

KERALA HIGH COURT

Dakshayini

Vs

Madhavan

C.R.P. No.1209 of 1979

(P. Subramonian Poti, Ag. C.J. and K. Bhaskaran, J.)

01.09.1981

JUDGEMENT

Subramonian Poti, Ag. C.J.

1. Reference has been made to the Division Bench because the learned single Judge who had occasion to hear this case felt that there was anomaly in the provision in Order 21, Rule 92 Sub-rule (2) of the Civil Procedure Code as it now stands despite the amendment of Article 127 of the Limitation Act, 1963 by Civil Procedure Code (Amendment) Act 104 of 1976. A person who seeks to set aside a sale may do so under the provisions of Order 21, Rule 89, Rule 90 or Rule 91. The right under Order 21, Rule 89 is to be exercised by applying to have the sale set aside on deposit into court of amount sufficient to pay to the decreeholder besides the commission of 5% to the auction purchaser. The Civil Procedure Code did not specify the time within which applications have to be made under Order 21, Rules 89, 90 or 91. That was provided in Article 127 of the Limitation Act. The period was 30 days from the date of sale. When the Civil Procedure Code was radically amended by Act 104 of 1976 the period for setting aside the sale which was 30 days earlier was enlarged to 60 days by amending the Limitation Act. Such amendment was made to Article 127 of the Limitation Act. Naturally therefore after that amendment the period available for setting aside a sale was 60 days. So if a person deposits the amount as contemplated by Order 21, Rule 89 and applies for setting aside the sale he need make the application within 60 days of the date of sale. The deposit contemplated under Order 21, Rule 89 was to be made within 30 days of the date of sale as provided in Order 21, Rule 92(2) of the Code. In cases where the amount deposited under Rule 89 was found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor such deficiency could be made good within such time as may be fixed by the court. The deposit contemplated by Order 21, Rule 89 to be made within the time specified in Rule 92(2) was a condition precedent to setting aside the sale. Evidently the period of 30 days contemplated under Order 21, Rule 92(2) was the period corresponding to the 30 days under Article 127 of the Limitation Act as it stood earlier. That meant that the deposit as well as application had to be made within 30 days. When this time was sought to be enlarged Article 127 of the Limitation Act was amended. But though a corresponding treatment was required to Order 21, Rule 92(2) that was evidently lost sight of unless it be that we assume that the legislature wanted two different periods, a period of one

month for deposit and two months for application, which of course does not appear to be, on the face of it, reasonable. It appears to us that it is a very clear case of omission on the part of the legislature to notice that a period corresponding to the period specified in Article 127 had to be stipulated as a period within which deposit is to be made in the provision in Order 21, Rule 92(2) of the Code. The consequence now is that if we read the rule as it stands deposit has to be made within 30 days and application has to be made within 60 days. In the case before us deposit and application were made within 60 days. Deposit was not made within 30 days. Consequently the application stands dismissed by the order of the court below. That is the order challenged in this revision.

2. The function of the courts is to apply the law as it stands. Maybe the court notices the anomalies. But it is not for the court to re-write the law even though the court considers the provisions as they stand to be unreasonable. Of course courts do resort to the device of reading words into the provisions of the statute purporting to bring it in accord with what is evidently the intention of the legislature. But where it is evident that there is an omission on the part of the legislature to make an amendment which it ought to have made, even if such omission appears to be inadvertent, the courts cannot supply the omission, for, then it would be arrogating to itself legislative functions which it does not possess. The instance before us is one such where it is not possible to read the provision differently, for, the provision in Order 21, Rule 92(2) was one in existence all along and there can be no doubt that when the legislature enacted that rule it was contemplated as a rule providing for a period of 30 days. There can also be no doubt when the legislature in Act 104 of 1976 amended Article 127 of the Limitation Act that was intended to change the period of limitation for filing an application under Order 21, Rules 89, 90 or 91 from 30 days to 60 days. If this be the context we cannot read the period of 30 days as 60 days on any approach.

We can only point out the anomaly and say that the law works inequitably perhaps because of the omission of the legislature to notice the need to amend the provision in Order 21, Rule 92(2). We can only call the attention of the Government to the need for moving immediately for amending the rule. Consequently while we dismiss this revision we alert the Central Government to the need of treating Order 21, Rule 92(2) by enlarging the period for deposit from 30 days to 60 days to bring it in accord with Rule 127 of the Limitation Act. A copy of this order will be sent to the Law Department of the Central Government besides furnishing a copy to the Central Government Pleader for onward transmission.

3. The Civil Revision Petition is dismissed. No costs.
Revision dismissed.