
(1977) 03 AP CK 0010

Andhra Pradesh High Court

Case No: CRP No. 1154 of 1975

Kota Damodaran

APPELLANT

Vs

P. Mark (Died) by LRS
and others

RESPONDENT

Date of Decision: March 3, 1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 21 Rule 19, Order 21 Rule 89#Provincial
Insolvency Act, 1920 – Section 20, 28, 51, 51(1), 51(3)

Citation: (1977) 03 AP CK 0010

Hon'ble Judges: Punayya, J

Bench: Single Bench

Advocate: T. Ramachandra Rao, for the Appellant; P. Kodandaramayya and E.V. Bhagiratha
Rao, for the Respondent

Final Decision: Dismissed

Judgement

Punayya

1. The 2nd respondent herein obtained a decree in OS No 114/69 for a mm of Rs. 2,000/-
and odd and filed Execution Petition No 322/1972

against the judgment-debtor 1st respondent herein. The property consisting of a house
site belonging to the judgment-debtor was sold in auction

held on 29-8-1970. The petitioner, herein purchased the same for a sum of Rs. 55,300/-
and he deposited the said amount in the Court.

Subsequently, i.e., on 24-9-73 that 1st respondent herein (judgment-debtor) deposited a
sum of Rs. 5.832/- towards the sale warrant amount plus

poundage plus 5 per cent commission in full satisfaction of the claim of the Decree holder and filed E.A. No 512/73 on 28-9-1973 under order

21, Rule 89 C.P.C. for letting aside the sale. The decree-holder opposed the said application taking several objections. The auction-purchaser

also opposed the said applications with objection similar to those taken by the decree-holder.

2. The learned District Munsif rejected all the objections raised by the decree-holder as well as the auction-purchaser and allowed E. A. No.

512/73 setting aside the sale held on 28-9-1973. Aggrieved with the order passed in E. A. No. 512/73, the auction-purchaser preferred an appeal

A.S. No. 199/74 in the District Court. Visakhapatnam.

3. The ground on which the order of the District Munsif was assailed before the learned District judge was that the amount deposited by the

judgment-debtor is not unconditional since the self same judgment-debtor filed I.A. No. 13/74 in I.P. No. 11/73 in the Court of the Subordinate

Judge with a request that the amount lying in the Court deposit, to the credit of E.P.No. 322/72 should be sent for and should be made available to

the general body of the creditors for rateable distribution and as the deposit made by the judgment-debtor cannot be said to be unconditional, the

sale cannot be set aside.

4. The learned District Judge held that when the amount was deposited into Court, he did not file I.P. No 11/73 & I.A. No 13/74 and hence the

deposit made by the judgment-debtor is not subject to any condition and the learned District Munsif is, therefore, justified in setting aside the sale

and so holding, he dismissed the appeal. It is this Judgment that is the subject-matter of this revision.

5. Sri T. Ramachandra Rao, the learned counsel for the petitioner auction-purchaser vehemently contends that both the Courts below lost sight of

the important and significant fact that when the judgment-debtor filed I.A. No 13/74 with a request that the amount deposited by the judgment-

debtor to the credit of E.P. No 322/72 on 24-9-1973 should be sent for and should be made available to be distributed amongst the general body

of the creditors, it means that the amount deposited by the judgment-debtor is not made available to the decree-holder and if it is not made

available to the decree-holder, it should be taken to mean that the deposit is conditional and it cannot be said to be free from any condition and

hence Order 21 Rule 89 has no application in the case on hand and thus the order of the lower court is vitiated with material irregularity. Sri

Ramachandra Rao lays much stress upon the non-availability of the amount by the judgment-debtor to the decree-holder. If the deposit made by

the judgment-debtor is not made available to the decree-holder for withdrawal, he contends that the sale cannot be set aside under Order 21, Rule

89 CPC.

6. As against these contentions, Sri E.V. Bhagiratha Rao, the learned counsel for the respondents, contends that the payment made by the

Judgment-debtor is unconditional as when the judgment-debtor deposited the amount, he did not file I.A. No. 13/73 and the deposits, therefore

not subject to any condition by the time of deposit and hence the deposit satisfies the requirements of Order 21, Rule 89 CPC. He also contends

that the proceedings in I. P. No. 11/7 or I.A. No 13/74 are only collateral proceedings and hence they cannot be treated as conditions imposed on

the deposit made by the judgment-debtor.

7. Order 21, Rule 89 is intended (1) to save the Judgment-debtor from the threatened deprivation of his property : (2) to satisfy the decree-

holder's claim and (3) to compensate the auction-purchaser. It is, therefore, manifest that while granting some special indulgence under this

provision to the judgment-debtor, the Legislature took equal care to protect the interests of the decree-holder by insisting upon the Judgment-

debtor to deposit the amount specified unconditionally and also the interests of the auction-purchaser by directing the Judgment-debtor to include

five per cent in the deposit as a compensation to him (purchaser) for his trouble and disappointment for the loss of that which was, perhaps a good

bargain. If an application is made under Rule 89 of Order 21 and the deposit required by that rule is made unconditionally within thirty days from

the date of the sale, the court has no option but to make an order letting aside the sale. The amount must be taken to have been deposited

voluntarily and unconditionally. His Lordship Mr. Justice Venkata Subba Rao in *Kummakutti and Another V. Neelakandan Nambudri* 1910 ILR

(Mad) 943 and his Lordship Viswanatha Sastri, J., in [*Ramichetti Ramayya Chetti vs. Putta Krishnayya Chetti & Another*] 1958 (1) An WR 369

considered the scope and effect of Order 21 Rule 89. The learned Judges held that for a deposit under Order 21 Rule 89 to be valid or effective,

it must be unconditional, that is to say, the money should be available to the decree-holder to be drawn out by him forthwith. A payment into Court

under protest or a demand subject to the purchaser giving security or undertaking any other onerous obligation of their drawing out the amounts

would not be valid. Viswanatha Sastri, J., also held that a petition filed under Order 21, Rule 89 CPC relating to the existence of collateral

proceedings in which the validity of the decree is impugned, could not be regarded as imposing a condition on the decree-holder or auction-

purchaser before the former could draw out his decree amount and the later the solatium of 5 percent from the deposit in Court. If an applicant

under Order 21, Rule 89 states that if the sale is not set aside the deposit might be returned to him, it is not a condition but only a statement of one

of the inevitable legal consequences and the sale not being set aside since the right to refund of the deposit in that event would be there whether

express or not in the petition under Order 21 Rule 89 and reference to it would not make the deposit unconditional.

8. Thus it is clear that it is not sufficient for the Judgment-debtor to deposit the amounts in the Court for invoking the benefit of Order 21 Rule 19

CPC. It should be at the same time free from any condition and it should be made available to the decree-holder to be drawn out by him forthwith.

9. In the case on hand, the Judgment-debtor deposited the amount of Rs. 5,832 on 24-9-1973 and he also filed EA No 512/73 on 28-9-1973.

By then the Judgment-debtor did not file the insolvency petition viz., IP No. 11/73. As IP No 11/73 was not filed by the date when the deposit

was made by the Judgment debtor or by the date when EA No 512/73 was filed requesting the Court to set aside the sale under Order 21 Rule

89, the deposit made by the Judgment-debtor can be treated as unconditional.

10. But Sri Ramachandra Rao contends that unless and until the Court passes an order setting aside the sale allowing EA No. 512/73, the decree-

holder is not entitled to withdraw the deposit made by the Judgment-debtor and as the Court passed orders on 18-11-1974 setting aside the sale

under Order 21 Rule 89 and allowing EA No. 512/73, the amount deposited by the judgment-debtor was made available to the decree-holder

only after 18-11-1974 and by 18-11-74 the Judgment-debtor has already filed IP No. 11/73 and also IA No 13/74 and as such the deposit made

by the Judgment-debtor cannot be said to be free from conditions.

11. It is true that the Court passed orders allowing EA No. 512/73 on 18-11-1974 though EA No. 512/73 was filed on 28-9-1973 i.e., after the

deposit was made within thirty days from the date of the sale. It is also true that Judgment-debtor filed IP No. 11/73 on 29-12-1973 showing the

decree-holder as 7th creditor. It is further true that the Judgment-debtor filed IA No 13/74 on 13-2-1974 and in that interlocutory application, the

Judgment-debtor mentioned that the 7th creditor (decree holder) in OS No. 11/1969 took out execution of the decree in OS No 114/69 and

levied EP No 312/72 in the Principal District Munsiff's Court, Visakhapatnam and during the course of the execution, an amount of Rs. 2,945-05,

Rs. was recovered and deposited into the Principal District Munsiff's Court, Visakhapatnam and it has to be collected by the receiver in order to

have it distributed amongst all the creditors and hence he requested the court to appoint an interim receiver investing him with all the powers to

take possession of the assets shown in the petition schedule and also the said sum of Rs 2,945-05 Ps from the Principal District Munsiff's Court,

Visakhapatnam as otherwise the money will be withdrawn by the decree-holder and other creditors will be put to serious loss. The insolvency

Court appointed an interim official Receiver for the purpose sought for In IA No. 13/74. The Interim Receiver who was appointed on 26-11-

1974, addressed a letter to the District Munsiff requesting him to send to him the amount of Rs. 2,845-05ps standing to the credit of the decree-

holder in OS No 114/69 so as to be made available to the General Body of creditors. But the District Munsif refused to send the amount to the

custody of the Interim Receiver on the ground that it cannot be sent to him as full satisfaction was already recorded and this fact was intimated by

the District Munsiff to the Interim Receiver under the letter Ex. X-3 dated 12-12-1973.

12. Thus nothing stood in the way of decree-holder to withdraw the said amount after Ex. X-3. It is, therefore, clear that though the amount was

available for the decree holder to withdraw after 18-11-1974, as full satisfaction was recorded, the decree-holder did not choose to withdraw the

amount. Even after Ex. X-3, he did not choose to with-draw. Further when the auction-purchaser preferred appeal AS No 199/74 in the District

Court on 16-12-1974 being aggrieved with the order passed in EA No 512/73 the decree-holder who was not aggrieved with the said order did

not choose to file a petition in the District Court requesting to permit him to withdraw the amount. Obviously the decree-holder has been colluding

with the auction-purchaser and was, therefore, not preferred to withdraw the deposit amount though full satisfaction was recorded and sale was set

aside. Hence contention that deposit amount was not available to the decree-holder and it was subject to condition on account of IP No 11/73 &

IA No 13/74 is devoid of substance. When the District Munsiff unequivocally intimated the Interim Receiver under Ex. X-3 that the amount

deposited by the decree-holder cannot be sent to him as full satisfaction was already recorded, neither IP No 11/73 nor IA No 13/74 has

operated any bar against the decree-holder from withdrawing the amount deposited by the Judgment-debtor. Since the result of the said

proceedings has not precluded the decree-holder from withdrawing the deposit amount, the mere filing of IP No 13/73 and IA No 13/74 are of no

consequence. Further the proceedings in IP No 11/73 and IA No 13/74 are only collateral proceedings and as such they cannot be treated to

impose conditions as the deposit made by the Judgment-debtor as held by Viswanatha Sastri J., in Ramachetti Ramayya Chetti V. Futta

Krishnayya Chetti & Another 1958 (1) An WR 369.

13. Sri Ramachandra Rao contends that when once I P No 11/73 was filed, all the assets of the insolvent would be vested with the Official

Receiver u/s 28 of the Insolvency Act and hence the amount deposited by the judgment-debtor on 24-9-73 could also be vested with the Official

Receiver and hence it cannot be said that the amount is made available to the decree-holder. It is true that Section 28 provides that whole of the

property of the insolvent shall vest in the Insolvency Court or in the Official Receiver when he was appointed on the making of an order of

adjudication. But here order of adjudication is not yet passed. If the order of adjudication is not passed on the insolvency petition, the question of

vesting of the property of the insolvent with the insolvency Court does not arise, If is true that an Interim Receiver can be appointed u/s 20 of the

Provincial Insolvency Act. Merely because an Interim Receiver was appointed, it cannot be said that the property of the insolvent shall be vested

with him, since the order of the appointment of the Interim Receiver u/s 20 of the Act has not got the same effect as the vesting order or the order

of adjudication, Its effect it that he will have the same powers conferable on a Receiver appointed under the CPC or such of the powers as the

court may direct. There is difference between the powers of a Receiver appointed u/s 56 of the Provincial Insolvency Act and the powers of a

Receiver appointed u/s 20 of the said Act. In the case of the Receiver appointed u/s 56, the property vests in the receiver, whereas in the case of a

receiver appointed u/s 20, the property does not vest in him and he has powers similarly to the powers of a receiver appointed under Civil

Procedure Code. In this case, as stated above the Interim Receiver only was appointed. Even Interim Receiver's request was turned down by the

District Munsif under Ex. X-3 as full satisfaction was already recorded. As the amount deposited long prior to the admission of IP No 11/73, it

cannot be treated as the property of the judgment-debtor especially after the sale was set aside and the execution application (EA No 512/73)

was allowed and full satisfaction was recorded in favour of the decree-holder and consequently the amount stood to the credit of the decree-

holder, it cannot be vested with the insolvency court. In such a case, the Interim Receiver has no jurisdiction to claim custody of it. Hence the

contention of the learned counsel for the petitioner is unsustainable.

14. Sri Bhagiratha Rao, contends that Section 51 (1) of the Insolvency Act provides that the Official Receiver's title does not extend to the assets

realised in the course of execution levied against the property of the judgment-debtor before the date of the admission of the insolvency petition. I

find force in this contention. Section 51 (1) of the provincial Insolvency Act makes it abundantly clear that if, before the admission of the insolvency

petition, the properties of the judgment-debtor were already sold in execution of a decree, they cannot be available to the Official Receiver. Hence

no order directing the purchaser to restore to Official Receiver the property which he had already purchased at an execution sale can be passed.

This legal position is made clear in *In Re: Papellugari Veera Reddi and Others*, In that case, before the insolvency petition was admitted, the

judgment-debtor's properties were sold in execution of the decree and a sum of Rs. 666/- was realised The Official Receiver applied to the Court

for payment of the said amount to him and the court order payment accordingly. The petitioner assailed the validity of that order as being contrary

to section 61 (1) of the Provincial Insolvency Act. His Lordship Patanjali Sastri J., (as he then was) held that the Official Receiver's title to the

property of the insolvent does not extend to the assets realised in the course of execution levied against the property of the insolvent. To hold

otherwise would be to nullify the provisions of Section 51. The same view was taken by a Division Bench of the Madras High Court in *The Official*

Receiver of Tanjore Vs. M.R. Venkatrama Iyer, The learned Judges held that Section 51 provides that where execution has issued, assets realised

in the course of the execution by sale or otherwise before the date of the admission of the petition shall be protected from the operation of the

Insolvency Act. In *The Firm of Bhimaji Motiji Vs. The Official Receiver*, another Division Bench of the Madras High Court held that the only

logical way of interpreting section 51 (1) is in this way. The benefit of the execution represents the bids made at a sale or the assets realised

otherwise in the course of the execution. It refers in other words to money and Section 51 decides that money which was realised shall in certain

circumstances be paid to the decree-holder. There does not seem to be any scope u/s 51 for passing of an order directing the decree-holder to

restore to an official Receiver property which he has already purchased at an execution sale.

15. But Sri Ramachandra Rao contends that as u/s 51 (3) of the Provincial Insolvency Act the purchaser in good faith of the debtor's property at

an execution sale obtains and acquires good title sale held in favour of the auction-purchaser should not be set aside. In support of this contention,

he relies on a Division Bench of the Andhra High Court in *Lokanatham Srirangamma Vs. Ganagalla Narayamunma and Others* do not think that

decision lends any support to the contention of Sri Ramachandra Rao. The proposition of law laid down by the Division Bench is that Section 51

(3) applies also the purchaser in execution of a decree after the property of the judgment-debtor vested in a receiver u/s 72 (2) of the Act and that

if the property so vested was sold in execution of a decree by another decree-holder, a purchaser in good faith is entitled to retain the property and

the creditors of the insolvency are entitled only to the sale proceeds of the property for distribution among them. In the case on hand, the order of

adjudication was not yet passed and hence the properties of judgment-debtor are not yet vested with Insolvency Court or Receiver and hence the

application of Section 51 (3) does not arise at all. As the sale was held long prior to the admission of IP No 31/73 and as order of adjudication is

not yet passed and as the amount was deposited long prior to IP No 31/73 and it was unconditional, the decision does not render any assistance

to the petitioner. For the aforesaid reasons and rulings, I find no merits in the revision petition. It is, therefore, dismissed with costs.