

CASE NO.:
Appeal (civil) 6129 of 2000

PETITIONER:
Rosali V.

RESPONDENT:
Taico Bank and Ors

DATE OF JUDGMENT: 23/01/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. Sinha, J.

A judgment and order dated 8.01.1999 passed by the High Court of Karnataka at Bangalore in CRP No. 3528 of 1998 is in question before us, which arises in the following factual matrix.

M/s. Nellai Small Match Producers Service Industrial Co-op. Society Ltd. filed a suit against N. Dharmaraj, Respondent No. 2 herein in the Court of Principal Subordinate Judge in the State of Tamil Nadu for realization of some amount owing and due to it. The said suit was decreed. The said decree was transferred for execution to the Court of City Civil Judge, Bangalore. The matter ultimately was transferred to the Court of the 17th Additional City Civil Judge, Bangalore.

A proclamation of sale of immovable property bearing No. 1138/8, II Main Road, Vijaynagar, Bangalore was issued on 21.10.1988 whereupon the auction sale was held. In the said auction sale Smt. Mahadevi S. Havannavar became the highest bidder having given a bid for a sum of Rs. 3,25,000/-. The said deal was accepted by the learned Executing Court on 26.10.1988. It is stated that the said sale was conducted at about 4.00 p.m. on the said date and keeping in view of the fact that the banks at that time were closed, the court directed the auction purchaser to deposit the amount by the next day in the following terms:

"Sale proclamation and warrant not served at spot. TRD files vakalath for the bidder did accepted (sic), permitted to deposit 25% of the sale amount by tomorrow. Property is free from encumbrances as it stands for balance of consideration by 11.11."

It is not in dispute that pursuant to or in furtherance of the said direction, the auction purchaser deposited the amount of 25% of the sale amount on 27.10.1988 and deposited the balance amount on 11.11.1988.

Smt. Leelavathi, Respondent No. 3 herein, in the meanwhile, had instituted a suit in the Court of Addl. City Civil Judge Bangalore being O.S. No. 2493 of 1981 on 17.08.1981 for specific performance of contract against Respondent No. 2 in respect of the self-same property wherefor a sum of Rs. 1,05,000/- said to have been paid by way of advance. The said suit was decreed by the said Civil Judge by a judgment and order dated 20.04.1985. An appeal was preferred thereagainst before the High Court which was dismissed by an order dated 6/8.03.1996.

After the auction sale was confirmed, Respondent No. 3 appears to

have filed an application purported to be under Order XXI Rule 97 of the Code of Civil Procedure (Code). It is not in dispute that by an order dated 11.11.1988 as no objection was filed and the entire amount had been deposited, the sale was confirmed and the sale certificate was directed to be issued to the auction purchaser. Sale certificate on a stamp paper, which had been furnished in the meanwhile, was issued by the Court on 17.11.1988.

It is also stated that the property in question had been allotted by the Bangalore Development Authority to the original owner. The Bangalore Development Authority by a registered deed of sale dated 16.01.1990 transferred the property in favour of Shri Sangamesh G. Havannavar, husband of the auction purchaser Smt. Mahadevi S. Havannavar as in the meantime she had died.

On or about 5.02.1992, the said Shri Sangamesh G. Havannavar transferred his right, title and interest in the said property in favour of the appellant herein in terms of a registered deed of sale dated 5.02.1992.

It is contended that the appellant obtained licence from the appropriate authority for renovation of the existing ground floor and for construction of the first floor and pursuant to grant of sanction in this behalf had made constructions upon incurring a cost of Rs. 8,00,000/- therefor. He is said to have been residing therein.

Appellant herein was not impleaded as a party in the said execution proceedings. Respondent No. 3, however, obtained warrant of delivery of possession of the said property in execution of the decree of specific performance passed in her favour. On or about 01.08.1998, the appellant obstructed in taking possession pursuant to the said warrant of delivery of possession and eventually filed an application under Order XXI Rule 97, 98, 100 and 101 of the Code. From the objection filed by Respondent No. 3, it transpired that the auction sale had allegedly been set aside at the instance of the decree holder on the premise that the sale was void as it was confirmed before expiry of 30 days from the date of acceptance of the bid and other litigations by an order dated 27.09.1996 which is to the following effect:

"Dhr. KAB

Jdr. SGK

To hear Dhr. and to produce copy of orders in RFA.

Sri MRG for Dhr submits that the sale is void in view of the confirmation before 30 days and other litigations. Hence sale is set aside for these reasons."

The said order appears to be vague. No reason has been assigned in support thereof. On what ground the decree holder was permitted to raise the said contention was not disclosed.

A revision application was filed by the appellant herein before the High Court which by reason of the impugned judgment has been dismissed. It appears that the vendor of the appellant had also filed a revision application and the same was also disposed of by reason of the said judgment.

The High Court in its impugned judgment, however, opined that in view of the fact that the 25% of the bid amount was not deposited on 26.10.1988 and was deposited on 27.10.1988, the provision of Order XXI Rule 84 was not complied with and in that view of the matter the auction sale was bad in law. For arriving at the said finding, reliance was placed upon a decision of this Court in Manilal Mohanlal Shah and Ors. v. Sardar Sayed Ahmed Sayed Mahamad and Anr. [AIR 1954 SC 349].

Mr. T.L. Viswanath Iyer, learned senior counsel appearing on behalf

of the appellant, would submit that the the predecessor of the appellant having deposited the 25% amount on 27.10.1988 pursuant to or in furtherance of the order passed by the learned Judge himself, the same cannot be said to be in contravention of the provisions of Order XXI Rule 84 of the Code.

It was submitted that had an opportunity of hearing been given to the appellant, he could have shown that the bid having been accepted at 4 O'Clock, there was no other way to deposit the 25% of the bid amount in the bank and only with a view to obviate the same, the learned Judge directed the auction purchaser to deposit the said amount on the next day.

Mr. Iyer would urge that, in any event, non-compliance of Order XXI Rule 84 of the Code having not been raised by the decree holder, the High Court committed a manifest error in relying thereupon as also the decision of this Court in Manilal Mohanlal Shah (supra).

Mr. S.S. Javali, learned senior counsel appearing on behalf of the respondents, however, would submit that the judgment debtor and Respondent No. 2 herein had colluded with the auction purchaser with a view to defeat the decree of specific performance of contract. The learned counsel argued that in the first appeal preferred by Respondent No. 2 against the judgment and decree dated 20.04.1985 passed in favour of Respondent No. 3, Respondent No. 2 had undertaken not to sell or transfer the said property. The learned counsel contended that the auction sale being mala fide, this Court should not interfere with the impugned judgment.

In view of the rival contentions of the parties, as noticed hereinbefore, the questions which would arise for our consideration are:

- (i) What would be the meaning of the term "immediately" occurring in Order XXI Rule 84 of the Code, in view of the peculiar facts and circumstances of this case?
- (ii) Whether the sale was void only because it was confirmed before expiry of the period of 30 days.

Order XXI Rule 84(1) of the Code reads as under:

"84. Deposit by purchaser and re-sale on default.--

(1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold."

What would be the meaning of the term "immediately" came up for consideration before this Court, as noticed hereinbefore, in Manilal Mohanlal Shah (supra) wherein it was held:

"Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase-money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase-money in the first instance and the balance within 15 days. When there is no sale within the

contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to re-sell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all."

We are, however, in this case, faced with a different situation.

Having regard to the fact that the appellant had explained that it was not possible for his predecessor in interest to deposit the 25% of the amount immediately after such declaration, as the banks, at that point of time, were closed and furthermore having regard to the fact that presumably the court in that view of the matter had directed the auction purchaser to deposit the amount on the next day, we are of the opinion that it satisfies the requirements of law.

It is a well-settled principle of interpretation of a statute that where literal meaning leads to anomaly and absurdity, it should be avoided. [See Raghunath Rai Bareja and Another v. Punjab National Bank and Others \026 2006 (13) SCALE 511]

It is equally well-settled that the Parliament must be held to have intended to lay down a reasonable statute unless a plain meaning of the Act leads to different conclusion. It is trite that a statute must be read reasonably. [See Ashok Lanka and Another v. Rishi Dixit and Others (2005) 5 SCC 598]

In Lalit Mohan Pandey v. Pooran Singh and Ors. [(2004) 6 SCC 626], this Court opined:

"A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfill the object and purport of the legislative intent."

[See also State of Himachal Pradesh and Ors. v. Surinder Singh Banolta, 2006 (12) SCALE 571]

It is the duty of the court to accept a construction which promotes the object of a legislation. [Sanjay Dutt v. State through CBI Bombay (II) (1994) 5 SCC 410]

It is also a well-settled principle of law that common sense construction rule should be taken recourse to in certain cases.

In Halsbury's Laws of England (Fourth Edition) Volume 44(1) (Reissue), it is stated:

"1392. Commonsense Construction Rule. It is a rule of the common law, which may be referred to as the commonsense construction rule, that when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, the court should presume that the legislator intended common sense to be used in

construing the enactment.

1477. Nature of presumption against absurdity. It is presumed that Parliament intend that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction which produces an absurd result, since this is unlikely to have been intended by Parliament. Here 'absurd' means contrary to sense and reason, so in this context the term 'absurd' is used to include a result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial or productive of a disproportionate counter-mischief.

1480. Presumption against anomalous or illogical result. It is presumed that Parliament intends that the Court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction that creates an anomaly or otherwise produces an irrational or illogical result. The presumption may be applicable where on one construction a benefit is not available in like cases, or a detriment is not imposed in like cases, or the decision would turn on an immaterial distinction or an anomaly would be created in legal doctrine. Where each of the constructions contended for involves some anomaly then, in so far as the court uses anomaly as a test, it has to balance the effect of each construction and determine which anomaly is greater. It may be possible to avoid the anomaly by the exercise of a discretion. It may be, however, that the anomaly is clearly intended, when effect must be given to the intention. The court will pay little attention to a proclaimed anomaly if it is purely hypothetical, and unlikely to arise in practice."

In *Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group and Others* [(2006) 3 SCC 434], this Court observed:

"It is also a fundamental proposition of construction that the effect of deletion of words must receive serious consideration while interpreting a statute as this has been repeatedly affirmed by this Court in a series of judgments\005"

While applying the principles of interpretation, the courts are also required to keep in mind the following two well-settled principles of law:

(i) *Actus Curiae neminem gravabit* (an act of Court shall prejudice no man) [See *Satyabrata Biswas and Others v. Kalyan Kumar Kisku and Others* (1994) 2 SCC 266 *Ram Chandra Singh v. Savitri Devi and Ors.*, (2003) 8 SCC 319, *Board of Control For Cricket in India and Another Vs. Netaji Cricket Club and Others* (2005) 4 SCC 741 and *Union of India v. Pramod Gupta (D) By LRs. and Ors.* (2005) 12 SCC 1]; and

(ii) *lex non cogit ad impossibilia* (the law does not compel a man to do that what he cannot possibly perform) [See *Ram Chandra Singh*

(supra) and Board of Control For Cricket in India (supra)]

The term "immediately", therefore, must be construed having regard to the aforementioned principles. The term has two meanings. One, indicating the relation of cause and effect and the other, the absence of time between two events. In the former sense, it means proximately, without intervention of anything, as opposed to "mediately". In the latter sense, it means instantaneously.

The term "immediately", is, thus, required to be construed as meaning with all reasonable speed, considering the circumstances of the case. [See Halsbury's Laws of England, 4th Edition, Vol. 23, para 1618, p. 1178]

In a given situation, the term "immediately" may mean "within reasonable time. Where an act is to be done within reasonable time, it must be done immediately. [See M/s. Gangavishan Heeralal v. M/s. Gopal Digambar Jain and Others, AIR 1980 MP 119 at 123, Keshava S. Jamkhandi v. Ramachandra S. Jamkhandi, AIR 1981 Kar 97 at 101, Ramnarayan v. State of M.P., AIR 1962 MP 93 at 98, R. v. Inspector of Taxes, (1971) 3 All ER 394 at 398 and R. v. HU Inspector of Taxes, (1972) 1 All ER 545 at 555]

In Bombay Dyeing (supra), this Court observed:

"In 'The Interpretation and Application of Statutes', Reed Dickerson, at p.135 discussed the subject while dealing with the importance of context of the statute in the following terms:

"... The essence of the language is to reflect, express, and perhaps even affect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called "conceptual map of human experience"."

In K.S. Muthu v. T. Govindarajulu and Anr. [2000 (4) SCALE 175], this Court opined:

"\005In the circumstances when the Appellant was not in a position to perform the direction given by the Court in view of the holiday, the Court cannot expect the Appellant to perform what is impossible..."

In Crawford on Statutory Construction at page 539, it is stated :

"271. Miscellaneous Implied Exceptions from the Requirements of Mandatory Statutes, In General.- Even where a statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their jurisdiction in considerations of justice. It is a well known fact that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient caliber to excuse or justify a technical violation of the law."

[See also Dove Investments Pvt. Ltd. and Ors. v. Gujarat Industrial

Inv. Corporation Ltd. and Anr. (2006) 2 SCC 619].

We, therefore, are clearly of the opinion that the High Court was not correct in holding that in the facts and circumstances of the case, the provisions of Order XXI Rule 84 had not been complied with.

It is interesting to note that in *Dakshayani v. Branch Manager & Others* [ILR 1997 Kar. 1940], interpreting Order XXI, Rule 84, the Karnataka High Court itself held

"4. On that basis if we interpret the law though there is no power in the Court to extend the time fixed by the statute still the expression immediately is capable of taking within its sweep a situation where an act is impossible of performance on the day on which the auction is held as it happened in Savithramma's case when the bank itself was on strike and no deposit could have been made in the bank or in the event the auction sale is held after Court hours, a receipt order in that regard cannot be obtained for deposit of such an amount. Such amount could be deposited only after obtaining a receipt Order. If next day also happens to be a holiday, the day immediately thereafter coming up which is a working day will be the day on which such act will have to be performed. If any other interpretation is given it would stultify the very object of law\005"

We may consider another aspect of the matter. With a view to consider the question as to whether he intended to abide by the provisions of a statute or the order of a court, his conduct is relevant. If one intended to comply with order of a court but by reason of fortuitous circumstances, he is not in a position to do so, the statute would not be held to be operating harshly in such a case.

We, therefore, are of the opinion that having regard to the order of the court and the other circumstances stated by the appellant, his predecessor-in-interest not being able to deposit the 25% of the bid amount upon acceptance of bid did not render the auction sale void, as was opined by the High Court.

We may also notice that the auction purchaser had deposited the full purchase money within the time stipulated in terms of Order XXI Rule 85 of the Code.

We do not know under what circumstances the decree holder himself filed an application for setting aside the sale. Only because the sale was confirmed within a period of 30 days from the date of acceptance of the bid, the same by itself, in our opinion, was not decisive to set aside the sale after 8 years. We, therefore, are unable to agree with the findings of the Executing Court or the High Court.

The impugned orders are set aside. However, we make it clear that we have not gone into the other contentions raised by the respondents herein. All other contentions, therefore, may be determined by the Executing Court, if raised, in accordance with law.

The appeal is allowed. We, however, make no order as to costs.