

P.K. UNNI

v.

NIRMALA INDUSTRIES & ORS.

FEBRUARY 20, 1990

[K.N. SINGH, T. KOCHU THOMMEN AND
N.M. KASLIWAL, JJ.]

Order XXI Rule 89 and 92(2)—Immovable property sold in execution of decree—Period of limitation for making deposit for application to set aside the sale.

In this appeal by special leave brought by the auction-purchaser against the Judgment of the Madras High Court the sole question for consideration is as regards the period of limitation for making a deposit to make an application under Rule 89 of Order XXI of the Civil Procedure Code, 1908 to set aside the sale of immovable property sold in execution of a decree. Whether the deposit is to be made within 30 days from the date of the sale as required by sub-rule (2) of Rule 92 of Order XXI or within 60 days from the date of sale as provided in Article 127 of the Limitation Act, 1963?

Following its earlier decision in *Thangammal & Ors. v. V.K. Dhanalakshmi & Anr.* and the decision of this Court in *Basavantappa v. Gangadhar Narayan Dharwadkar & Anr.*, the High Court had held that Article 127 governed the period of limitation to make a deposit in terms of Rule 89. Setting aside the judgment of the High Court on the question of limitation, this Court in allowing the appeal,

HELD: The correct construction of Rule 92(2) of Order XXI of the Civil Procedure Code, 1908 leads to the irresistible conclusion that the time for making a deposit in terms of Rule 89 of Order XXI is 30 days, and Article 127 of the Limitation Act, 1963 prescribing the period for making an application under Rule 89 has no relevance to the prescribed time for making the deposit. Neither provision has any effect on the other as to time. [489G-H; 490A]

Basavantappa v. Gandadhar Narayan Dharwadkar & Anr., [1986] 4 SCC 273, over-ruled.

Nalinakaya Bysack v. Shyam Sunder Haldar & Ors., [1953] SCR 533 at 545; *Mersey Docks v. Henderson*, [1988] 13 App. Cas. 595, 602;

A *Crawford v. Spooner*, [1846] 6 Morre P.C. 1, 8, 9; *Seaford Court Estates v. Asher*, All E.R., [1949] 2.155 at 164 M. Pentiah & Ors. v. *Muddala Veeramallappa & Ors.*, [1961] 2 S.C.R. 295 at 314 Heydon's case (1584) 3 Co Rep 7a: 76 ER 637; *Dakshayini & Ors. v. Madhavan*, AIR 1982 Kerala 126, referred to.

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1308 of 1990.

From the Judgment and Order dated 9.12.86 of the Madras High Court in A.A.O. No. 421/83.

C K. Parasaran, B. Ramamoorthy and V. Balachandran for the Appellant.

M.R. Narayanaswamy and A.T.M. Sampath for the Respondents.

D The Judgment of the Court was delivered by

THOMMEN, J. Special leave is granted.

E This appeal arises from the judgment of the Madras High Court in A.A.O. No. 421 of 1983. The sole question that arises for consideration is as regards the period of limitation for making a deposit to make an application under Rule 89 of Order XXI of the Civil Procedure Code, 1908 to set aside sale of immovable property sold in execution of a decree. Has the deposit to be made within 30 days from the date of sale as required by sub-rule (2) of Rule 92 of Order XXI or within 60 days from the date of sale as provided in Article 127 of the Limitation Act, 1963?

F The High Court by the impugned judgment held that Article 127 governed the period of limitation to make a deposit in terms of Rule 89. In coming to that conclusion the High Court followed its earlier decision in *Thangammal & Ors. v. K. Dhanalakshmi & Anr.*, AIR 1981 Mad. 254 and the decision of this Court in *Basavantappa v. Gangadhar Narayan Dharwadkar & Anr.*, [1986] 4 SCC 273. In the latter decision, a Bench of two Judges of this Court held that *Thangammal* (supra) was correctly decided on the point and the deposit made within 60 days from the date of sale was well within time.

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We shall read the relevant provisions insofar as they are material. Rule 89 of Order XXI provides:

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“89. Application to set aside sale on deposit.—(1) Where immovable property has been sold in execution of a decree, any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person, may apply to have the sale set aside on his depositing in Court,—

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(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder,

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.....”

Rule 92(2) of Order XXI reads:

(2) where, in the case of an application under Rule 89, the deposit required by that rule is made within thirty days from the date of sale, [or in cases where the amount deposited under Rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale].

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.....”

The words shown in bracket in Rule 92(2) were substituted by section 72 of the Civil Procedure Code (Amendment) Act, 1976 with effect from 1.2.1977. The object of the amendment was to afford an opportunity to the applicant to make good any deficiency in the amount deposited under Rule 89 when the deficiency occurred by reason of clerical or arithmetical mistake on his part. That amendment has no relevance to the point in issue as regards the period of limitation except to emphasise that sub-rule (2) of Rule 92 had received the special attention of Parliament in 1976. Parliament addressed itself particularly to the sub-rule, and yet did not, apart from the special

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A contingency provided for by the amendment, think it necessary to extend the period generally prescribed under Rule 92(2) to make the deposit which is a condition precedent to an application to set aside a sale.

B Rule 89 postulates an application on deposit. It says "*may apply to have the sale set aside on his depositing in Court*". These words show that deposit is a condition precedent to the making of an application to set aside a sale. That condition must be satisfied within the period prescribed by sub-rule (2) of Rule 92, which undoubtedly is 30 days. Parliament refused to alter that provision even when a part of the sub-rule was substituted.

C No doubt on this aspect would probably have arisen had it not been for the longer period prescribed by Article 127 of the Limitation Act, 1963 (as substituted by the Amending Act 104 of 1976 with effect from 1.2.1977) for making an application under Rule 89. That Article reads:

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

F Prior to the Amending Act 104 of 1976 the period prescribed by Article 127 was 30 days. As a result of the amendment, a period of 60 days is provided for making an application to set aside a sale. It is important to remember that Article 127 appears in Part I of Third Division of the Schedule to the Limitation Act, 1963, dealing exclusively with applications. Article 127 thus relates solely to the making of an application and not to a deposit. This Article governs applications made under Rules 90 and 91 as well, but we are not concerned with them.

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H It is true that prior to the Amending Act 104 of 1976, the period prescribed for the making of an application was identical to that for the

making of a deposit. But as a result of the amendment, different periods are now prescribed for the making of the deposit and the application. That it was the legislative intent to provide different periods of limitation for these two matters is, from the language used in the two enactments, clear and explicit. The reason why the legislature provided for different periods for the two matters which are the necessary steps—one following the other—to be taken for setting aside the sale of an immovable property sold in execution of a decree is not for the Court to question. This Court would not assume that the legislature made a mistake in this respect or made an omission in accomplishing what it had set out to achieve.

There is no inconsistency between the two sets of provisions prescribing different periods of limitation. Such inconsistency can arise only if obedience of one provision will result in disobedience of the other. While Rule 92(2) requires a deposit to be made within 30 days from the date of sale, Article 127 requires an application contemplated under Rule 89 to be made within 60 days from the date of sale. As stated earlier, the deposit must necessarily precede the application for no application under Rule 89 can be made except on depositing the amount in Court. We see no inconsistency in these two sets of provisions.

The words of the statutes being clear, explicit and unambiguous, there is no scope to have recourse to external aid for their construction. Nevertheless in deference to the arguments of the respondents' counsel, we would refer to the Statement of Objects and Reasons in respect of clause 102 of the Bill introduced in the Lok Sabha on 8th April, 1974 [Published in the Gazette of India (Extraordinary) Part II, Section 2, dated April 8, 1974] amending Article 127. It states:

“Clause 102 (Amendment of the Schedule to the Limitation Act, 1953)—An application to set aside a sale in execution of a decree on deposit under Rule 89 of Order XXI is required to be made within thirty days from the date of the sale. Experience shows that this period is too short and often causes hardship because the judgment-debtors usually fail to arrange for moneys within that time. Banks usually take more than thirty days to sanction loans and advances. In the circumstances, entry 127 of the Schedule to the Limitation Act is being amended to increase the period of limitation to sixty days *in respect of an application* to set aside a sale in execution of a decree. This increase in

A the period of limitation will not affect the purchaser because five per cent of the purchase money is required to be paid to him. The advantage of the increased period of limitation will also be available to an application under Rule 90 or Rule 91 of Order XXI to set aside a sale in execution of a decree. In view of the increase in the period of limitation, confirmation of a sale will have to await the expiry of the increased period of limitation.”

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(emphasis supplied)

C The legislative intent, as seen from the above statement, was indeed to extend the period prescribed for making an application and not for any other purpose. That is the reason why Article 127 was amended enlarging the period for making an application from 30 days to 60 days. That period has no bearing on the time allowed for making a deposit in respect of which the period is prescribed, not under Article 127, but under Rule 92(2) of Order XXI, and this period has always been, and remains to be, 30 days. We see no repugnance or inconsistency or lack of clarity in these two sets of provisions.

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E Appearing for the appellant (the auction purchaser), Mr. Parasaran submits that the High Court was not justified in attempting to correct or supply, what it thought to be, a defect or an omission in the statute. He rightly contends that even if there was an omission, it was not for the Court to rectify it.

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F The Court must indeed proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said: See *Nalinakhya Bysack v. Shyam Sunder Halder & Ors.*, [1953] SCR 533 at 545. Assuming there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. “No case can be found to authorise any court to alter a word so as to produce a *casus omissus*”: Per Lord Halsbury, *Mersey Docks v. Henderson*, [1888] 13 App. Cas. 595, 602. “We cannot aid the legislature’s defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there”: *Crawford v. Spooner*, [1846] 6 Moore P.C. 1, 8, 9.

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H Where the language of the statute leads to manifest contradiction

of the apparent purpose of the enactment, the Court can, of course, adopt a construction which will carry out the obvious intention of the legislature. In doing so "a judge must not alter the material of which the Act is woven, but he can and should iron out the creases.": Per Denning, L.J., as he then was, *Seaford Court Estates v. Asher*, All E.R. [1949] 2 155 at 164. See the observation of Sarkar, J. in *M. Pentiah & Ors. v. Muddala Veeramallapa & Ors.*, [1961] 2 S.C.R. 295 at 314.

In the construction of the relevant provisions, we see no contradiction or ambiguity or defect or omission. We see no merit in the argument that Article 127 must override Rule 92(2) of Order XXI in respect of limitation. We view both the provisions as prescriptive of time for different purposes, and of equal efficacy and particularity. The maxim *generalalia specialibus non derogant* has no relevance to their construction. Nor does the principal in *Heydon's* case [1584] 3 Co Rep 7a: 76 ER 637 offer any help on the point in issue. The mischief which the legislature had set out to remedy by amendment of Article 127 is what is stated in the objects and reasons clause. That object was accomplished by prescribing a longer period for filing an application to set aside a sale in execution of a decree. Further more, as already seen, by amendment of Rule 92(2) of Order XXI an opportunity was accorded to the depositor to make good the deficiency in the deposit made by him due to arithmetical or clerical mistake on his part. In no other respect did the legislature evince an intention to extend the period prescribed for making the deposit. It would perhaps have been better, more logical, reasonable and practical, as stated by the Kerala High Court in *Dakshayini & Ors. v. Madhavan*, AIR 1982 Kerala 126, to enlarge the period for making the deposit so as to make it identical with that prescribed for making the application, and such extended period would have better served the object of the amendment, namely, ameliorating the plight of the judgment-debtor, but such are matters exclusively within the domain of legislation by Parliament and the Court cannot presume deficiency and supply the omission. The legislature did not do more than what it did. It has, in our view, accomplished what it had set out to achieve. No more no less.

In the circumstances, we hold that the correct construction of Rule 92(2) of Order XXI of the Civil Procedure Code, 1908 leads to the irresistible conclusion that the time for making a *deposit* in terms of Rule 89 of Order XXI is 30 days, and Article 127 of the Limitation Act, 1963 prescribing the period for making an *application* under Rule 89 has no relevance to the prescribed time for making the deposit.

A Neither provision has any effect on the other as to time. All decisions to the contrary on the point, we hold, are incorrect. With the greatest respect, we disagree with the contrary view expressed in *Basavantappa v. Gangadhar Narayan Dharwadkar & Anr.*, [1986] 4 SCC 273.

B On the question of limitation the judgment of the High Court is set aside, and the appeal is allowed to that extent. We make no order as to costs.

R.N.J.

Appeal allowed.