

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1482 OF 2020
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 28113 OF 2018)

M/S. GOLDEN EARTH GROVES LTD. . . . APPELLANT(S)

VERSUS

M/S. ION EXCHANGE ENVIRO FARMS LTD. . . . RESPONDENT(S)

O R D E R

R. BANUMATHI, J.

Leave granted.

2. Being aggrieved by allowing of the Revision Petition filed by the respondent-decree holder and setting aside the order passed in E.A.No. 946/2006 in E.P.No. 267 of 2005 in O.S. No. 271 of 1999 (on the file of Principal Sub Court, Tirunelveli), the appellant-judgment debtor has preferred this appeal.

3. The brief facts of the case are as follows:

Respondent filed a suit being O.S. No. 271 of 1999 against the appellant with respect to recovery of money. It was decreed in favour of respondent vide order dated 22.02.2002. Respondent filed Execution Petition No. 158/2004 before the Court which was dismissed for default on 05.10.2004. Respondent filed another Execution Petition No. 267/2005. As no one appeared on behalf of the appellant-

judgment debtor, the order was passed ex-parte in Execution Petition No. 267/2005 on 26.09.2005. Summons were returned; due to non-serving of summons, a publication was also made with respect to the auction of the property in the local newspaper. Subsequently, the property was sold in court auction on 03.02.2006 and the respondent-decree holder himself made a bid of the suit property for Rs.6,00,001/-. The sale was confirmed in the favour of respondent.

4. The appellant aggrieved by the ex-parte order dated 26.09.2005 passed in Execution Petition No. 267/2005 filed an application before the Sub-Judge under Order 21 Rule 106 CPC. The appellant contended that he came to know about the ex-parte order only on 04.08.2006. Learned Sub-Judge vide order dated 04.04.2008 allowed the application filed by the appellant on the ground that : (i) when the summon was sent to the appellant's address, the same was returned stating the remark that the appellant was not residing at that old address. It was held that the summon should have been sent properly to the correct address of appellant. It was further held that since there was no possibility for appellant to know about the Execution order and (ii) that appellant is entitled for the relief prayed by him as both the parties should be given equal opportunities to be heard. Ex-parte order dated 26.09.2005 was set aside and Execution Petition was directed to be heard afresh.

5. Being aggrieved, the appellant-judgment debtor has preferred revision before the High Court. The High Court vide

order dated 20.09.2017 allowed CRP on the ground that the appellant-judgment debtor had the knowledge about the ex-parte order, newspaper publication was also made and the notice of auction was pasted on the suit property. But the appellant did not take any action thereafter. When the auction was confirmed in favour of respondent, only thereafter appellant objected.

6. We have heard Mr. V. Balaji, learned counsel appearing on behalf of the appellant as well as Mr. Amey Nargolkar, learned counsel appearing on behalf of the respondent-decree holder and perused the impugned judgment and materials on record.

7. As pointed out by the Execution Court that when the summon was sent to the appellant's address, the same was returned with the remark that the appellant was not residing at that old address. When summon has not been duly served upon the appellant-judgment debtor, the Execution Court should have ordered issuance of fresh notice. On the other hand, the appellant was set ex-parte on 04.08.2006 and the proceedings in Execution Petition proceeded further and the property was put to auction and the respondent-decree holder himself has become the auction purchaser in the sale conducted on 03.02.2006. Though it is stated that the publication was effected by the respondent-decree holder and it is also stated that the publication was in Malayalam. There is nothing on record to show that the appellant-judgment debtor was well conversant with Malayalam. When there was no effective

service on the appellant-judgment debtor, in our view, the Execution Court ought to have issued a fresh notice rather than ordering auction of the property. In such view of the matter, the impugned order of the High Court is liable to be set aside. Consequently the Execution Petition No. 267/2005 has to be restored.

8. Learned counsel appearing on behalf of the respondent-decree holder, on instructions, submitted that if the decree amount is paid with such interest as ordered by the Court, the respondent would be satisfied. Considering the submissions of the learned counsel appearing on behalf of the respondent-decree holder and the facts and circumstances of the case, we deem it appropriate that in full satisfaction of the decree passed in O.S. No. 271 of 1999, the respondent-decree holder would be entitled to receive the sum of Rs.12,50,000/- (Rupees twelve lakhs fifty thousand).

9. Pursuant to the order of this Court dated 16.11.2018, the appellant-judgment debtor has already deposited an amount of Rs. 10,00,000/- (Rs. 5,00,000/- plus Rs.5,00,000/-) before the Execution Court. In addition to Rs. 10,00,000/- (Rupees ten lakhs). The respondent-decree holder is permitted to withdraw the amount of Rs. 10,00,000/- (Rupees ten lakhs) deposited before the Execution Court, Principal Subordinate Judge, Tirunelveli. The appellant-judgment debtor shall pay an amount of Rs.2,50,000/- (Rupees two lakhs fifty thousand) in the name of the respondent-decree holder within a period of eight weeks. The amount of Rs. 12,50,000/- (Rupees twelve

lakhs and fifty thousand) is in full satisfaction of all the claims of the respondent-decree holder. Since the respondent-decree holder has been paid the decree amount (as agreed by the parties), the court auction sale held on 03.02.2006 is set aside.

10. The appellant is at liberty to make necessary application before the concerned sub Registrar for making appropriate entries in relation to cancellation of the court auction sale dated 03.02.2006. The concerned Sub-Registrar shall take note of this order and make necessary entries in the Registers.

11. The appeal is, accordingly, allowed.

..... J.
[R. BANUMATHI]

..... J.
[S. ABDUL NAZEER}

NEW DELHI
11TH FEBRUARY, 2020

..... J.
[A.S. BOPANNA]