

## IN THE HIGH COURT OF KERALA

PRESENT: P.A. MOHAMMED J.

**Karimbil Ice & Cold Storage Company & Anr. V. SBT & Anr.**

of Civil Procedure 1908 - 0.21 R. 64 - Duty and obligation of the court to bring in for sale such portion of the property, which would be sufficient to satisfy the claim of the decree holder. When the property is kept under attachment the court can discharge the 'obligation' till the actual sale takes place - When there is refusal to consider the objection raised by the judgment debtor as to the saleability of the property after attachment the sale is liable to be set aside as there is failure to discharge the obligation under Rule 64.

Obviously there are well laid stages in a decree execution process, but Rule 64 will apply in respect of any property already attached. In other words, when the property is kept under attachment the court can discharge the 'obligation' till the actual sale takes place. It can also be done at the time of the judgment. When the court refuses to consider the objection as to the saleability of the property raised by the judgment debtor after the attachment, the sale is liable to be set aside as there is failure to discharge the 'obligation' under Rule 64. The reason is that the court has no power under this rule to order a sale unless it is found that the property 'is liable to sale'

(Para 5)

1990 SC 119

Followed

**Dominic**

For Petitioner

**Manachandran Nambiar**

For Respondent No. 1

### ORDER

The first respondent filed suit O.S. No. 3 of 1975 for recovery of a sum of Rs. 8,73,312.81 against the petitioners. The said amount was due to the State Bank as per the mortgage deed dated 21.1.1971 executed in its favour by the petitioners. The suit was decreed and charged on the properties mortgaged. The Judgment-debtors had paid Rs. 4,95,000/- towards the decree debts. However, as per the order in E.P. 68/87 the properties had been put up for sale. An application filed by the first petitioner under Order XXI, Rule 69 and Section