

(1998) 06 AP CK 0011

Andhra Pradesh High Court

Case No: A.A.O. No. 1319 of 1997

Devineni Durgamba

APPELLANT

Vs

Raj Kumar Financiers,
Vijayawada

RESPONDENT

Date of Decision: June 26, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 89, Order 21 Rule 90, Order 21 Rule 92(2), 151
- Limitation Act, 1963 - Article 127, 4

Citation: AIR 1998 AP 365 : (1998) 4 ALD 301 : (1998) 4 ALT 145 : (1998) 2 APLJ 367 : (1999) 2 CivCC 526 : (1999) 1 RCR(Civil) 342

Hon'ble Judges: G. Bikshapathy, J

Bench: Single Bench

Advocate: Mr. P.S. Narayana, for the Appellant; Mr. M. Chandrasekhara Rao, for the Respondent

Judgement

1. The present C.M.A. is filed by the Judgment Debtor/4th Defendant aggrieved by the order of the learned Principal Subordinate Judge, Tenali in E.A.No.291/1991 in E.P.No.32/1987 in O.S.No.587/1983 dated 16-7-1997.

2. The plaintiff filed suit for recovery of the amount and obtained a decree. In execution of the said decree, the landed properties belonging to the Defendants were brought to sale and auction was held on 4-4-1991 for a sum of Rs.82,000/-. It is the case of the Appellant that she deposited the amount into the Court on 3-6-1991 and filed an application under Order XXI Rule 89 read with Section 151 of C.P.C. for setting aside the sale of her property held on 4-4-1991. It is also her case that the Court was closed for summer vacation from 27-4-1991 to 2-6-1991 and therefore the application to set aside the sale was filed on 3-6-1991 i.e. on reopening day and therefore the application was within time. The application was resisted by the

Decree Holder stating that the deposit ought to have been made within 30 days from the date of the sale and therefore there was non-compliance of Order XXI Rule 92(2) C.P.C. The lower Court after considering the respective contentions held that deposit ought to have been made within 30 days from the date of the sale irrespective of the closure of the Court for summer vacation since the deposit was made beyond 30 days, the application was dismissed. Aggrieved by the said order, the present Appeal has been preferred by the Judgment Debtor.

3. The learned Counsel for the Appellant submits that the lower Court has not correctly construed the provisions of Order XXI Rule 89 and also Rule 92(2) of C.P.C. with reference to the Section 4 of the Limitation Act. He further submits that the application was made on 3-6-1997 the reopening day of the Courts after summer vacation, along with the challan for the auction amount. Even though the deposit is made beyond 30 days, yet since the application has been filed within time i.e. 3-6-1997, it has to be construed that the deposit is also made within the permissible limitation and hence he submits that the order of the lower Court is liable to be set aside. He also relied on the following decisions:

Durga Prasad v. Baku Lal, AIR 1922 All. 195, [Mst. Hiraniam Vs. Sm. Ram Piari](#), , [Jagu Anyaba Adhav Vs. Bajrang Auba Jadhav and Others](#), .

4. On the other hand the learned Counsel for the Respondent Mr. M Chandrasekhara Rao appearing for auction purchaser submits that the sale was held on 4-4-1991 and he has deposited the amount within 15 days from the date of the sale. On the other hand, the Appellant failed to deposit the amount within the mandatory period of 30 days. It is also his case that Appellant had taken challan for depositing the amount on 20-4-1991 and he failed to deposit the same within 30 days of the sale. Therefore, the closure of the Courts for summer vacation had no relevancy to the issue under adjudication. He relied on the decision of the Supreme Court reported in [P.K. Unni Vs. Nirmala Industries and others \[OVERRULED\]](#), .

5. The undisputed facts are that the sale was held on 4-4-1991 and the amount was deposited by the Appellant/Judgment Debtor in the bank beyond 30 days. The application to set aside the sale was made on 3-6-1991 i.e. the reopening day. In such a situation, can it be said that there is compliance of the provisions of the Order XXI Rule 89 and Rule 92(2) of C.P.C.?

6. For proper appreciation of the case, it is necessary to extract the relevant provisions of Order XXI Rule 89 and Rule 92(2) of C.P.C. which reads thus:

"89. Application to set aside sale on deposit :--(1) Where immovable property has been sold in execution of a decree, any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person, may apply to have the sale set aside on his depositing in Court:

(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under Rule 90 to set aside the sale of his immovable property, he shall not unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

92. Sale when to become absolute or be set aside:-(1) Where.....

(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."

7. There is no dispute that the application is filed by the Appellant on 3-6-1991 which is within the limitation protected by Section 4 of Limitation Act. But, the crucial question that falls for consideration is whether the deposit is also protected by Section 4 of Limitation Act. This issue is no more *res Integra* and the same has been decided by the Supreme Court in P.K. Unni's case (*supra*) which was relied on by the learned Counsel for the respondent. The Supreme Court has categorically held at para 6 as follows:

"Rule 89 postulates an application on deposit. It says "may apply to have the sale set aside on his depositing in Court". These words show that deposit is a condition precedent to the making of an application to set aside a sale. That condition must be satisfied within the period prescribed by sub-rule (2) of Rule 92, which undoubtedly is 30 days. Parliament refused to alter that provision even when a part of the sub-rule was substituted."

After referring to the amended provisions under the Limitation Act, and dealing with Article 127, wherein period of limitation was prescribed for 60 days to set aside a sale in execution of decree including any such application by the Judgment Debtor, the Supreme Court held at para 12 thus :

"The legislative intent, as seen from the above statement, was indeed to extend the period prescribed for making an application and not for any other purpose. That is the reason why Article 127 was amended enlarging the period for making an application from 30 days to 60 days. That period has no bearing on the time allowed for making a deposit in respect of which the period is prescribed, not under Article 127, but under Rule 92(2) of Order XXI, and this period has always been and remains to be, 30 days. We see no repugnance or inconsistency or lack of clarity in these two sets of provisions."

Thus it is clear that making deposit has no relevancy for filing the application. The application has to be filed within 60 days and if during the intervening period, the Courts are closed for vacation, the benefit can be availed of u/s 4 of Limitation Act. But, however, the same benefit cannot be extended for making deposit. The deposit has to be made by the Judgment Debtor within 30 days from the date of the sale and the benefit u/s 4 of the Limitation Act cannot be said to be available to the deposits also as what is saved u/s 4 of Limitation Act is the suit, appeal or application whose period of limitation expired when the Courts are closed. The statute enjoins upon the judgment debtor to deposit the amount within 30 days of the sale. It is well settled principle of interpretation that when the words of statute are clear, explicit and unambiguous, recourse to external aids for construction of statute is unwarranted. Therefore, it has to be held that the provisions of Section 4 of Limitation Act are not attracted to the deposits which are required to be made under Rule 92(2) of Order XXI. Filing of application and making deposit stand on two different footings. The Supreme Court also while interpreting the above provisions overruled the contra decisions of various High Courts and also disagreed with the view expressed in [Basavantappa Vs. Gangadhar Narayan Dharwadkar and Another](#), . Thus, I find that even though the application filed on 3-6-95 to set aside the sale is within time, it cannot be construed that the deposit which is made beyond 30 days of the sale also in time. Since the application was filed with the challan manifesting the deposit beyond 30 days, the order of the lower Court be found fault with.

8. The learned Counsel for the appellant however submits that Section 4 of the Limitation Act was not considered in P.K. Unni 's case (supra), and therefore the matter has to be considered afresh. I am afraid, I cannot accept this contention, inasmuch as, the Supreme Court had clearly laid down that the deposit has to be made within 30 days implying that the provisions of Section 4 of Limitation Act would not apply to the deposit. Even on the plain reading of Section 4 of Limitation Act, there is no scope to cover the deposits. Further the facts in the present case, reveal that the deposit is required to be made in the bank and not in the Court and only the challan has to be submitted in the Court along with the application to set aside the sale.

9. For the foregoing reasons, the Appeal cannot be sustained. Accordingly, the C.M.A. is dismissed.

10. No costs.