



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
CIVIL REVISION PETITION NO: 6528 OF 2018

Between:

1. G. Venkata Ramana Naidu, S/o G. Akullaiah Naidu,
Hindu, age 68 years, R/o D.No.11-246,
S.V.Nagar, Tirupati, Chittoor District
Chittoor

...PETITIONER(S)

AND:

1. K VENKATARAMANA REDDY S/o K. Damodar Reddy,
Hindu, aged 58 years,
R/o D. No. 18-3-53/1-AI, Santhi Nagar,
Khadi Colony, Tirupati, Chittoor District.
Chittoor
2. M/s. Margadarsi Chit Fund Pvt., Ltd., Having its branch at Tirupati,
Rep, by its Manager/Foreman C. Kesavulu Naidu,
S/o late Sri Krishnama Naidu, Hindu,
aged about 44 years, R/o Tirupati.
...Respondent/Respondent/DHr
3. S. Narayan Naidu, S/o S. Chenchaiyah Naidu, Hindu, aged 47 years, R/o
D. No. 3-102/11, Thummalagunta Village and Post,
Tirupati Rural Mandal, Chittoor District.
4. S. Sankar Naidu, S/o S. Chenchaiyah Naidu, Hindu, aged 45 years, R/o D.
No. 1-3-8, Thummalagunta Village and Post,
Tirupati Rural Mandal, Chittoor District.
5. N. Ravi, S/o N. Venkata Subbaiah,
Hindu, aged about 43 years,
R/o D. No. 1-6, Thummalagunta Village and Post, Tirupati Rural Mandal,
Chittoor District.
6. Y. Ravi Kumar Reddy, S/o Y. Thimma Reddy, Hindu, aged about 47
years, R/o D. No. JGO-2, Agri Staff Quarters, Tirupati, Chittoor District.
7. T. Jayarami Reddy, SR) T. Kuppaswamy Reddy,
Hindu, aged about 40 years, R/o Plot. No. 72,
L.S.Nagar, Tirupati, Chittoor District.

...RESPONDENTS

Counsel for the Petitioner(s): V SUDHAKAR REDDY

Counsel for the Respondents: HARINATH REDDY SOMA

The Court made the following: ORDER



2019:APHC:15839



IN THE HIGH COURT OF ANDHRA PRADESH

MONDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION NO: 6528 OF 2018

(Petition under Section 115 of CPC to revise the order dated 10-10-2018 made in EA No.94 of 2018 in EP No.20 of 2014 in OS No.114/2011 on the file of the court of the V Additional District Judge, Tirupati.)

Between:-

G. Venkata Ramana Naidu, S/o G. Akullaiah Naidu,
Hindu, age 68 years, R/o D.No.11-246,
S.V.Nagar, Tirupati, Chittoor District.

...Petitioner/Respondent/JDr. No.4

And

1. K. Venkataramana Reddy, S/o K. Damodar Reddy,
Hindu, aged 58 years,
R/o D. No. 18-3-53/1-A1, Santhi Nagar,
Khadi Colony, Tirupati, Chittoor District.

...Respondent/ Petitioner /Auction Purchaser

2. M/s. Margadarsi Chit Fund Pvt., Ltd.,
Having its branch at Tirupati,
Rep, by its Manager/Foreman C. Kesavulu Naidu,
S/o late Sri Krishnama Naidu, Hindu,
aged about 44 years, R/o Tirupati.

...Respondent/Respondent/DHr

3. S. Narayan Naidu, S/o S. Chenchaiyah Naidu,
Hindu, aged 47 years, R/o D. No. 3-102/11,
Thummalagunta Village and Post,
Tirupati Rural Mandal, Chittoor District.

4. S. Sankar Naidu, S/o S. Chenchaiyah Naidu,
Hindu, aged 45 years, R/o D. No. 1-3-8,
Thummalagunta Village and Post,
Tirupati Rural Mandal, Chittoor District.

5. N. Ravi, S/o N. Venkata Subbaiah,
Hindu, aged about 43 years,
R/o D. No. 1-6, Thummalagunta Village and Post,
Tirupati Rural Mandal, Chittoor District.

P-T.O



6. Y. Ravi Kumar Reddy, S/o Y. Thimma Reddy,
Hindu, aged about 47 years, R/o D. No. JGO-2,
Agri Staff Quarters, Tirupati, Chittoor District.

7. T. Jayarami Reddy, S/o T. Kuppaswamy Reddy,
Hindu, aged about 40 years, R/o Plot. No. 72,
L.S.Nagar, Tirupati, Chittoor District.

...Respondents/Respondents/JDrs Nos. 1 to 3, 5 & 6

(R5 to R7 are not necessary parties)

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dt.10-10-2018 made in EA No.94 of 2018 in EP No.20 of 2014 in OS No.114 of 2011 on the file of the court of the V Additional District Judge, Tirupati, pending disposal of the above Civil Revision Petition.

For the Petitioner: SRI V.SUDHAKAR REDDY, Advocate

**For the Respondent No.1: SRI T.D.PHANI KUMAR, Advocate for
SRI HARINATH REDDY SOMA, Advocate**

For the Respondent No.2: SRI P.DURGA PRASAD, Advocate

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO****CIVIL REVISION PETITION No.6528 OF 2018****ORDER:**

Challenging the Civil Revision Petition at the instance of petitioner/4th Judgment Debtor is the order dated 10.10.2018 in E.A.No.94 of 2018 in E.P.No.20 of 2014 in O.S.No.114 of 2011 where under the learned V-Additional District Judge, Tirupati allowed the petition filed by the petitioner/auction purchaser u/Sec.151 of Civil Procedure Code (for short 'C.P.C') to permit him to deposit the value of stamp papers for getting sale certificate beyond the time stipulated in Order 21, Rule 5 of C.P.C.

2. The factual matrix of the case is thus;

(a) In E.P.No.20 of 2014, the 1st respondent herein was the third party/auction purchaser being the successful bidder in the auction conducted by the Execution Court. He paid 25% of the sale consideration amount on the date of auction itself i.e., on 16.08.2018 and also deposited the remaining 75% of the consideration on 23.08.2018. However, he has not deposited the requisite amount for obtaining stamp paper for drafting sale certificate within the period prescribed under Order 21, Rule 85 of C.P.C.

(b) The auction purchaser realized his mistake and later, he filed E.A.No.94 of 2018 u/Sec.148 & Sec.151 of C.P.C, on 25.09.2018 requesting the Court to permit him to deposit the value for stamp paper for obtaining sale certificate and the said petition was allowed



by the Execution Court which is filed and the said order is assailed by the petitioner/4th Judgment Debtor in the instant Civil Revision Petition. 2019:APHC:15839

3. Heard learned counsel for the petitioner, Sri V. Sudhakar Reddy and learned counsel for the 1st respondent, Sri T.D. Phani Kumar.

4. The contention of learned counsel for the petitioner Sri V. Sudhakar Reddy is that under Order 21, Rule 85 of C.P.C, the auction purchaser is duty bound to deposit full purchase money which includes the value of stamp duty required for obtaining sale certificate within 15 days from the date of auction for sale. Though, the petitioner deposited the purchase money within 15 days, however, he failed to deposit the requisite money for obtaining stamp duty for drafting sale certificate within 15 days as prescribed under Rule 85 of C.P.C. Hence, in terms of Rule 86 of C.P.C, the sale has become null and void as Rule 86 of CPC mandates that consequent upon the default committed by the auction purchaser, the Court shall conduct a resale. In that view, he was strenuously argued, the Court has no power either u/Sec.148 or Sec.151 of CPC to extend time to deposit the worth of stamp duty into Court.

5. Hence, the impugned order is contrary to the tenets of law and liable to be struck for contra.

6. While admitting that the 1st respondent/auction purchaser failed to deposit the money required for obtaining stamp duty, learned



counsel would argue that he had diligently paid the entire purchaser money, but by mistake, which is bonafide one he failed to deposit the money for stamp duty. Hence, considering the said procedural mistake as a bonafide one, the Execution Court has rightly allowed the petition and permitted him to deposit the money for stamp duty and there is nothing wrong in the said order.

7. In the light of the above respective arguments, the question that follow for consideration is:

Whether the Execution Court has power to extend time prescribed under Rule 84 and Rule 85 of C.P.C to deposit the purchase money?

8. To answer the above question, it is useful to extract Order 21 Rules 84, 85 and 86 of C.P.C.

“Rule 84 of CPC : Deposit by purchaser and re-sale on default: - (1) *On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty five per cent on the amount of his purchase-money to the officer or other person conducting, the sale, and in default of such deposit, the property shall forthwith be re-sold.*

(2) *Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under Rule 72, the Court may dispense with the requirements of this rule.*

Rule 85 of CPC : 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.

Rule 86 of CPC : Procedure in default of payment:- *In default of payment within the period mentioned in the last preceding 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."*

9. A cumulative reading of the above three provisions makes it clear that an auction purchaser shall;

- (i) *pay/deposit immediately 25% of purchase money, failing which the auction fails and property shall be resold. However, if the Decree Holder is the auction purchaser, he is entitled to seek for set off the purchase money under Rule 72 of C.P.C and the Court may then dispense with the requirement of Rule 84 of CPC.*
- (ii) *Under Rule 85 of CPC, the full amount of purchase money (i.e., the balance of 75%) shall be paid by the auction purchaser into Court before the Court closes on the 15th day from the sale of the property. Here also the benefit under Rule 72 of CPC accrues to the concerned person. As per Andhra Pradesh (Amendment), Rule 85 of C.P.C, the auction purchaser shall be bound to pay full amount of purchase money and stamp for certificate under Rule 94 of C.P.C before the Court closes on the 15th day from the sale of the property.*



10. Thus, Order 21 Rules 84 and 85 of CPC would conjointly tell us that 25% of the purchase money shall be paid on the date of auction and balance amount including the amount required for purchasing stamp duty for issuing sale certificate shall be deposited within 15 days from the date of sale.

11. The consequences of failure to follow the aforesaid mandate is narrated under Rule 86 of C.P.C. This rule tells us that in case of default, on the discretion of the Court, the deposited amount after defraying the expenses of the sale can be forfeited to the government and further the Court shall resell the property as the defaulting purchaser shall forfeit the claim on property or any part of the sum, for which it may subsequently be sold.

12. The tone and terrorem of Order 21 Rules 84 and 85 and particularly Rule 86 of C.P.C., is such that they are mandatory in nature and therefore the default committed by the auction purchaser cannot be excused and set at right by the Court by exercising its power under Section 148 or Section 151 of C.P.C.

13. We have a thicket of decisions in this regard.

(a) In *Manilal Mohanlal Shah and others Vs. Sardar Sayed Ahmed Sayed Mahamad and others*¹, the Apex Court observed thus;

“Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase-money

¹ AIR 1954 SC 349 = MANU/SC/0005/1954



immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase-money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired. No rights at all."

(b) In ***Thayyan Padayachi and others Vs. Veluswami and others***²,

in similar circumstances the Bombay High Court observed thus;

"It seems to me that Order 21, Rule 86 is quite clear on the point. It states that in default of payment within the period mentioned in Order 21, Rule 85, the court may, if it thinks fit, forfeit the deposit less the expenses of sale, to the Government, and the rule proceeds to lay down that the property shall thereafter 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.

This rule does not authorise the court to grant any extension of time for the payment of the balance of the

² AIR 1961 Madras 407 = MANU/TN/0266/1961



purchase price. The only discretion that is available to the Court under this rule relates to the extent to which it is called upon to deal with the 25 per cent of the purchase price which had been deposited under Rule 84. In so far as that is concerned, the court may order its forfeiture after deducting the expenses of the sale.”

14. Incidentally, the Madras High Court held that Section 148 of C.P.C will not come to the rescue of the petitioners therein because it relates to a case where a period is fixed or granted by the Court in its discretion for the doing of an act which is prescribed or allowed by the Code. In such an event, the Courts' discretion in enlarging the period is not fettered. But, in the case on hand, the period was not fixed or granted by the Court, but it was fixed by the Code itself. Thus, it makes a fundamental difference to the application of Sec.148 of C.P.C and the said provision will not apply.

15. (a) *In Uttamchand Milapchand Vs. Balkrishna Ramnath*³, referring to *Manilal Mohanlal Shah and others case (supra 1)*, the Bombay High Court expressed the similar view holding thus;

In Para No.4 xxxx..... In view of these observations of the Supreme Court it is clear that the provisions of Order 21, Rule 85 as well as Rule 86 are mandatory in the sense that in the event of the auction purchaser failing to deposit the full purchase price within 15 days from the date of the auction sale the Court will have no option but to order a re-sale of the property. This necessarily implies that the Court has no jurisdiction whatever to

³ AIR 1961 Bombay, 224 = MANU/MH/0053/1961



extend the time for the payment of the balance of the purchase price as fixed under Order 21 Rule 85 of the Code. Either the purchaser pays the price within 15 days of the sale or he does not. If he pays, the sale would be complete; if he does not pay then, as pointed out by the Supreme Court in the aforesaid decision, there is no sale at all and all the proceedings in respect of the auction sale would be a nullity. Applying the ratio of that decision to the facts of this case, it is clear that as auction purchaser, who is the applicant in the present revision application, failed to pay the full purchase price within 15 days of the auction sale, there was no sale at all in his favour and, therefore, there was no question of any irregularity in such a sale being waived on account of the consent of the judgment-debtor to the time being extended in favour of the auction purchaser. Following upon the default in the payment of the purchase price as required under Order 21 Rule 85 the Court had straightaway to order resale of the property which the learned Judge in the court below has done in this case. Accordingly, in my opinion, the order passed by the learned Judge ordering re-sale of the property is perfectly valid.

(b) In *Nachhattar Singh and others Vs. Babu Khan and others*⁴, the High Courts of Punjab and Haryana and Himachal Pradesh expressed similar view.

(c) In *Mudragada Suryanarayanamurthi Vs. Southern Agencies, Rajahmundry and another*⁵, this High Court has reiterated that the Rules 84, 85 and 86 are mandate in nature, it held thus;

⁴ AIR 1972 P&H 204 = MANU/PH/0067/1972 and AIR 2003 HP 63 = MANU/HP/0042/2002



“In Para No.4 xxx.....The language of Rules 84, 85 and 86 is mandatory. Under Rule 84, twenty five percent of the amount of the purchase money shall be deposited immediately after the person is declared to be the purchaser and in default of such deposit, the property shall forthwith be re-sold. Similarly, under Rule 85, the full amount of the purchase money payable as well as the amount required for the general stamp for the certificate under Rule 84 shall be deposited into Court before the court closes on the fifteenth day from the date of the sale of the property. In default of payment within the period mentioned in Rule 85, the property shall be re-sold under Rule 86.

The payment mentioned in Rule 86, is, in our opinion, the payment of the amounts that are required to be deposited under Rule 85, including the full amount required for the general stamp for the sale certificate. That the “Payment” referred to in Rule 86 is not merely the payment of the full amount of the purchase money but refers also to the amount required for the general stamp for the certificate under rule 94 is clear also from Rule 87 as amended in Madras, Kerala and Andhra Pradesh which is as follows:

“Every re-sale of immovable property, in default of payment of the amounts mentioned in Rule 85 within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period herein before prescribed for the sale”.

(d) In **Dasarla Koteswaramma Vs. Alla Venkayamma**⁶, also similar views expressed and held thus;

⁵ AIR 1962 AP 271 = MANU/AP/0070/1962

⁶ 2009(5) ALD 237



“From this, it is clear that not only the balance of sale consideration but also the amount required for general stamp for the certificate under Rule 94 or the amount required for such stamp shall be deposited before the expiry of 15th day. Admittedly that amount was not deposited before the stipulated time. When the petitioner wanted enlargement of the time, the trial Court dismissed the E.A.

The failure to deposit the amount under Rule 85 of Order 21 C.P.C, automatically entails in cancellation of the sale and Rule 86 mandates that the resale of the property shall be conducted. There would not be any necessity to pass separate order setting aside the sale on account of failure of the bidder to deposit the amount.”

16. In the light of aforesaid precedential jurisprudence, the Execution Court was not legally right in allowing the petition filed by the auction purchaser to permit him to deposit the value of stamp paper beyond the period prescribed under Order 21 Rule 85 of C.P.C.

17. In the result, this Civil Revision Petition is allowed and the impugned order in E.A.No.94 of 2018 in E.P.No.20 of 2014 in O.S.No.114 of 2011 is set aside and while setting aside the auction sale, the lower court is directed to conduct a fresh sale in accordance with law. No costs.

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

Sd/- K.AMMAJI
ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

One Fair Copy to the Hon'ble SRI JUSTICE U.DURGA PRASAD RAO
(For His Lordship's Kind Perusal)

To

1. The V Additional District Judge, Tirupati, Chittoor District.
2. 9 L.R. Copies.
3. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.
4. The Secretary, Advocates' Association Library, High Court Buildings, Amaravati.
5. One CC to Sri V.Sudhakar Reddy, Advocate (OPUC)
6. One CC to Sri Harinath Reddy Soma, Advocate (OPUC)
7. One CC to Sri P.Durga Prasad, Advocate (OPUC)
8. Two C.D. Copies.

MRC

[Signature]



2019:APHC:15839

HIGH COURT

DATED: 18-03-2019



2019:APHC:15839

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OC
215/19

ORDER

CRP NO.6528 OF 2018

Rs. 18 = 00

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ALLOWING THE CRP
WITHOUT COSTS.

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