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CHILAMKURTI BALA SUBRAHMANYAM

v.

SAMANTHAPUDI VIJAYA LAKSHMI & ANR.

(Civil Appeal No. 5988 of 2007)

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MAY 02, 2017

**[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]**

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*Code of Civil Procedure, 1908 – Or.XXI, r.90 – Scope of – Execution application filed by decree-holder – Attachment of suit schedule property – Proclamation of sale on 5.10.1999 – On 4.11.1999, sale warrant issued to bailiff to give 15 days notice by affixing the same in court house making due proclamation of suit schedule property – Publication in newspaper regarding sale on 17.11.1999 – Participation of 7 bidders – Appellant highest bidder – Dissatisfied, judgment debtor filed application u/Or.XXI, r.90 seeking setting aside of sale which was dismissed – High Court allowed the appeal of judgment debtor and set aside the order of executing court holding that no clear 15 days notice of sale was given and, therefore, sale held was irregular and if judgment debtor deposits a sum of Rs.715000 being the price fetched at public auction, the sale held would not be given effect to – On appeal, held: No case was made out by the judgment debtor for setting aside of the sale of the property in question on the ground of material irregularity or fraud in publishing or in conducting the sale so as to enable the Court to invoke its powers u/Or.XXI, r.90(2) – Proper publicity was given for auction sale in papers as also by beat of drums pursuant to which 7 bidders participated in auction sale – Moreover, a clear 15 days notice was given for auction sale from the date of issuance of order for proclamation of sale – The order of executing court is restored.*

**Allowing the appeal, the Court**

**HELD: 1. Respondent No. 1, in her application for setting aside the sale, had mainly raised four objections. Firstly, clear 15 days' notice was not given for sale of the properties as required under the Rules. Secondly, the valuation of the property was not properly mentioned in the concerned documents so as to enable**

the parties to know its proper valuation prevailing on the date of sale. Thirdly, the market value of the property on the date of auction was more than the price actually fetched in the auction, and fourthly, no proper publication including beating of drum was made before the date of auction due to which there was less participation of the bidders in the auction sale. The executing Court dealt with all the four objections with reference to the record of the proceedings and found as a fact that none of the objections had any merit. The executing Court was justified in overruling the objections. [Paras 16-18][833-E-G, H; 834-A]

2. The proper publicity was given for auction sale in papers so also by beat of drums pursuant to which as many as seven bidders including the appellant participated in the auction sale. Had there been no publicity, it would not have been possible for seven persons to participate in the auction proceedings. Secondly, the details of the valuation of the property were duly mentioned, namely, decree holder's valuation at Rs.2,75,000/- likewise, Amin's valuation at Rs.4 lacs whereas the property was sold in auction for Rs.7,50,000/-. In this view of the matter, it could not be said that the bidders did not know the valuation or/and that it was not mentioned in the auction papers. Thirdly, judgment debtor did not adduce any evidence nor brought any bidder to purchase the property for a higher price than the purchase bid (Rs.7,50,000/-) except to say in the application that value of the property was between Rs.12 lakhs to Rs.14 lakhs. This objection has no substance for want of any evidence. Fourthly, there was adequate publicity given with the aid of beat of drums in the locality. It was proved with the record of the executing Court. Lastly, a clear 15 days' notice was given for auction sale fixed for 17.11.1999 when counted from 05.10.1999. In other words, 15 days have to be counted from 05.10.1999 because it is on this date the order was issued as contemplated under Order XXI Rule 64 for proclamation of sale fixing the date of sale as 17.11.1999. The executing Court, therefore, substantially and in letter and spirit followed the procedure prescribed under Order XXI Rules 64 and 66 of the Code while conducting the sale of the property in question. [Paras 19-23][834-B-F]

3. It is not the material irregularity that alone is sufficient

- A for setting aside of the sale. The judgment debtor has to go further and establish to the satisfaction of the Court that the material irregularity or fraud, as the case may be, has resulted in causing substantial injury to the judgment-debtor in conducting the sale. It is only then the sale so conducted could be set aside under Order XXI Rule 90(2) of the Code. Such is not the case here.
- B None of the objections raised by respondent No.1 had any merit and nor any of the objections constituted any kind of material irregularities so as to enable the Court to set aside the sale under Order XXI Rule 90(2) of the Code. So far as the plea of fraud was concerned, admittedly, it was not raised and, therefore, it did not
- C fall for consideration. [Paras 24, 25][834-G-H; 835-A-B]

*Saheb Khan v. Mohd. Yousufuddin & Ors.* (2006) 4 SCC 476 – referred to.

- D *Gajadhar Prasad & Ors. v. Babu Bhakta Ratan & Ors.* (1973) 2 SCC 629 : [1974] 1 SCR 372; *Ambati Narasayya v. M. Subba Rao & Anr.* 1989 Supl(2) SCC 693 : [1989] 1 Suppl. SCR 451; *Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh* (1994) 1 SCC 131: [1993] 2 Suppl. SCR 346 – distinguished.

Case Law Reference

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|---|-------------------------|---------------|---------|
| E | (2006) 4 SCC 476        | referred to   | Para 14 |
|   | [1974] 1 SCR 372        | distinguished | Para 26 |
|   | [1989] 1 Suppl. SCR 451 | distinguished | Para 26 |
| F | [1993] 2 Suppl. SCR 346 | distinguished | Para 26 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5988 of 2007.

- G From the Judgment and Order dated 23.12.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Civil Miscellaneous Appeal No. 1721 of 2000.

Basava Prabhu Patil, Sr. Adv., Ms. Ananya Bhattacharyya, Mukund Unny, Devahuti T, Anupam Lal Das, Advs. for the Appellant.

Gagan Gupta, Ananta Prasad Mishra, Sanjay Kapur, Advs. for the Respondents.

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The Judgment of the Court was delivered by

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**ABHAY MANOHAR SAPRE, J.** 1. This appeal is filed by the auction purchaser against the final judgment and order dated 23.12.2005 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Civil Misc. Appeal No. 1721 of 2000 whereby the High Court allowed the appeal filed by judgment debtor-respondent No.1 herein and set aside the order dated 20.04.2000 passed by the Senior Civil Judge, Kovvur in E.A. No. 1020 of 1999 in E.P. No. 46 of 1998 in O.S. No. 192 of 1987 dismissing the application filed by the judgment debtor under Order 21 Rule 90 read with 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code").

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2. Facts of the case need mention, in brief, to appreciate the controversy involved in this appeal.

3. Respondent No.2-State Bank of India is the plaintiff/decreed holder whereas respondent No.1 is the defendant/judgment debtor in O.S. No.192 of 1987. Respondent No.2 obtained a money decree for Rs.5,15,390/- against respondent No.1 on 16.03.1998 in O.S. No.192 of 1987 for the loan given to her by respondent No.2 and which remained unpaid by respondent No.1. Since respondent No.1 failed to satisfy the decree, respondent No.2 filed execution application and brought the schedule property owned by respondent No.1-judgment debtor to auction sale through the process server of the Court of Senior Civil Judge, Kovvur, in execution proceedings in E.P. No. 46 of 1998 in O.S. No.192 of 1987 for realization of decretal dues.

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4. The suit schedule property was, accordingly, attached by the executing Court under a warrant. Notice was, accordingly, issued to respondent No.1-judgment debtor in respect of the said executing proceedings on 14.07.1999 to which she filed counter affidavit raising certain objections. On 31.09.1999, the executing Court overruled the objections raised by respondent No.1 in her counter affidavit and fixed 22.09.1999 as the date of settlement of terms. On 22.09.1999, the terms of proclamation of sale were settled fixing the date for sale of the said property on 17.11.1999.

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5. Pursuant to the above referred proceedings, proclamation of the sale was issued on 05.10.1999 by the executing Court under Order

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- A 21 Rule 64 of the Code mentioning therein the conditions of sale. Proclamation of the sale was entrusted to the Process Server of publication on 27.10.1999. The Process Server gave endorsement on 02.11.1999 that the sale proclamation was affixed to the house/suit schedule property and also by beat of tom tom near the property and also affixed the same on the notice board of the Court. On 04.11.1999, sale warrant was issued to the Bailiff to give 15 days' notice by affixing the same in court house, making due proclamation of the suit schedule property. The proclamation of the sale was published in the newspaper on 05.11.1999 stating that the sale would be held on 17.11.1999.
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- C 6. On 17.11.1999, the property was brought to auction sale where 7 bidders participated. The appellant herein was the highest bidder of Rs.7,15,000/-. Out of the said bid amount, Rs.1,78,750/- was paid to the Bailiff. The Bailiff filed a return on 18.11.1999 about the sale stating that he published about sale by tom tom and the appellant was the highest bidder and the initial amount was deposited with respondent No.2-Bank after deducting poundage.
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- E 7. Dissatisfied with the auction, the judgment debtor filed an application under Order 21 Rule 90 seeking setting aside of the sale, *inter alia*, on the ground that the proclamation was done within 15 days and hence it is illegal, tom tom wala neither made proclamation and nor took neighbours' signatures, proclamation was not published in Nagar Panchayat office, publication was defective in nature because it did not mention the valuation of the property etc. It was also objected that the Bank brought only three bidders whereas if more bidders had participated, the property put to sale would have fetched easily between 12 to 14 lakhs.
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- G 8. By order dated 20.04.2000, the Senior Civil Judge, Kovvur found no merit in any of the objections raised by respondent No.1 and accordingly dismissed the application.
- H 9. Challenging the said order, the judgment debtor-respondent No.1 filed an appeal before the High Court.
10. The High Court, by impugned judgment dated 23.12.2005, allowed the appeal and set aside the order of the executing Court, *inter alia*, holding that if the judgment debtor deposits a sum of Rs.7,15,000/- being the price fetched at the public auction within a period of three weeks from the date of receipt of a copy of the judgment, the sale held

would not be given effect to. It was held that if the executing Court feels that the amount deposited by the judgment debtor is sufficient to discharge the decretal amount, it would not be necessary to put the property to auction and the amount so deposited earlier by the auction purchaser shall be refunded to him. It was held that if the amount ordered to be deposited by the judgment debtor is more than the amount due to the decree holder, excess amount, after adjusting the amount due to the decree holder/auction purchaser, be refunded to the judgment debtor. It was held that no clear 15 days' notice of sale as per Rules was given and hence sale held is irregular. It was lastly held that in default of payment of Rs.7,15,000/- within the stipulated period, the appeal shall stand dismissed.

11. Aggrieved by the said judgment, the auction purchaser has filed this appeal by way of special leave before this Court.

12. Heard Mr. Basava Prabhu Patil, learned senior counsel for the appellant-auction purchaser and Mr. Gagan Gupta, learned counsel for respondent No.1-judgment debtor and Mr. Sanjay Kapur, learned counsel for the Bank-decree holder.

13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal finding merit therein.

14. The law which governs the controversy involved in this appeal is laid down by this Court in the case of **Saheb Khan vs. Mohd. Yousufuddin & Ors.**, 2006(4) SCC406 (Three Judge Bench). While examining the scope of Order 21 Rule 90 of the Code, Justice Ruma Pal speaking for the Bench held as under :

**“12. We are unable to sustain the reasoning of the High Court. Order 21 Rule 90 of the Code of Civil Procedure allows, inter alia, any person whose interests are affected by the sale to apply to the court to set aside a sale of immovable property sold in execution of a decree on the ground of “a material irregularity or fraud in publishing or conducting” the sale. Sub-rule (2) of Order 21 Rule 90 however places a further condition on the setting aside of a court sale in the following language:**

A           **“90. (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.”**

B           **13. Therefore before the sale can be set aside merely establishing a material irregularity or fraud will not do. The applicant must go further and establish to the satisfaction of the court that the material irregularity or fraud has resulted in substantial injury to the applicant. Conversely even if the applicant has suffered substantial injury by reason of the sale, this would not be sufficient to set the sale aside unless substantial injury has been occasioned by a material irregularity or fraud in publishing or conducting the sale. (See *Dhirendra Nath Gorai v. Sudhir Chandra Ghosh*; (1964) 6 SCR 1001, *Jaswantlal Natvarlal Thakkar v. Sushilaben Manilal Dangarwala*, 1991 Supp(2) SCC 691 and *Kadiyala Rama Rao v. Gutala Kahna Rao*, (2000) 3 SCC 87)**

C           **14. A charge of fraud or material irregularity under Order 21 Rule 90 must be specifically made with sufficient particulars. Bald allegations would not do. The facts must be established which could reasonably sustain such a charge. In the case before us, no such particulars have been given by the respondent of the alleged collusion between the other respondents and the auction-purchaser. There is also no material irregularity in publishing or conducting the sale. There was sufficient compliance with Order 21 Rule 67(1) read with Order 21 Rule 54(2). No doubt, the trial court has said that the sale should be given wide publicity but that does not necessarily mean by publication in the newspapers. The provisions of Order 21 Rule 67 clearly provide if the sale is to be advertised in the local newspaper, there must be specific direction of the court to that effect. In the absence of such direction, the proclamation of sale has to be made under Order 21 Rule 67(1) “as nearly as may be, in the manner prescribed by Rule 54 sub-rule (2)”. Rule 54 sub-rule (2) provides for the method of publication of notice and reads as follows:**

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**“54. (2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the courthouse, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.”**

15. After examining the facts of this case in the light of the law laid down in the case of *Saheb Khan* (supra), we are of the considered opinion that the reasoning and the conclusion arrived at by the executing Court deserves to be restored as against that of the High Court in the impugned order. In other words, no case was made out by the judgment debtor for setting aside of the sale of the property in question on the ground of committing any material irregularity or fraud in publishing or in conducting the sale so as to enable the Court to invoke its powers under Order 21 Rule 90 (2) of the Code.

16. It is noticed that respondent No. 1, in her application for setting aside the sale, had mainly raised four objections. Firstly, clear 15 days' notice was not given for sale of the properties as required under the Rules. Secondly, the valuation of the property was not properly mentioned in the concerned documents so as to enable the parties to know its proper valuation prevailing on the date of sale. Thirdly, the market value of the property on the date of auction was more than the price actually fetched in the auction, and fourthly, no proper publication including beating of drum was made before the date of auction due to which there was less participation of the bidders in the auction sale.

17. The executing Court dealt with all the four objections with reference to the record of the proceedings and found as a fact that none of the objections had any merit. The High Court, however, found fault in the same though not in all but essentially in the matter relating to giving of clear 15 days' notice and the manner in which it was issued and finding merit in the objection, set aside the sale on imposing certain conditions enumerated above.

18. In our considered opinion, as mentioned above, the executing

A Court was justified in overruling the objections and we concur with the reasoning and the conclusion of the executing Court.

19. We also find on facts that firstly, the proper publicity was given for auction sale in papers so also by beat of drums pursuant to which as many as seven bidders including the appellant herein participated in the auction sale. Had there been no publicity, it would not have been possible for seven persons to participate in the auction proceedings.

20. Secondly, the details of the valuation of the property were duly mentioned, namely, decree holder's valuation at Rs.2,75,000/- likewise, Amin's valuation at Rs.4 lacs whereas the property was sold in auction for Rs.7,50,000/-. In this view of the matter, it could not be said that the bidders did not know the valuation or/and that it was not mentioned in the auction papers.

21. Thirdly, judgment debtor did not adduce any evidence nor brought any bidder to purchase the property for a higher price than the purchase bid (Rs.7,50,000/-) except to say in the application that value of the property was between Rs.12 lakhs to Rs.14 lakhs. In our view, this objection has no substance for want of any evidence.

22. Fourthly, there was adequate publicity given with the aid of beat of drums in the locality. It was proved with the record of the executing Court as was rightly held by the executing Court and lastly, in our view, a clear 15 days' notice was given for auction sale fixed for 17.11.1999 when counted from 05.10.1999. In other words, 15 days have to be counted from 05.10.1999 because it is on this date the order was issued as contemplated under Order 21 Rule 64 for proclamation of sale fixing the date of sale as 17.11.1999.

23. The executing Court, therefore, substantially and in letter and spirit followed the procedure prescribed under Order 21 Rules 64 and 66 of the Code while conducting the sale of the property in question.

24. The law on the question involved herein is clear. It is not the material irregularity that alone is sufficient for setting aside of the sale. The judgment debtor has to go further and establish to the satisfaction of the Court that the material irregularity or fraud, as the case may be, has resulted in causing substantial injury to the judgment-debtor in conducting the sale. It is only then the sale so conducted could be set aside under Order 21 Rule 90(2) of the Code. Such is not the case here.

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25. In the light of aforesaid discussion, we are of the considered view that none of the objections raised by respondent No.1 had any merit and nor any of the objections constituted any kind of material irregularities so as to enable the Court to set aside the sale under Order 21 Rule 90(2) of the Code. So far as the plea of fraud was concerned, admittedly, it was not raised and, therefore, it did not fall for consideration.

26. Learned Counsel for the respondent has placed reliance on the decisions in **Gajadhar Prasad & Ors. Vs. Babu Bhakta Ratan & Ors.**, (1973) 2 SCC 629, **Ambati Narasayya vs. M. Subba Rao & Anr.**, 1989 Supl(2) SCC 693, **Desh Bandhu Gupta vs. N.L. Anand & Rajinder Singh**, (1994) 1 SCC 131 and **Saheb Khan vs. Mohd. Yousufuddin & Ors.**, (2006) 4 SCC 476. We have gone through these cases and find that all are distinguishable on facts. When we have held on facts that there are no material irregularities noticed in the case and that there was compliance of the provisions of Order 21 Rules 64 to 68 then, in our view, the law laid down in these decisions are of no help to the respondent-judgment debtor.

27. In view of foregoing discussion, we are unable to agree with the reasoning and the conclusion arrived at by the High Court which is factually and legally unsustainable. Its view is not in conformity with the law laid down in the case of **Saheb Khan** (supra).

28. As a result, the appeal succeeds and is allowed. Impugned order is set aside and that of the executing Court restored.