

\234ÇC.A. No.4204 of 2007

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.4204 OF 2007  
UNITED FINANCE CORPORATION

...Appellant

Vs.

M.S.M. HANEEFA

...Respondent

J U D G M E N T

R. BANUMATHI, J.

This appeal arises out of order passed by the High Court of Kerala at Ernakulam allowing the revision in CRP No.894 of 2005 dated 2 nd January, 2006 and thereby dismissing the application filed by the appellant under Order XXI Rule 95 C.P.C. on the ground that the application is barred by limitation and declining direction for delivery of possession of the immovable property purchased in the court auction sale to the appellant.

2. Brief facts which led to filing of this appeal are as under:-

The appellant/Corporation-decree holder filed a suit for realisation of the suit claim and the said suit was decreed for a sum of Rs.2,72,100/- along with interest. In execution of the decree, the property of respondent/judgment-debtor was auctioned on 27 th

October, 2001 and the same was purchased by the appellant/decree-holder himself. The appellant/decree holder purchased schedule item No.2 property to an  
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extent of 1 acre and 50 cents comprised in Survey No.458/1 of Parassala Village along with the building situated therein. The sale was made absolute on 1 st

June, 2002. Sale certificate was issued to the appellant on 17 th

March, 2003. In the meanwhile, the first respondent/judgment-debtor filed an application to set aside the auction sale (Order XXI Rule 90 C.P.C.) and also another application for appointment of the Commissioner to value the property. Both the applications came to be dismissed by the executing court. Being aggrieved by the order dismissing the Commissioner's application (E.A.No.77/2002), the first respondent/judgment-debtor filed revision before the High Court in C.R.P.No.2829/2002 in which the High Court has granted stay of further proceedings in the execution petition. The Civil Revision Petition came to be dismissed on 9 th

July, 2003.

3. Thereafter, on 30 th

August, 2003, auction purchaser appellant filed an application under Order XXI Rule 95 C.P.C. for delivery of possession of the immovable property purchased in the court auction sale. In the said

application by order dated 12 th

August, 2005, the executing court ordered delivery of possession which was challenged by the judgment-debtor before the High Court in C.R.P.No.894/2005. By the impugned order dated 2 nd

January, 2006, the High Court allowed the revision and dismissed the application filed by the appellant under Order XXI Rule 95 CPC on the ground that it is barred by limitation.

4. Challenging the impugned order, learned counsel for the appellant submitted that the court auction sale does not become absolute on the  
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passing of a mere order of confirmation of sale as enjoined by Order XXI Rule 92(1) C.P.C. but it becomes absolute only on the termination of proceedings initiated to set aside the order confirming the sale. It was

further submitted that the steps taken by the judgment-debtor to set aside the court auction sale were pending consideration before the High Court in C.R.P.No.2829/2002, which proceedings came to be terminated only on 9 th July, 2003 and hence the application filed by the appellant under Order XXI



The High Court held that the issuance of a sale certificate is not sine qua non for the maintenance of an application for delivery, since the title of the court auction purchaser becomes complete on the confirmation of the sale under Order XXI Rule 92 C.P.C. We may refer to the relevant portion of the judgment in Pattam Khader Khan's case, which reads as under:

11. Order 21 Rule 95 providing for the procedure for delivery of property in occupation of the judgment-debtor etc., requires an application being made by the purchaser for delivery of possession of property in respect of which a certificate has been granted under Rule 94 of Order 21. There is  
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nothing in Rule 95 to make it incumbent for the purchaser to file the certificate along with the application. On the sale becoming absolute, it is obligatory on the court though, to issue the certificate. That may, for any reason, get delayed. Whether there be failure to issue the certificate or delay of action on behalf of the court or the inaction of the purchaser in completing the legal requirements and formalities, are factors which have no bearing on the limitation prescribed for the application under Article 134. The purchaser cannot seek to extend the limitation on the ground that the certificate has not been issued. It is true though that order for delivery of possession cannot be passed unless sale certificate stands issued. It is manifest therefore that the issue of a sale certificate is not sine qua non of the application, since both these matters are with the same court.... [Underlining added]

10. Order XXI Rule 95 C.P.C. deals with delivery of property in occupancy of judgment-debtor. Order XXI Rule 95 C.P.C. reads as under:

95. Delivery of property in occupancy of judgment-debtor Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same. [ Underlining added ]

11. By careful reading of Order XXI Rule 95 C.P.C., the language of the provision is indicative that application for delivery of possession of property purchased in the court auction can be filed where a certificate in respect thereof has been granted under Rule 94 of Order XXI. Having regard to the language of Order XXI Rule 95 C.P.C. a certificate in respect thereof has been granted in Rule 94... that the court shall, on the application of the purchaser, order delivery to be made... we have our own doubts

regarding the view taken by this Court in the case of Pattam Khader Khan's case (supra) that there is nothing in Rule 95 to make it incumbent for the purchaser to file the certificate alongwith the  
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application and a certificate is not a sine qua non of the application. However in the facts and circumstances of the present case, we are not inclined to refer the question to a larger Bench - whether issuance of sale certificate is a sine qua non or not for filing the application under Order XXI Rule 95 C.P.C.

and the question is left open.

12. The High Court mainly considered the applicability of Section 15(1)

of the Limitation Act to arrive at the conclusion that the application for delivery of possession was barred by limitation. The High Court took the view that application under Order XXI Rule 95 C.P.C. does not attract Section 15(1) of the Limitation Act and consequently the period during which order of stay of execution granted by the revisional court cannot be taken into consideration. The High Court further observed that the court auction purchaser cannot seek to extend the limitation on the ground that the stay granted by the High Court was in force to claim the benefit of Section 15(1) of the Limitation Act.

13. As seen from the records after the court auction sale on 27<sup>th</sup> October, 2001, the first respondent-judgment-debtor had filed two applications, one for setting aside the sale under Order XXI Rule 90 C.P.C. (E.A.No.315/2001) and another for appointment of an Advocate-Commissioner to assess the value of the property sold in the court auction sale (E.A.No.77/2002) and both the applications were dismissed by the executing court. As against the order passed in E.A. Page No. 7 of 12

C.A. No.4204 of 2007 No.77/2002, in and by which, executing court declined to appoint Commissioner to assess the value of the property, the judgment-debtor has filed the revision in C.R.P.No.2829/2002 in which the High Court has granted stay of further proceedings in the execution. The said revision came to be dismissed on 9<sup>th</sup>

July, 2003. While allowing the revision filed by the respondent-judgment-debtor, the High Court observed the period during which stay granted by the High Court was in force i.e. from 17<sup>th</sup>

September, 2002 to 9<sup>th</sup>

July, 2003 cannot be excluded in terms of Section 15(1) of the Limitation Act. The High Court took the view that application filed in the execution petition seeking delivery of possession does not attract Section 15(1) of the Limitation Act.

14. The learned senior counsel appearing for the first respondent-judgment-debtor submitted that the application filed under Order XXI Rule 95 C.P.C. for delivery of possession of immovable property by a purchaser in a court auction sale cannot be construed as an application for execution so as to attract Section 15 (1) of the Lim

itation Act and the High Court rightly held that Section 15(1) of the Limitation Act cannot be applied to an application for delivery of possession filed under

Order XXI Rule 95 C.P.C.

15. Per contra, the learned counsel for the appellant-decree-holder submitted that as per Section 47 C.P.C. all questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree shall Page No. 8 of 12

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be determined by the court executing the decree and not by a separate suit. It was further submitted that as per Clause (a) of Explanation II of

Section 47 C.P.C., a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is

passed. Learned counsel for the appellant submitted that in view of Section 47 C.P.C., a separate suit by the auction purchaser for recovery of the possession of the property purchased in auction in execution of a decree is barred. It was therefore contended that by a conjoint reading of Order XXI Rule 95 C.P.C. read with Section 47 C.P.C., Section 15(1) of the Limitation Act is to be made applicable even to an application filed under

Order XXI Rule 95 by the auction purchaser for delivery of property.

Having regard to the narrow compass of the question involved in the present appeal, we are not inclined to go into the larger question of applicability of Section 15(1) of the Limitation Act to an application filed

under Order XXI Rule 95 C.P.C. and this question of law is also left open.

16. As pointed out earlier, in terms of Article 134 of the Limitation Act, an application for delivery of possession by a purchaser of immovable property at a sale in execution of a decree has to be filed within a period of one year from the date when the sale becomes absolute. Considering the scope of the expression as to when the sale becomes absolute in the case of Chandra Mani Saha and Ors vs. Anarjan Bibi and others AIR 1934 PC 134 it was held as under:

â- Sâ- | In order to ascertain when such a sale as is referred to in the said

Article becomes absolute, reference must be made to the Civil Procedure Page No. 9 of 12

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Code, and the orders and rules contained in the Sch.1 thereto, for that is the Code which contains the provisions relating to the sale of immoveable property in execution of decrees. Order 21, Rules 82 to 96, in the said

schedule are applicable to sales of immoveable property. Rules 89, 90 and 91 deal with applications to set aside a sale and Rule 92 (1) provides as follows:

â- S Where no application is made under Rule 89, Rule 90, or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.â- \235

There is no doubt that the above-mentioned rule is applicable to the present case ; for as already stated the judgment-debtors did apply to set aside the sale, and the Subordinate Judge disallowed the applications on 15 th

April 1924, and on 22 nd

April 1924, he confirmed the sales. The sales, therefore, became absolute on 22 nd

April 1924, at any rate so far as the Court of the Subordinate Judge was concerned. But the judgment-debtors had a right of appeal under Order 43, Rule (1)(j) against the orders of the Subordinate Judge by which he disallowed their applications to set aside the sales. This right of appeal the judgment-debtors exercised. Upon the hearing of the appeals, the High Court, by reason of the provisions of Section 107 (2) of the Code had the same powers as the Court of the Subordinate Judge. In the present case, the High Court dismissed the appeals and on such dismissal the orders of the Subordinate Judge confirming the sales became effective and the sales became absolute. In considering the meaning of the words in Article 180 of the Limitation Act , it is useful to consider the converse case. Take a case in which the Subordinate Judge allowed the application to set aside the sale; in that case, of course, there could be no confirmation of the sale as far as the Subordinate Judge was concerned, as there would be no sale to be confirmed. But if, on appeal, the High Court allowed the appeal, and disallowed the application to set aside the sale, the High Court would then be in a position to confirm the sale, and on such an order of confirmation by the High Court the sale would become absolute. Again, take a case in which the Subordinate Judge disallowed the application to set aside the sale; there would then be confirmation of the sale by the Subordinate Judge and the sale would become absolute as far as his Court was concerned. If the High Court allowed an appeal, and set aside the sale, there would then be no sale, and, of course, no confirmation and no absolute sale.

Upon consideration of the sections and orders of the Code, their Lordships are of opinion that in construing the meaning of the words &#34;when the sale becomes absolute&#34; in Article 180, the Limitation Act ,

regard must be had not only to the provisions of Order 21, Rule 92(1), of the schedule to the Civil Procedure Code, but also to the other materi al

sections and orders of the Code, including those which relate to appeals from orders made under Order 21, Rule 92(1). The result is that where there is an appeal from an order of the Subordinate Judge, disallowing the application to set aside the sale, the sale will not become absolute within the meaning of Article 180 of the Limitation Act, until the disposal of the appeal, even though the Subordinate Judge may have confirmed the sale, as he was bound to do, when he decided to disallow the above-mentioned application. â- \235 [ Underlining added ]

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The same view was reiterated in the case of Sri Ranga Nilayan Rama Krishna Rao vs. Kandokori Chellayamma AIR 1953 SC 425. 17. Considering the facts of the present case in the light of the above principles, in our view, the sale could not have become absolute till the proceedings in the revision in C.R.P.No.2829/2002 was over and the revision was disposed of. The judgment-debtor, as discussed earlier, had filed two applications E.A.No.315/2001- (i) to set aside the sale alleging that the property was sold for a lower price as a result of which substantial injury was caused to him and (ii) another application in E.A. No.77/2002- an application for appointing Advocate-Commissioner to assess the value of the property. As against the order dismissing E.A.No.77/2002, the judgment-debtor has filed the revision in C.R.P.No.2829/2002. So long as the said revision was pending, the court auction sale was yet to become absolute. For the sake of arguments, assuming that the said revision was allowed, then in that case the court auction sale would have been set aside on the ground that the property was sold for a lesser price. Therefore, till the revision in C.R.P. No. 2829 of 2002 was disposed of in one way or the other, the sale was yet to become absolute. Be it noted that in Article 134 of the Limitation Act, the legislature has consciously adopted the expression â- S when the sale becomes absolute â- \235 and not when the sale was confirmed. As against the order dismissing E.A No.77/2002 since the revision was preferred by the judgment-debtor and the same came to be disposed of on 9 th July, 2003 the sale became absolute only on 9 th July,

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2003. The application filed under Order XXI Rule 95 C.P.C on 30 th August, 2003 was well within the period of limitation. In our view, the High Court was not right in holding that the application under Order XXI Rule 95 C.P.C was barred by limitation and the impugned order cannot be sustained. 18. In the result, the impugned order of the High Court in C.R.P.No.894 of 2005 dated 2 nd January, 2006 is set aside. This appeal is allowed. The Executing Court is directed to restore E.A.No.297/2003 in O.S.No.57/1985 and to dispose of the same in accordance with law. No costs. â- |â- | .....J.  
[ R.K. AGRAWAL ]  
â- |.....J.  
[ R.BANUMATHI ]

New Delhi;

January 11, 2017.

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ITEM NO.1 COURT NO.2 SECTION XIA  
S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 4204/2007

UNITED FINANCE CORPORATION

Appellant(s)

VERSUS

M.S.M. HANEEFA (DEAD) THROUGH LRS. Respondent(s)

Date : 11/01/2017 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. Romy Chacko, AOR

For Respondent(s) Mr. Ankur S. Kulkarni, AOR

Hon&#39;ble Ms. Justice R. Banumathi pronounced the judgment of the Bench comprising of Hon&#39;ble Mr. Justice R.K. Agrawal and Her Ladyship.

The appeal is allowed in terms of the signed reportable judgment. The impugned order of the High Court in C.R.. No.894 of 2005 dated 2 nd

January, 2006 is set aside. The Executing Court is directed to restore E.A. No.297/2003 in O.S. No.57/1985 and to dispose of the same in accordance with law. No Costs.

(Gulshan Kumar Arora) (H.S. Parasher)

Court Master Court Master

(Signed reportable judgment is placed on the file)