

United Finance Corporation vs M.S.M. Haneefa (Dead) Through Lrs on 11 January, 2017

Equivalent citations: AIR 2017 SUPREME COURT 498, 2017 (3) SCC 123, AIR 2017 SC (CIVIL) 2663, (2017) 2 MAD LJ 49, (2017) 2 ANDHLD 58, (2017) 2 CIVILCOURTC 237, (2017) 1 RECCIVR 746, (2017) 1 CLR 267 (SC), (2017) 1 ICC 935, (2017) 1 SCALE 516, (2017) 1 WLC(SC)CVL 314, (2017) 171 ALLINDCAS 161 (SC), (2017) 1 CAL HN 121, (2017) 4 MAD LW 219, (2017) 1 ALL RENTCAS 223, (2017) 1 CAL LJ 184, (2017) 1 CURCC 5, (2017) 2 PAT LJR 13, (2017) 135 REVDEC 338, (2017) 2 UC 863, (2017) 2 CIVLJ 911, (2017) 123 CUT LT 784, (2017) 121 ALL LR 248, (2017) 1 KER LJ 20, (2017) 1 KER LT 500, (2017) 4 MAH LJ 656, (2017) 3 MPLJ 291, (2017) 1 JLJR 341, 2017 (3) KCCR SN 230 (SC), (2017) 2 BOM CR 43

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Bench: R.Banumathi, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4204 OF 2007

UNITED FINANCE CORPORATION

...Appellant

Vs.

M.S.M.
...Respondent

HANEEFA

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 2nd 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 27th October, 2001 and the same was purchased by the appellant/degree-holder himself. The appellant/degree holder purchased schedule item No.2 property to an 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 1st June, 2002. Sale certificate was issued to the appellant on 17th 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 9th July, 2003.

3. Thereafter, on 30th 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 12th 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 2nd 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 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 9th July, 2003 and hence the application filed by the appellant under Order XXI Rule 95 C.P.C. on 30th August, 2003 was well within the period of limitation as stipulated under Article 134 of the Limitation Act, 1963. It was contended that in terms of Section 15(1) of the Limitation Act, the period of stay granted by the High Court between 17.09.2002 to 09.07.2003 should be excluded and the High Court erred in allowing the revision thereby dismissing the application filed under Order XXI Rule 95 C.P.C. as barred by limitation.

5. Per contra, Mr. Basava Prabhu S. Patil, learned senior counsel appearing for the respondent submitted that as per the decision in Ganpat Singh (Dead) by LRs. vs. Kailash Shankar and Others (1987) 3 SCC 146, an application filed by the auction purchaser under Order XXI Rule 95 C.P.C. for delivery of possession of property would be covered by Article 134 of the Limitation Act and in the present case limitation will start from 1st June, 2002 i.e. the date of confirmation of sale and hence the application filed on 30th August, 2003 is beyond the period of limitation. Placing reliance on

Pattam Khader Khan vs. Pattam Sardar Khan and Anr. (1996) 5 SCC 48, it was further contended that for filing application by the auction purchaser for delivery of possession (under Order XXI Rule 95 C.P.C.), issuance of sale certificate is not the sine qua non and therefore the appellant cannot contend that the application filed on 30th August, 2003 is within the period of limitation. The learned senior counsel further submitted that the High Court has noted the fact that the first respondent/judgment-debtor has already deposited the entire amount and since the decree-holder/appellant-Corporation itself is the auction purchaser, this is not a fit case warranting interference in exercise of extraordinary jurisdiction under Article 136 of the Constitution of India, notwithstanding the leave already granted.

6. We have carefully considered the rival contentions and perused the impugned order and other materials on record. The point falling for consideration is whether the High Court was right in holding that the application filed by the auction purchaser under Order XXI Rule 95 C.P.C. for delivery of possession of immovable property was barred by limitation.

7. Article 134 of the Limitation Act will apply to an application filed under Order XXI Rule 95 C.P.C. by the auction purchaser for delivery of possession of property sold in execution of a decree. The limitation for filing an application under Order XXI Rule 95 C.P.C. is one year from the date when the sale becomes absolute. Article 134 of the Limitation Act reads as under:-

	Description of application	Period of	Time from which				limitatio	period begins				
to			n	run		134	For delivery of possession	One year	When the sale			by a
purchaser of		becomes absolute.					immovable property at a					sale in
execution of a					decree							

8. For better appreciation of the contentions, we may recapitulate the various dates in seriatum as under:

Date of auction sale	... 27.10.2001
Confirmation of sale	... 01.06.2002
Sale certificate	... 17.03.2003
Stay granted by High Court in force	... 17.09.2002
	till 09.07.2003
Order XXI Rule 95 C.P.C.	... 30.08.2003
application filed by appellant	

9. The High Court relied upon the decision in Pattam Khader Khan's case (supra) for taking the view that the application filed under Order XXI Rule 95 C.P.C by the auction purchaser-appellant was barred by limitation. 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 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 to 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.....” “..... 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 application.....” and “.....that the

issuance of sale 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 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 27th 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. 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 9th 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 17th September, 2002 to 9th 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 Limitation 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 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:

“...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 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:

“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.” 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 15th April 1924, and on 22nd April 1924, he confirmed the sales. The sales, therefore, became absolute on 22nd 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 "when the sale becomes absolute" 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 material 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." [Underlining added] 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 "when the sale becomes absolute" 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 9th July, 2003 the sale became absolute only on 9th July, 2003. The application filed under Order XXI Rule 95 C.P.C on 30th 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 2nd 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.

.....J. [R.K. AGRAWAL]J. [R.BANUMATHI] New Delhi;

January 11, 2017.