

MOHAN LAL

A

v.

SHRI HARI PRASAD YADAV AND ORS.

MAY 13, 1994

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

B

Civil Procedure Code, 1908 : Order 21, Rule 89—Application under—Limitation period—Held : Governed by Article 127 of the Limitation Act—Executing Court has no jurisdiction to entertain application after period of limitation prescribed by Article 127—Section 5 of Limitation Act and Section 148 of Civil Procedure Code, 1908—Held inapplicable.

C

An auction sale took place on 25.5.81. The objections filed by the judgment debtor under Order 21 Rule 90 of the Code of Civil Procedure, 1908 were dismissed by the Executing Court and the appeal filed against the order of the Executing Court was dismissed by the High Court by Its order dated 21.12.83. However, an application filed under Order 21 Rule 89 for setting aside the sale was allowed by the Executing Court. The auction purchaser preferred revision against this order. By its order dated 26.4.83, the High Court held that the executing court had no jurisdiction to entertain the application under Order 21 Rule 89 as it was time barred under Article 127 of the Limitation Act. Against the orders dated 21.12.83 and 26.4.83 special leave petition/appeal was referred in this court.

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Dismissing the petition and appeal, this Court

F

HELD : An application to set aside sale under Order 21 Rule 89 of the Code of Civil Procedure is governed by Article 127 of the Limitation Act. Section 5 of the Limitation Act has no application on its own wordings. Again Section 148 of the Civil Procedure Code would not be applicable to the present case for the simple reason that the time for making an application under Order 21 Rule 89 of the Code is not fixed by the Court. Therefore, the High Court was right in coming to the conclusion that the executing court had no jurisdiction whatsoever to entertain the application under Order 21 rule 89 of the Code after the period of limitation prescribed by Article 127 of the Limitation Act. There is no reason to interfere with the order passed by the High Court. [110-C, G, H, 111-A-D]

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A **CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 2647 of 1984.

From the Judgment and Order dated 26.4.83 of the Patna High Court in C.R. No. 984 of 1982.

B S.S. Javali, R.P. Singh, R.K. Khanna and S.K. Sinha for the Appellant.

K.K. Gupta and Shankar Divate for Mrs. Lalitha Kaushik for the Respondents.

C The Judgment of the Court was delivered by

D **YOGESHWAR DAYAL, J.** This appeal is directed against the judgment of the Single Judge of the High Court of Patna dated 26th April, 1983 whereby the Single Judge set aside an order dated 28th May, 1982 passed by the executing court in Execution Case No. 7 of 1977 while giving the benefit of Order 21 rule 89 of the Code of Civil Procedure (hereinafter referred to as 'the Code') to the judgment debtor.

E Undoubtedly the sale took place on 25th May, 1981 and even the objections, which were filed for setting aside the sale under Order 21 rule 90 of the Code were dismissed on 4th May, 1982. An application purporting to be under Order 21 rule 89 of the Code was filed on 28th May, 1982. It may be mentioned that even an appeal has been filed against the order of the executing court dated 4th May, 1982 dismissing the objections to the sale filed under Order 21 rule 90 of the Code. After the dismissal of the objections under Order 21 after rule 90 of the Code the executing court granted time for moving the High Court till 22nd May, 1982 and the appeal filed by the appellant against the order of the executing court dismissing objections under Order 21 rule 90 of the Code stood dismissed on 21st December, 1983. The said order is also under challenge before this Court in Special Leave Petition (Civil) No. 8523 of 1985 and is being disposed of separately.

H As stated above the application purporting to be under Order 21 rule 89 of the Code for setting aside the sale was filed on 28th May, 1982 which was granted by the executing court on the same date by the following

order:

"28.5.82

Order

The Judgment-debtor, has placed before me, has since recoin-
cided to his fate after exhausting all the processes, at his command
and is now ready to deposit the decretal amount and he is ready
to deposit another Rs. 5000 and undertakes to deposit the remain-
ing amount within a short period. It was submitted on his behalf
that irreparable loss will be caused if his prayer is not allowed.

In the interest of justice and in the circumstance of the case I
take the liberty to order the judgment debtor to deposit hence
forth Rs. 5000 and is order to deposit the remaining amount under
decreed latest by 10.6.82 failing which the sale will be confirmed.

I also find that the auction purchaser in the circumstances
would be put to loss the position being that the judgment-debtor
would separately deposit another amount equivalent to the interest
at the rate of 5% from the date of deposit by the auction purchaser
till 10.6.82 by way of compensation remuneration for the auction
purchasers. This amount is ordered to be deposited alongwith the
decretal amount on separate item on this amount by month of June
failing which the sale in question will be confirmed.

The judgment debtor must comply with the order by the date
fixed.

Sd/-R.C. Ram

A.S.I. III"

On revision being filed by the auction purchaser against this order,
the High Court accepted the same and dismissed the application filed
under Order 21 rule 89 of the Code as being barred by time. The other
objections of the auction purchaser, as to the maintainability of the applica-
tion under Order 21 rule 89 of the Code in view of the dismissal of the
objections under Order 21 rule 90 of the Code were not decided since the
High Court felt that the application under Order 21 rule 89 was barred by

- A time in view of the limitation provided under Article 127 of the Limitation Act, which provides as under :

| Article | Description of suit | Period of limitation | Time from which period begins to run |
|---------|---------------------------------------------------------------------------------------------------|----------------------|--------------------------------------|
| B 127 | To set aside a sale in execution of a decree including any such application by a judgment-debtor. | Sixty days | The date of the sale |

- C It is settled law that an application to set aside sale under Order 21 89 of the Code is governed by Article 127 of the Limitation Act. Section 5 of the Limitation Act has no application on its own wordings. Section 5 of the Limitation Act reads as follows :

- D "5. Extension of prescribed period in certain cases. - Any appeal or any application, *other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908*, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

- E Explanation. - The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

- F The application under Order 21 rule 89 of the Code being an application under the provisions of Order 21, Section 5 of the Limitation Act, on its own language, is not applicable specifically.

- G We are thus left with the question whether Section 148 of the Code would be applicable to the present case or not. Again section 148 of the Code would not be applicable to the present case for the simple reason that the time for making an application under rule 89 of Order 21 of the Code is not fixed by the Court.

- H The High Court was thus right in coming to the conclusion that the executing court had no jurisdiction whatsoever to entertain the application

purporting to be under Order 21 rule 89 of the Code after the period of A
limitation prescribed by Article 127 of the Limitation Act.

The result is that the appeal fails and is dismissed.

Learned counsel for the judgment-debtor had invited us to give a B
finding as to the extent of the property which was sold as a result of court
sale. We are not inclined to go into this question in the present proceedings
as it is a matter to be decided by the executing court while granting the
sale certificate.

Order

In the present case the executing court had dismissed the objections C
filed by the petitioners/judgment-debtors under Order 21 rule 90 of the
Code of Civil Procedure by order dated 4th May, 1982. The High Court,
affirming the order of the executing court, dismissed the appeal by the
impugned order dated 21st December, 1983.

We find no reason whatsoever to interfere with the impugned order D
of the High Court. The special leave petition is accordingly dismissed.

T.N.A.

Petition & Appeal dismissed.