

Mohan Lal vs Hari Prasad Yadav (Dayal, J.) on 13 May, 1994

Equivalent citations: 1994 SCC (4) 177, JT 1994 (4) 116, 1994 AIR SCW 2345, 1994 (4) SCC 177, 1994 HRR 496, (1994) 2 LANDLR 215, (1994) 2 LS 4, (1994) 3 PUN LR 234, (1994) 2 RRR 702, (1994) 2 BLJ 608, (1995) 1 CIVILCOURTC 398, (1995) 1 MAD LJ 10, (1994) 2 PAT LJR 34, 1994 BLJR 2 1135, (1994) 2 SCJ 406, 1994 SCFBRC 273, 1994 UJ(SC) 2 458, (1994) 2 LJR 511, (1994) 3 CIVLJ 418, (1994) 2 CURCC 501, (1994) 55 DLT 7, (1994) 4 JT 116 (SC)

Author: Yogeshwar Dayal

Bench: Yogeshwar Dayal, Kuldip Singh

PETITIONER:

MOHAN LAL

Vs.

RESPONDENT:

HARI PRASAD YADAV (Dayal, J.)

DATE OF JUDGMENT 13/05/1994

BENCH:

YOGESHWAR DAYAL (J)

BENCH:

YOGESHWAR DAYAL (J)

KULDIP SINGH (J)

CITATION:

1994 SCC (4) 177 JT 1994 (4) 116

1994 SCALE (2) 1019

ACT:

HEADNOTE:

JUDGMENT:

The Judgment and Order was delivered by YOGESHWAR DAYAL, J.-

Judgment in Civil Appeal No. 2647 of 1984 This appeal is directed against the judgment of the Single Judge of the High Court of Patna dated 26-4-1983 whereby the Single Judge set aside an order dated 28-5-1982 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.

2. Undoubtedly the sale took place on 25-5-1981 and even the objections, which were filed for setting aside the sale under Order 21 Rule 90 of the Code were dismissed on 4-5-1982. An application purporting to be under Order 21 Rule 89 of the Code was filed on 28-5-1982. It may be mentioned that even an appeal has been filed against the order of the executing court dated 4-5-1982 dismissing the objections to the sale filed under Order 21 Rule 90 of the Code. After the dismissal of the objections under Order 21 Rule 90 of the Code the executing court granted time for moving the High Court till 22-5-1982 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 21-12-1983. 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.

3. As stated above the application purporting to be under Order 21 Rule 89 of the Code for setting aside the sale was filed on 28-5-1982 which was granted by the executing court on the same date by the following order:

"28-5-1982 Order The judgment-debtor, has placed before me, has since reconciled 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 remaining 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 henceforth Rs 5000 and order to deposit the remaining amount under decree latest by 10-6-1982 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 10-6-1982 by way of compensation remuneration for the auction purchasers. This amount is ordered to be deposited along with 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. 111"

4. 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 application 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 time in view of the limitation provided under Article 127 of the Limitation Act, which provides as under:

----- Article Description of suit Period
of Time from limitation which period begins to run

----- 127 To set aside a sale in execution
Sixty days The date of of a decree including any such the sale.

application by a judgment-

debtor.

5. It is settled law that an application to set aside sale under Order 21 Rule 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:

"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. 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."

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.

6. 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.

7. 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 limitation prescribed by Article 127 of the Limitation Act.

8. The result is that the appeal fails and is dismissed.

9. Learned counsel for the judgment-debtor had invited us to give a 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 SLP (Civil) No. 8523 of 1985

10. In the present case the executing court had dismissed the objections filed by the petitioners/judgment-debtors under Order 21 Rule 90 of the Code of Civil Procedure by order dated 4-5-1982. The High Court, affirming the order of the executing court, dismissed the appeal by the impugned order dated 21-12-1983.

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