC on the ground that Article 127 of the Limitation Act requires such an application to be filed within 30 days from the date of confirmation of the auction sale. In this case, the auction sale was confirmed on 10th August 2004, and the petitioners admittedly filed their application only on 8th December 2005, beyond the prescribed period. No explanation for the inordinate delay was provided, nor was any plea of lack of knowledge raised by the petitioners before the lower courts.

3. Fraud, as consistently held by the Hon'ble Supreme Court, goes to the root of the matter and can render the proceedings void ab initio. However, the burden of proving fraud lies heavily upon the party alleging it, and the standard of proof is higher than a mere preponderance of probabilities. The petitioners, therefore, bear the onus to demonstrate with cogent and credible evidence that the auction process suffered from fraud or material irregularity as contemplated under Order 21, Rule 90 CPC.

4. Mr. Arjunwadkar, learned Advocate representing the petitioners, relied upon the judgment of the Apex Court in ***Nani Gopal Paul v. T. Prasad Singh & Ors.***[1], submitting that in cases of fraud, no limitation applies. However, in my opinion in the absence of credible proof of fraud, limitation cannot be circumvented. Moreover, even if the petitioners allegedly gained knowledge of the confirmation of the auction sale on 22nd October 2005, they still failed to file the application within 30 days thereafter. This delay remains unexplained and is fatal to their case.

5. Moreover, an application under Order 21, Rule 90 of CPC can only be entertained when the sale is shown to be vitiated by material irregularity or fraud, and the applicant demonstrates

1 **(1995) 3SCC 579.**

substantial injury resulting therefrom. Mere irregularities in the sale process, without proof of resultant substantial injury, are insufficient to set aside the sale. Therefore, the petitioner's failure to provide evidence of such injury further undermines their case. Additionally, the principle that ignorance of the confirmation date must be bona fide and duly established to invoke equitable relief.

6. The Supreme Court in ***Aarifaben Yunusbhai Patel And Others v. Mukul Thakorebhai Amin And Other***[2] also reiterated that Section 5 of the Limitation Act does not apply to applications filed under Order 21, Rule 90 CPC, as the statutory scheme mandates strict adherence to timelines. This reinforces the principle that execution proceedings, require expeditious disposal. In light of this binding precedent, the rejection of the petitioners' application on the ground of limitation by the courts below is legally sound and unassailable. The appellate court rightly observed that any deviation from the limitation prescribed under Article 127 would disrupt the finality of execution proceedings, an outcome that is impermissible under the statutory framework.

7. In conclusion, the courts below have correctly applied the law in dismissing the petitioners' application for setting aside the auction sale. The petitioners' failure to establish fraud, irregularity, or substantial injury, coupled with their unexplained delay in filing the application, leaves no room for interference. Accordingly, the writ petition is devoid of merit and stands dismissed.

(AMIT BORKAR, J.)

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2 **(2020) SCC 2344.**