

(1960) 07 BOM CK 0019

Bombay High Court**Case No:** Civil Revision Application No. 421 of 1959

Radhabai Ghubbaji

APPELLANT

Vs

Kondba Shioram

RESPONDENT

Date of Decision: July 14, 1960**Acts Referred:**

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

Citation: (1961) 63 BOMLR 351 : (1961) NLJ 49 : (1960) NLJ 22**Hon'ble Judges:** Tambe, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Tambe, J.

The applicants were indebted to opponent No. 1 Kondba. They made an application before the Debt Relief Court and the Debt Relief Court after scaling down the debts on March 17, 1941, fixed their liability at Rs. 1,577-8-0 and ordered that the applicants should pay the aforesaid amount by annual installments of Rs. 159-12-0, first installment being payable on March 1, 1942. The applicants paid installments regularly upto March 1, 1946. Thereafter they failed to make payments and, therefore, opponent No. 1 Kondba applied to the Deputy Commissioner u/s 13(3) of the C.P. & Berar Relief of Indebtedness Act for requisite certificate. On July 1, 1953, the Deputy Commissioner made an order under Sub-section (5) of Section 13 that the order of the Debt Relief Court fixing installments shall cease to have effect and the balance remaining due shall be recovered as if a decree. Opponent No. 1 then on the basis of this order took out execution seeking to recover the balance of Rs. 778-12-0 by sale of the applicants' field No. 105 situate in mauza Pujai, tahsil Wardha. After issuing notice to the applicants, sale proclamation was drawn up and the sale was fixed for April 4, 1957. On that day, however, the sale did not take place. Another proclamation was then issued for holding sale on June 28, 1957. On that day also sale did not take place and another proclamation was issued fixing the

sale on October 8, 1957. The said field was sold in Court auction on October 8, 1957, and was purchased by opponent No. 2. On October 17, 1957, the applicants made two applications, one u/s 3 of the M.P. Temporary Postponement of Execution of Decrees Act, Act No. V of 1956, and by this application the applicants prayed that they being agriculturists under the provisions of Section 3 of Act No. V of 1956 proceedings in execution be stayed; in other words, the prayer of the applicants was that the sale be not confirmed; the other application was under Order XXI, Rule 90, of the CPC for setting aside the sale on the ground of certain irregularities and illegalities mentioned in the application. The trial Court first heard the latter application. June 25, 1958, was fixed for recording evidence of the parties. On June 25, 1958, the applicants appeared but had not summoned any witnesses. They prayed that they may be granted time to summon witnesses. Their request was rejected. Ultimately the applicants' application under Order XXI, Rule 90, was dismissed on July 7, 1958. Thereafter, the trial Court took up the former application of the applicants, viz. application u/s 3 of Act V of 1956 and that application also was dismissed on July 7, 1958. The applicants then took an appeal against the order of the trial Court dismissing their application under Order XXI, Rule 90. It has been dismissed. The applicants, therefore, have preferred this revision application.

2. First contention raised by Mr. Ranade, learned Counsel for the applicants, is that it was incumbent on the trial Court to stay execution, the applicants are agriculturists and Section 3, the provisions of which are mandatory, directs that execution of decrees against agriculturists should be stayed. This contention of the applicants has not been accepted, and, in my view, rightly. The said Section 3 runs:

3. (1) All proceedings in execution of any decree for money, or proceedings for making final any preliminary decree for foreclosure or sale, or proceedings in execution of any final decree for sale, passed by a Civil Court on the basis of a liability incurred before this Act comes into force, in which a judgment-debtor or defendant, as the case may be, is, on the date this Act comes into force, an agriculturist, shall be stayed against such judgment-debtor or defendant, on an application made by him in this behalf during the period this Act remains in force.

(2) All attachments of growing crops, agricultural produce, live-stock and other movable property of a perishable nature made in execution of decrees for money the execution of which has been stayed under Sub-section (1) and existing on the date on which the stay order is passed shall be withdrawn.

(3) Any judgment-debtor or defendant who is an agriculturist, may, notwithstanding that no proceedings of the nature referred to in Sub-section (1) are pending against him, make an application for stay under that sub-section.

(4) Every stay order passed by the court under this section shall relate back to the date of the application for stay filed by the judgment-debtor or defendant, as the case may be, and the proceedings shall for all purposes of this Act be deemed to

have been stayed with effect from such date.

To attract the provisions of Section 3, it must firstly be established that the execution proceedings are in respect of a decree passed by a civil Court on the basis of a liability incurred before that Act came into force and, secondly, that the person proceeded against is an agriculturist.

3. It is well-known that the Debt Conciliation Act and the Relief of Indebtedness Act were enacted with a view to grant relief to agriculturist debtors. Cases started thereunder were disposed of between 1936 and 1943 and by 1943 all the proceedings relating to the indebtedness of a debtor agriculturist who had applied thereunder were completed. These debtors had received considerable advantage.. Their debts were substantially scaled down, the reduced amount was made payable by easy installments. Section 13(5) of the Relief of Indebtedness Act inter alia provided that if two consecutive installments remain in arrears the Deputy Commissioner shall order that the order of the Debt Relief Court fixing installments shall cease to have effect and the balance remaining due shall be recoverable as if a decree. M. P. Temporary Postponement of Execution of Decrees Act was passed in 1956. It can be safely assumed that the Legislature was well aware of the aforesaid circumstances, the provisions of Section 13(5) of the Relief of Indebtedness Act, and the certificates already issued by the Deputy Commissioner or those which would be issued in future under that section. If the Legislature had intended to grant relief to the same debtors again u/s 3 of Act V of 1956, the Legislature would have in clear terms said so; not only it has not said so but it has not done so. As already stated Section 3 of Act V of 1956 is attracted only when proceedings in execution are in respect of a decree passed by a civil Court, and the person proceeded against is an agriculturist.

4. Even assuming that the applicants are agriculturists it cannot be said that the execution proceedings taken against them are in respect of a decree passed "by a civil Court. The execution is in respect of a certificate issued by the Deputy Commissioner under Sub-section (5) of Section 13 of the Relief of Indebtedness Act. The section in terms says that the certificate is executable as if a decree. The use of the expression "as if in Sub-section (3) connotes that the certificate is not a decree of a civil Court, and even though it is not a decree of a civil Court, the Legislature confers powers on the civil Courts to execute that certificate as if it is a decree. Section 3 of Act V of 1956, therefore, has no application to proceedings in execution in respect of a certificate issued by the Deputy Commissioner under Sub-section (5) of Section 13 of the Relief of Indebtedness Act. I find support in *Dillisingh v. Thakur Teksingh* [1946] Nag. 821 and *Jagannath v. Gulabsingh* [1949] Nag. 981.

5. It is next contended that it was incumbent on the executing Court to issue a fresh sale notice under Order XXI, Rule 66(2), of the CPC before issuing a sale proclamation and fixing the sale for June 28, 1957, and October 8, 1957. Reliance is placed on Note 5.1 in 1959 N.L.J. 14. Mr. Ranade argues that the failure on the part

of the trial Court to issue sale notice in respect of sales fixed for June 28, 1957, and October 8, 1957, amounts to illegality, vitiating the sale. Reliance is placed on a decision reported in *Dada Narayan v. Jaichand* (1957) 60 Bom. L.R. 380. Judicial opinion is divergent as to whether failure to give notice under Order XXI, Rule 66 (2), amounts to an illegality or irregularity. The aforesaid decision of this Court, however, supports Mr. Ranade's contention that failure to give notice under Order XXI, Rule 66(2), amounts to an illegality and goes to the root of the jurisdiction of the Court. But that decision, however, is no authority in support of Mr. Ranade's other contention that it is incumbent on the Court to issue a sale notice every time fresh proclamation is ordered on adjournment of a sale.

6. The other decision relied on viz. Note 51 in 1959 N.L.J. 14, C.R. No. 711/56 dated July 3, 1957, is also not of any assistance to Mr. Ranade. That decision is distinguishable on facts. In that case, sale of an item of property was held and it was then set aside. When the property was going to be resold the question arose whether it was necessary to give a fresh notice and it was held that fresh sale notice was necessary. The facts of the present case are different. As already stated, before the sale proclamation was drawn up and the sale fixed for April 4, 1957, sale notice had been issued to the applicants under Order XXI, Rule 66(2), that the property had not been sold at any time up to October 8, 1957, the sale fixed for April 4, 1957, was first adjourned to June 28, 1957, and then to October 8, 1957. The provisions of Order XXI, Rule 69, of the Civil Procedure Code, under which the Court must have adjourned the sale first on April 4, 1957, and then on June 28, 1957, when read together with those of Order XXI, Rule 66(2), afford a complete answer to the contention raised by Mr. Ranade. Order XXI, Rule 66, relates to the drawing up of a proclamation of sale for the first time after the Court has ordered that particular property to be sold by public auction in execution of a decree. Clause (7) of Rule 66 provides that where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Clause (2) provides that such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible the property to be sold. Further clauses are not relevant to the issue. These provisions appear to have been enacted to give an opportunity to the judgment-debtor to raise an objection if he so desires against the proposed sale of that property. There is no reason to afford another such opportunity to him when the sale of that property does not take place on the appointed date but is only adjourned to some other date. Now, once a proclamation is drawn up and sale is fixed for a particular day but the sale cannot take place for some reason or the other on that day what procedure has to be followed is laid down in Rule 69 of Order XXI. It provides that the Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reason for such adjournment : provided

that, where the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court. Third proviso to Rule 69 is not material. Second proviso provides that where a sale is adjourned under Sub-rule (1) for a longer period than seven days, a fresh proclamation under Rule 67 shall be made, unless the judgment-debtor consents to waive it. It would be seen that the second proviso does not provide for issuance of a fresh sale notice. It only provides for issuance of a fresh proclamation in the event sale is adjourned for a period longer than 7 days. Reading the provisions of Order XXI, Rules 66 and 69 together it becomes clear that a fresh sale notice is not required to be given when a sale is merely adjourned in the discretion of the Court for certain reasons. The contention raised by Mr. Ranade, therefore, should fail.

7. A similar view has been taken by Bose J. (as he then was) in Miscellaneous Appeal No. 178 of 1937, dated October 5, 1938.

8. Lastly, Mr. Ranade contends that on June 25, 1958, the applicants should have been given a chance to summon their witnesses. The applicants were under the impression that their application u/s 3 of Act V of 1956 would first be taken up for consideration and they were under the impression that the proceedings in execution would be stayed under that provision. They had, therefore, not summoned their witnesses. On the material on record I find it difficult to assume that the applicants could have any such impression that their application u/s 3 of Act V of 1956 would be considered first. As stated above, the trial Court had fixed the application under Order XXI, Rule 90, for hearing and had directed the parties to summon their witnesses. The trial Court had not granted adjournment to the applicants. Obviously, the applicants were not in a position to satisfy the trial Court that they had adequate grounds for not summoning their witnesses. I do not consider it proper to interfere with the discretion exercised by the trial Court in this matter as it cannot be said that it had not been exercised judicially.

9. In result, the application fails and is dismissed with costs.