

(2014) 02 MAD CK 0108

Madras High Court

Case No: O.S.A. No. 276 of 2012 and M.P. No. 1 of 2012

B.G. Chandrasekar

APPELLANT

Vs

V. Gopal

RESPONDENT

Date of Decision: Feb. 18, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 57, Order 21 Rule 89, Order 21 Rule 90

Citation: (2014) 7 MLJ 810

Hon'ble Judges: P. Devadass, J; N. Paul Vasantha Kumar, J

Bench: Division Bench

Judgement

P. Devadass, J.

As against the order of the learned Single Judge passed in A. No. 634 of 2012 in A. No. 4058 of 2011 in E.P. No. 5 of 2001 in C.S. No. 836 of 1996, dated 12.3.2012, wherein the order of the learned Master dated 9.9.2011 directing payment of 2% interest to the third party auction purchaser was set aside, the auction purchaser has directed this appeal. The auction sale was held on 8.6.2011. The appellant was the highest bidder. On 8.6.2011, he had deposited 25% of the bid amount, however, by way of cheque. The balance 75% of the bid amount, has to be deposited within fifteen days thereon. Accordingly, he had deposited, however, by way of cheque. In the meanwhile, the respondent/Judgment debtor deposited the proclamation money plus 5% of the bid amount, within time.

2. It is not in dispute that the cheques presented by the auction purchaser both towards 25% and 75% of the bid amount have been encashed. Admittedly, the encashment was beyond the permitted time, namely, 15 days. Taking note of this aspect, the learned Master directed refund of only 2% out of 5%. This was varied by the learned Single Judge, since the mode of payment adopted is not in consonance with law.

3. The learned counsel for the appellant would contend that the cheque has been presented to the Court Office within the time stipulated under the Rule. Thereafter, encashment of the cheque was within the office procedure and clearance by the bank. The delay has occurred after the prescribed date. The learned counsel also pointed out that the application to set aside the sale was filed not under Order 21 Rule 90, but under Order 21, Rule 89. In such circumstances, the judgment debtor cannot object to the reduction of the amount to 2%. The learned counsel also would point out that the learned Master has exercised the discretion on sound reasoning.

4. On the other hand, the learned counsel for the first respondent would contend that the mode of payment is by way of cash. This is what contemplated under Order 21, Rule 57. The learned counsel would cite [C.N. Paramasivam and E.M.C. Palaniappan Vs. Sunrise Plaza and Others](#), to drive home his point of view.

5. We have considered the rival submissions, perused the impugned order, materials on record and the decision cited.

6. In the case before us, the auction purchaser has presented the cheques in time. The Court Office did not refuse it nor returned the cheques. Receipts were also issued to the appellant. If cheques are not accepted, the Office should have returned them and insisted upon cash payment. On the contrary, the cheques were received. Of course, there was delay in encashment. For that, the appellant cannot be faulted.

7. It is also pertinent to note that the cheques issued were not empty cheques. In other words, they were not dishonoured. The cheques were not returned on account of insufficient funds or no funds. The delay has occurred not because of the fault of the auction purchaser. It is because of the administrative delay and delay occurred in clearance.

8. In C.N. Paramasivam and Another v. Sunrise Plaza (supra), there was default in paying the amount within the stipulated time and no extension of time was also sought for by filing a petition. In that event, the Division Bench had to take a strict view. But, that is not the situation before us. So the decision cited will not apply to the facts of this case.

9. Procedural laws are not equivalent to substantive laws. Procedural laws are handmaid of justice. They are not justice by themselves. They are intended to advance the cause of justice.

10. The learned Master has also taken into account the relevant aspects and the payment by cheque and thought it fit to exercise the discretion and thus reduced the rate of interest to 2% as against the 5% demanded. In our considered view, he has rightly exercised the discretion. In this view of the matter, we are to interfere with the impugned order of the learned Single Judge. In view of the foregoing, this Original Side Appeal is allowed. The order of the learned Single Judge dated

12.3.2012 is set aside. The order of the learned Master dated 9.9.2011 is restored.
No costs. Connected miscellaneous petition is closed.