

BANDA CHINNA SUBBARAYUDU & ORS.

v.

THAILAM VISHANATHA RAO & ANR.

(Civil Appeal No. 7153 of 2009)

OCTOBER 27, 2009

[Altamas Kabir and Cyriac Joseph, JJ.]

[2009] 15 (Addl.) SCR 470

The following Order of the Court was delivered

ORDER

1. Leave granted.

2. This appeal is directed against the judgment and order dated 28th March, 2008, passed by the Andhra Pradesh High Court in Civil Revision Petition No. 4778 of 2007, dismissing the Revisional Applications, which had been filed by the appellants herein.

3. The appellants suffered a decree for recovery of money in O.S. 458/98, in the court of Principal Junior Civil Judge, Proddatur. Pursuant to the said decree, the respondent No.1 herein, who is the plaintiff-decree-holder, filed Execution Proceedings, 352 of 2000, for sale of the property indicated in the said proceedings. On 25th November, 2003, the sale was conducted and the property in question was sold to the second respondent. On the same date, in an appeal filed by one Chennakkagari Ravindranath Reddy, being A.S. No. 10/2003, the said Execution Proceedings No. 352/2000 were stayed.

4. Subsequently, in the said Execution Proceedings the appellants/judgment-debtors filed an application under Order 21 Rule 89 of the C.P.C. to set aside the sale, which had been held on 25th November, 2003. The respondent No.1 herein filed objection to the said application for setting aside the sale mainly on two grounds, namely, (1) that the deposit made by the judgment-debtor was less than what was required to be deposited under Order 21 Rule 89 of the Code; and (2) that the application

had been filed well beyond the period of limitation prescribed under Article 127 of the Limitation Act.

5. The application filed by the appellant/judgment-debtor was dismissed by the Executing Court on both grounds. Even in appeal, the said order was confirmed. When the matter was taken to the High Court, it found in favour of the appellant as far as the amount of deposit is concerned. However, the High Court affirmed the order of the Executing Court, as well as of the Appellate Court, on the question of limitation. Aggrieved thereby, the appellants have preferred the instant appeal.

6. Appearing in support of the appeal, Mr. Shetty, learned senior counsel, submitted that none of the courts below had taken into account the fact that in view of the stay obtained by the said Chennakkagari Ravindranath Reddy, it was not possible for the appellants to take steps in the Execution Proceedings by filing the application for setting aside the sale. In this connection, a few dates would be relevant. As noticed hereinbefore, the suit of the respondent No.1 was decreed in 1998 and after the decree was put into execution, the sale of the judgment-debtor's property was conducted on 25th November, 2003, on which date Chennakkagari Ravindranath Reddy obtained a stay of the Execution Proceedings in the appeal filed by him. The sale was, however, yet to be confirmed. In the meantime, on 2nd December, 2004, the appeal filed by the said third party Chennakkagari Ravindranath Reddy was dismissed and the stay order stood vacated. An application was made by the appellant/judgment-debtor under Order 21 Rule 89 CPC and the amount, as required to be deposited under Rule 89(1), was deposited on 15th December, 2004.

7. Mr. Shetty has questioned the decision of the courts below, including the High Court, on the ground that since the Execution Proceedings were stayed, albeit, at the instance of a third party, the appellant was unable to take any steps in the said proceedings for setting aside the sale and once the

stay was lifted, he proceeded to take steps and that, accordingly, the period during which the Execution Proceedings remained stayed, should have been excluded from the period as contemplated under Article 127 of the Limitation Act. This factor does not appear to have been considered by the Executing Court or the appellate court and was for the first time considered by the High Court, which held that the stay of the proceedings at the instance of a third party could not come to the aid of the appellant/judgment-debtor for the purpose of filing an application under Order 21 Rule 89 of the Code. In effect, the finding of the High Court was that such pendency would not come to the aid of the Judgment-debtors for extending the period of limitation prescribed.

8. The only question we are, therefore, left to answer is whether the appellants would be entitled to the benefit of the said period during which he was prevented by the Execution Proceedings in taking steps to file the application for setting aside the sale.

9. Having heard learned counsel for the respective parties and considering the facts, as disclosed in the records, we are unable to uphold the decision of the High Court in this regard. Whether the stay of the Execution Proceedings was obtained by the judgment-debtor or by any other person is hardly relevant except to decide whether the judgment-debtor could have taken any steps in the proceedings which were stayed. That a stay of the Execution Proceedings was granted on 25th November, 2003, is admitted. That such stay was vacated on 2nd December, 2004, is also admitted. If the period between 25th November, 2003, and 2nd December, 2004, when the stay was vacated is excluded, then the steps taken by the judgment-debtor thereafter under order 21 Rule 89 CPC would be in the time.

10. In our view, since the appellants were prevented by the stay order from taking any further steps in the Execution Proceedings, they would be entitled to the benefit of the said period and the same has to be excluded

while considering the question of limitation as prescribed under Article 127 of the Limitation Act.

11. Having regard to the above, the appeal is allowed and the orders of the High Court, so far as it relates to the question of limitation and affirming the view of the lower courts, is set aside. The Executing Court is directed to proceed with the application filed by the appellants herein under Order 21 Order 89 CPC, being E.A. 333 of 2005, and dispose of the same at an early date, since the matter has already been considerably delayed.

12. Having regard to the circumstances involved, there will be no orders as to costs.

