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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. No.43 /2009 & CM 3956/2009(stay)

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22nd December, 2014

SH.RAKESH KUMAR SHARMA & ORS.

.....Petitioners

Through: None.

VERSUS

SMT. SHASHI PRABHA SHARMA & ORS.

..... Respondents

Through: Mr. Vinay Kr. Garg, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. On the last date i.e. 17.12.2014, the following order was passed:-

“Lawyers are abstaining from work. This case was argued in detail on 15.12.2014, and though it is not recorded in the order, there was a possibility of compromise in case petitioners wanted certain additional amount, and which was without prejudice to the respective rights and contentions.

List 22nd December, 2014.”

2. No one appears for the petitioners in spite of the matter being passed over.

3. The present petition impugns the judgment of the first appellate court dated 10.12.2008 by which the first appellate court dismissed the appeal,

against the order of the trial court dated 30.4.2008 by which objections which were filed by the petitioners seeking setting aside of the auction sale were dismissed. The executing court/trial court by the order dated 30.04.2008 dismissed the objections which were filed by the petitioners under Order XXI Rules 61, 64, 66, 84, 85 and 90 of the Code of Civil Procedure, 1908 (CPC) . Objections were filed for setting aside the auction sale conducted with respect to the property no.C-69, Tagore Garden Extension, New Delhi, belonging to the defendant no. 2 in the suit and who on decreeing of the suit became the judgment debtor no.2. Petitioners are the legal heirs of the judgment debtor no.2 late Shri Yog Raj Sharma.

4. By a judgment and decree dated 22.05.2004, a money decree for a sum of approximately Rs.1,40,000/- was passed in favour of the respondent nos.1 & 2. Since the money was not paid under the decree for it being satisfied, the subject execution proceedings were filed.

5. The executing court vide its judgment dated 30.04.2008 dismissed the objections filed by the petitioners in terms of a detailed judgment dealing with each of the objections raised by the petitioners. Petitioners had raised objections with respect to the auction purchaser not depositing 75% of the purchase price within 15 days of completion of the auction, that no notice of

proclamation of sale was served upon the judgment debtor, and that the entire property could not have been sold for satisfaction of the decretal amount. A fourth objection, and which was actually a prayer made that since the petitioners/ legal heirs of the judgment debtor no.2 have now since paid the decretal amount to the decree holder, the execution proceedings be dismissed as satisfied.

All these objections have been dismissed by the executing court vide its detailed judgment dated 30.04.2008 and which judgment has been upheld by the first appellate court vide its judgment dated 10.12.2008, and hence, this petition under Section 115 CPC is filed by the petitioners/objectors.

6. In execution proceedings for filing objections to attachment and sale of a property, there are four essential stages. The first stage of filing objections is under Order XXI Rule 58 CPC whereby attachment made under Order XXI Rule 54 CPC is objected. Attachment is objected on the ground that for whatever reasons permissible in law including that attachment could not have taken place of the property which has been attached on the ground that the property did not belong to the judgment debtor. The second stage for filing objections is under Order XXI Rule 66 CPC when proclamation of sale is to be drawn up. The first proviso of Order

XXI Rule 66 CPC however makes it clear that no notice is required to be given to the judgment debtor for drawing up of proclamation of sale once notice of attachment is issued to the judgment debtor under Order XXI Rule 54 CPC. The third stage when objections are filed is after the auction sale proceedings are conducted and the judgment debtor at that stage seeks to make payment of the decreed amount, and which objections/proceedings are the subject matter of Rule 89 of Order XXI CPC. The fourth stage of filing objections is in terms of Order XXI Rule 90 CPC and under which objections are entertained only on the limited grounds of existence of a material irregularity or fraud in publishing or conducting the sale. Sub-Rule (3) of Rule 90 of Order XXI CPC however makes it abundantly clear that objections which are entertained under sub-Rule (1) of Rule 90 of Order XXI CPC are not those objections which ought to have been raised earlier before the drawing up of the proclamation of sale. The object of sub-Rule (3) of Rule 90 of Order XXI CPC is to give finality to the drawing up of the proclamation of sale and not for re-opening the *factum* with respect to the conduct of the auction sale proceedings.

7. At this stage, I would seek to refer to Section 5 of the Limitation Act, 1963 which states that condonation of delay is not permissible with respect to an application which is filed under Order XXI CPC i.e with respect to an

application which is for filing of objections, there cannot be extension of time beyond the prescribed period of limitation. The prescribed period for setting aside a sale of a property effected in execution of a decree is a period of sixty days from the date of the sale as per Article 127 of the Limitation Act, 1963.

8. Admittedly, in the present case, auction proceedings were conducted on 17.07.2007. These subject objections which were filed and which have been dismissed by the executing court and the first appellate court were filed on 25.01.2008, and therefore, the objections were clearly barred by limitation inasmuch as they were not filed within 60 days from 17.07.2007. These objections being therefore clearly time barred, and since no condonation of delay is permissible under Section 5 of the Limitation Act, 1963 with respect to an application under Order XXI CPC, the objections/ application in fact was liable to be dismissed *in limine*, however, both the courts below decided objections on merits also and which was not required. I note that the objections in fact having rightly been dismissed on merits inasmuch as admittedly judgment debtor no.2 was served on the notice of the attachment of the property, the judgment debtor did file objections to the attachment and which were effectively dismissed by the order of the executing court dated 15.09.2006 by which the court directed the property to

be sold by public auction. Though the language of the order dated 15.09.2006 of the executing court could have been better worded, however, various earlier orders prior to 15.09.2006 of the judgment debtor objecting to the decree including taking time/payment of the decree, and ultimately the Court directing auction purchase of the property vide order dated 15.09.2006, it is clear that the objections to the attachment stood dismissed, and only for that reason property was directed to be sold by public auction. This order dated 15.09.2006 became final as it was not challenged by the judgment debtor. No objections were also filed when the proclamation of sale was drawn up and finalized and the property was thereafter put for auction sale. In fact there were two endeavours to sell the property in auction, the second one taking place because in the first auction sale proceedings, no buyer came for the property at the reserved price fixed by the executing court. It is only after auction sale was conducted on 17.07.2007 and much after the period of limitation that the subject objections were filed by the judgment debtor no.2 and the objections were thereafter pursued by the present petitioners, who are the legal heirs of the judgment debtor no.2.

9. Whatever be the provisions which are cited in the objections being Rules 61, 64, 66, 84, 85 and 90 of Order XXI CPC, however, in view of the

specific language of sub-Rule(3) of Rule 90 of Order XXI CPC, the subject objections which were filed can only be objections under sub-Rule 1 of Order XXI Rule 90 CPC, i.e objections could only be those objections which made averments with respect to material irregularity or fraud in publishing or conducting the sale. As already stated above, sub-Rule (3) of Rule 90 of Order XXI CPC bars raising those objections under Order XXI Rule 90 CPC which were to be raised before the conduct of the auction sale proceedings; the object of the law being that relevant objections must be raised at the relevant time and if the relevant objections which ought to be raised with respect to the attachment of the property and auction sale of the property are not raised at the relevant time, auction sale proceedings achieve finality subject of course to the objections under Order XXI Rule 90 CPC being considered, on the limited grounds of material irregularity or fraud in conducting or publishing the auction sale. Also, this application under Order XXI Rule 90 CPC has necessarily to be filed within 60 days of the conduct of the auction sale proceedings, and if not filed within the said limitation period, the application has to be dismissed *in limine* as no delay beyond the period of sixty days can be condoned under Section 5 of the Limitation Act. The object of law is that an auction purchaser who comes in must have certainty not only with respect to participating in the auction sale

proceedings which take place in the execution of the decree, but also that unnecessarily auction sale proceedings are not frustrated.

10. In view of the specific language of Section 5 of the Limitation Act, 1963 which does not permit condonation of delay with respect to an application which is filed under Order XXI Rule 90 CPC, I need not lengthen this judgment by dealing with the objections on merits, and which in any case had been discussed in detail by the executing court and the first appellate court and which reasoning I accept as correct.

11. In view of the above, there is no merit in this petition and the same is therefore dismissed. No costs.

12. Trial court record/executing court record be sent back.

DECEMBER 22, 2014
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VALMIKI J. MEHTA, J.