

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **EFA No.4/2010**

% **15th July , 2014**

SH. DHARAM PAL Appellant
Through: Mr. Soayib Qureshi, Advocate.

VERSUS

SMT. HIRA JHARI MISHRA & ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Judgment debtors invariably use all tactics in the book, and not in the book, to keep on objecting to the execution of the decree. This Execution First Appeal is one such totally frivolous case.

2. The challenge by the present appeal is to the impugned order of the executing court dated 2.2.2010 by which the objections which have been filed by the defendant/judgment debtor have been dismissed. Objections have been dismissed on various grounds. First ground is that the objections are barred by limitation. The second ground is that the earlier objections were filed to the sale certificate proceedings, and which objections were

dismissed by the order dated 25.1.2008. It is also observed in the impugned order that the appellant/objector states that the property does not belong to him and if that is so it is not understood how the appellant would have locus standi. It may be noted that the appellant stated that the property had been transferred to one Sh. Harbir Singh. It is also relevant to note that Sh. Harbir Singh had filed objections to execution, and which objections were dismissed right till this Court. Also, the impugned order notes that the son of the appellant one Sh. Kunwarpal Singh had filed objections and which were dismissed.

3. Firstly, it is required to be stated that once execution proceedings are completed, and sale certificate is issued, then, the auction purchaser gets a complete right in the suit property. Such rights of auction purchaser are not rightly disturbed by courts. The object of law is that the bonafide purchaser at an auction being the auction purchaser after the sale proceedings are complete and sale certificate is issued, should not be harassed by means of applications for setting aside this certificate, of course, except on limited grounds.

4. In the present case, I asked the counsel for the appellant to show me the order of the executing court dated 25.1.2008, and which is referred to at internal page 3 of the impugned order, and it is stated that

objections to issuance of sale certificate filed by the objector were dismissed by the order dated 25.1.2008, and the sale certificate was issued in favour of the auction purchaser, but the counsel for the appellant states that he has not filed that order. Counsel for the appellant was then asked that whether he has filed copy of the objections to show the issue of whether the objections were filed within the period of limitation as per Article 127 i.e 60 days after the date of the sale, counsel for the appellant states that objector was not aware of the auction proceedings and therefore there is fraud and hence limitation starts from the date of his coming to know of the fraud.

5. I cannot agree. There is a specific limitation period provided of 60 days under Article 127 and beyond which period delay cannot be condoned as Section 5 of the Limitation Act, 1963 is not applicable to execution proceedings vide *Mohan Lal Vs. Hari Prasad Yadav & Ors. (1994) 4 SCC 177*. In any case I refuse to believe the stand of the appellant that he was not aware of execution of the decree. It is not possible to believe that the appellant will not be aware of the decree having been passed and executed, more so because admittedly the appellant had filed an application under Order 9 Rule 13 of Code of Civil Procedure, 1908 (CPC) and which was dismissed and finality had been achieved to the order dismissing the application under Order 9 Rule 13 CPC.

6. I may note that there are basically two steps in execution before the sale certificate is issued. First stage is the stage of attachment when objections are filed to attachment. Second is the stage post attachment proceedings when auction proceedings for sale of the property are conducted. Once auction proceedings for sale of the property are conducted, then, objections cannot be raised to attachment of a property inasmuch as failing to raise objections to adjustment concludes the issue that the particular property is of the judgment debtor which is liable to be sold in the execution of the money decree for recovery of the amount. So far as the aspect of the finality of the sale certificate is concerned, it may be reiterated and is noted in page 3 of the impugned order, that vide order dated 25.1.2008, objections filed by the objector to issuance of the sale certificate were dismissed and sale certificate was issued in favour of the auction purchaser and which is also an additional reason why now objections to attachment cannot be considered vide *Sri Ram Maurya Vs. Kailash Nath and Ors. (1999) 9 SCC 276*.

7. So far as the aspect of fraud is concerned, I really find the argument to be a very specious argument because if the money decree has become final the same is executable and all aspects of merits as to of alleged compromise with the decree holder during the pendency of the suit or any

other aspects of merit had to be taken up in the suit proceedings and not in the execution proceedings because an executing court has to proceed taking the decree to be final. It is because of this reason that it is the decree which is executed and not the judgment because the court cannot go behind the decree which is the operative part of the judgment i.e court cannot look into the merits of the matter which are to be seen in the suit and not in the execution proceedings.

8. Learned counsel for the appellant sought to argue that the objections of Sh.Kunwarpal Singh which were discussed, is wrongly alleged to be the son of the objector and that he is not the son of the objector. To this aspect all that is required to be noted is that even if Sh. Kunwarpal Singh was not the son of the objector obviously he was put up by the objector/judgment debtor otherwise there was no reason why a totally third person/stranger should object to the execution of the decree. In any case, further this aspect of objections of Sh. Kunwarpal Singh is immaterial because the present judgment debtor/objector had filed objections against issuance of the sale certificate which have been dismissed by the order dated 25.1.2008, which has become final and therefore once again fresh objections to execution of the decree cannot be entertained. Also, as already stated above, the appellant claimed to have sold the property to one Sh. Harbir

Singh who had filed objections and whose challenge to execution against the property sold in auction have been dismissed.

9. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

JULY 15, 2014
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VALMIKI J. MEHTA, J.