

SUPREME COURT OF INDIA

Manju Swarup (D) through Lrs.

Vs.

Bhupenshwar Prasad (D) Through Lrs.

C.A.No.8398 of 2013

(Anil R. Dave and A.K. Sikri JJ.)

20.09.2013

JUDGMENT

ANIL R. DAVE, J.

1. Leave granted.

2. This is one of the cases which shows how miserable a decree holder becomes in the execution proceedings. This is a Second Appeal in the execution proceedings filed by the judgment debtor whose property was ordered to be sold in the execution proceedings. In pursuance of a suit, which had been filed in 1955, the final decree was passed and the property of the appellant had been attached on 21st December, 1962. The execution proceedings had been continuing since then. The facts, in a nutshell, are that the Execution Case No. 29 of 1962 was filed for recovery of the decretal amount by the decree-holder. Auction notice was published on 16th April, 1964. The appellant herein, the judgment debtor had filed an application under Order XXI, Rule 83 of the Code of Civil Procedure, 1908 (for short 'the CPC') for postponement of the sale, as it was possible for the judgment debtor to raise the decretal amount and pay the same to the decree-holder.

3. Ultimately, on 8th October, 1964, the parties had come to some understanding, which had been recorded by the Court as under:

“The parties agree that time of four months be given to JD should he deposit Rs.2000/- per month & deposits the entire amount in 4 (four) months. (...illegible) under Order 21 Rule 83 CPC be given. If amount is not

deposited in four months then the JD agrees that property be sold without proclamation.”

4. The amount was not deposited by the judgment debtor within the specified time and ultimately the executing court had passed the following order on 3rd August, 1965:

“In case the JD has committed default in not making payment in time, the execution has to proceed unless the decree holder (DH) condones the delay. Let DH disclose by 19.08.1965 if he wants to proceed or condone the delay of JD.”

5. The amount was still not paid by the judgment debtor and the judgment debtor filed an application for extension of time and on the said application, the court passed the following order on 28th August, 1965:

“I have heard learned counsel and gone through the proceeding. There are no grounds why the JD should be allowed any further time. 47C2 is rejected.

Issue sale proclamation 28.10.1964. Deposit by 01.11.1965.”

6. An application made for stay of the auction proceedings, filed by the judgment debtor, had been rejected by the order dated 23rd October, 1965 and ultimately the attached property was auctioned on 29th October, 1965. At the time of the auction, 35 bidders were present and the property was sold for Rs.13,700/-.

7. Thereafter, on 10th May, 1969, the judgment debtor filed an application under Order XXI, Rule 90 of the CPC alleging that irregularities were committed in the conduct of the auction and the attached property had been sold at a lower price. The said application was allowed by the executing court on the ground that the sale price was inadequate.

8. Being aggrieved by the aforesaid order dated 10th May, 1969, an appeal had been filed, which had been allowed by the order dated 5th February, 1970.

9. The validity of the aforesaid order dated 5th February, 1970 was challenged by the judgment debtor by filing an Execution Second Appeal No. 742 of 1970 before the High Court of Allahabad. The High Court, by an interim order dated 11th May, 1970 gave an opportunity to the appellant/judgment debtor to pay the entire

decretal amount within two months from the date of passing of the interim order, failing which it was directed that the said order would stand automatically vacated.

10. The entire decretal amount was admittedly not paid by the judgment debtor and therefore, finally by an order dated 2nd February, 2006, the Execution Second Appeal No. 742 of 1970 has been dismissed by the High Court and being aggrieved by the said order, the judgment debtor has filed this appeal.

11. The learned counsel appearing for the judgment debtor- the appellant had mainly submitted that the decretal amount had been deposited by the appellant in the court after the period specified by the High Court was over and therefore, the sale should be cancelled and the present appeal should be allowed so that the appellant can get his property back.

12. On the other hand, the learned counsel appearing for the respondents had submitted that the stay had been granted by the High Court by an interim order dated 11th May, 1970 on the condition that the appellant would pay the decretal amount within a specified period, but that had not been paid or deposited within the time prescribed by the High Court and therefore, the Execution Second Appeal has been dismissed by the High Court. In the circumstances, no further opportunity be given to the appellant.

13. We have heard the learned counsel and have also considered the facts of the case. It is really deplorable that the heirs of the plaintiff who had filed the original suit somewhere in 1955 are still unable to get the decretal amount. In our opinion, sufficient opportunities had been provided to the judgment debtor to pay the decretal amount but every time the appellant failed to pay the decretal amount within the period prescribed, this matter should have an end at this stage and therefore, we dismiss the appeal and the stay granted by this Court also stands vacated.

14. The appeal stands dismissed with no order as to costs.