(1995) 02 KL CK 0046

High Court Of Kerala

Case No: C.R.P. No. 781 of 1992-I

Karambil Ice and Cold Storage Company and Another		APPELLANT
	Vs	
State Bank of Travancore and Others		RESPONDENT

Date of Decision: Feb. 1, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 64, Order 21 Rule 69, Order 21 Rule 83, 151

Citation: (1995) 83 CompCas 224 : (1995) 1 KLJ 495

Hon'ble Judges: P.A. Mohammed, J

Bench: Single Bench

Advocate: Antony Dominic, for the Appellant; O. Ramachandran Nambiar, for 1st Respondent, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.A. Mohammed, J.
The first Respondent filed suit O.S. No. 3 of 1975 for recovery of a sum of Rs. 8,73,312.81 against the Petitioners. The said amount was due to the Plaintiff-Bank as per the mortgage deed dated 21st January 1971 executed in its favour by the Petitioners. The suit was decreed and charged on the properties mortgaged. The judgment-debtors had paid Rs. 4,95,000 towards the decree debt. However, as per the order in E.P. 68/87 the properties had been put up for sale. The application filed by the first Petitioner under Order XXI, Rule 69 and Section 151 of the CPC was rejected by the court below. Being aggrieved by the aforesaid order, the present revision petition has been filed.

2. The schedule of properties attached to the execution petition E.P. 68/1987 in O.S. No. 3/1975 contains four lot each having different items of properties. The details of the

properties described in the schedule are given below:

Lot No.	Sl. No.	R.S. No.	Extent (in acres)	Estimated Value (Rs.)
I	1	588/2 pt.	230.00	2,30,000.00
	2	ï¿½	26.40	26,480.00
	3	ï¿½	22.70	22,700.00
II	1	109 pt.	85.89	85,590.00
III	1	658-1B pt.	1.78	
	2	659-2	0.14	21,000.00
	3	168 pt.	" 0.28	
IV	1	193 pt.	219.51	2,19,510.00
	2	193 pt.	469.70	4,69,700.00
	3	200 pt.	60.72	7,49,930.00
Total			1117.12	18,24,910.00

above details sufficiently reveal the properties proposed to be sold is a large extent of 1117.12 acres having an estimated value of Rs. 18,24,910. In the objection filed by judgment-debtors in E.P. 68/87, the upset price in respect of properties in Lot I was claimed to be fixed at Rs. 20 lakhs and of Lot II at Rs. 2 lakhs. As far as the properties comprised in Lot III, they claimed the upset price at Rs. 12 lakhs.

3. It was claimed that the decree-debt could be satisfied from out of the income of properties. The adjournment or stoppage of sale under Rule 69 of Order XXI was sought on the basis which forms thus: "The yield of areca and pepper will be ready for marketing in July or August when prices are likely to go up. The Petitioner is attempting to raise loan by mortgaging or selling some properties ...Tapping of rubber will only start from the month of September or October. If tapping is started he can raise substantial amount from that also." It cannot be said that these reasons are totally unworthy of consideration. However, these reasons are not favourably cogitated by the court below inspite of the provisions contained in Rule 83. The said rule contemplates the postponement of sale to enable judgment-debtor to raise amount of decree by different processes similar to those raised in the objection by the Petitioners.

4. The learned Counsel for the Petitioners submits that in order to realise the balance decree amount, the entire properties detailed in the petition schedule need not be sold. A portion of the property alone would be sufficient to recover the entire decree debt, the counsel adds. In support of this plea, strong reliance is placed on Rule 64 of Order XXI

which proclaims that any court executing a decree may order that any property attached by it and liable to sale, or such portion thereof, as may seen necessary to satisfy the decree shall be sold. "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", so held by the Supreme Court in Ambati Narasayya Vs. M. Subba Rao and another, It further clarified: "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". It gives a well-meant caution as this: "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 requirement would be illegal and without jurisdiction." However it is confronted by pinpointing that the term "may" in Rule 64 does confer only a discretion on the court to order or refuse to order a sale. But there is no reason to befuddle on this score inasmuch as the Supreme Court in unequivocal terms declared in Ambati Narasayya Vs. M. Subba Rao and another, supra that the duty conferred on the court under Rule 64 "... is not just discretion, but an obligation imposed on the court".

5. The next dot to consider is when can the court discharge its "obligation" under Rule 64. Obviously there are well-laid stages in a decree execution process; but Rule 64 will apply in respect of any property already attached. In other words, when the property is kept under attachment the court can discharge the "obligation" till the actual sale takes place. It can also be done at the time of the attachment. When the court refuses to consider the objection as to the saleability of property raised by the judgment-debtor after the attachment, the sale is liable to be set aside as there is failure to discharge the "obligation" under Rule 64. Reason is that the court has no power under this rule to order a sale unless it is found that the property "is liable to sale".

6. The Petitioners contended that the entire decree amount claimed in the E.P. can easily be actualised if the properties shown in Lot III alone are directed to be sold first. Those properties are situated by the side of the National Highway near the Government Coconut Farm and Nehru Arts and Science College and are under the possession and enjoyment of the judgment debtors. There is no inhibition in selling the properties by lot by lot. The counter-affidavit filed by the Bank in this case discloses their attitude towards the entire problem as thus: "The Petitioners can point out which property to be sold first, before the court below, for which the decree-holder has no objection. The decree holder is interested only in recovering the dues from the judgment debtors". Therefore, the entire question as to the saleability of the properties described in the petition-schedule is liable to be examined by the court below. There is no impediment in examining this question at present because the sale has not been taken place yet. No doubt there is a proclamation for sale. The above objection raised by the Petitioners can very well be considered by the court below at this stage, that is to say, before the sale takes place.

7. In view of what I have said above, the order under revision is set aside. The case is remanded to the court below for determining the entire question afresh in view of the observations made above. The court below is also specifically directed to decide the question as to which portion of the petition schedule properties to be sold first in realisation of the decree amount.

The C. R. P. is disposed of as above. No costs.