In the High Court of Punjab and Haryana at Chandigarh

201 Civil Revision No. 2998 of 1997 (O&M)

Date of decision:

Rajesh Chopra

......Petitione

Versus

State Bank of India and others

.......Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjay Vij, Advocate,
for the petitioner.

Mr.Sachin Mittal, Advocate,
for respondent No.1-Bank

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1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

<u>RAJ MOHAN SINGH, J.</u>

1. Petitioner has assailed the order dated 26.2.1997 passed by Additional District Judge, Jalandhar, whereby order dated 29.7.1994 passed by Senior Sub Judge, Jalandhar has been set aside, thereby accepting the objection petition filed by respondent No.1 in execution.

2. Respondent No.1 filed a suit for recovery and obtained a money decree against judgment debtors/

respondents No.2 to 10. In execution of said decree, property of judgment debtors was attached and was put to sale on 8.7.1989. Bid of petitioner Rajesh Chopra was accepted to be the highest bid by the Court auctioneer at the fall of the hammer at ₹ 12,575/-. According to the petitioner/ auction purchaser, he deposited 25% of the sale consideration at the spot with the Court auctioneer and deposited the remaining amount in Court on 18.7.1989. Objections were filed by the decree-holder that the property had been sold by the Court auctioneer at a very inadequate consideration, whereas, market value of the property was not less than 50,000/- in any case. It has also been alleged that the Court auctioneer had not advertised the auction schedule properly and had colluded with the officials and manipulated the purchase at throw away prices.

3. Executing Court, vide order dated 29.7.1994, dismissed the objections on the ground that there is no legal evidence to suggest that there was any defect in publishing the auction schedule. The reference was made to the statement of O.P.Arora, witness of the decree holder, in which he has not uttered even a single word that the advertisement/ auction schedule was not properly published or there was any defect in conducting the sale by the Court auctioneer. The aforesaid statement only referred to the inadequacy of the sale consideration, which was stated to be on lower side. No

evidence was led by the decree holder to suggest as what was the market value of the property in question at the relevant time. Rather para 4 of the objection petition shows that the decree holder himself has projected that the minimum price of the land in question is approximately ₹ 20,000/- per marla. According to the petitioner only ½ marla is the suit land and if the aforesaid objection of the decree holder is taken to be on its face value, the sale consideration of the land in question is proved to be on higher side. The Executing Court also observed that alleged inadequacy of the sale proceed is not a legal ground to set aside the auction which was conducted by the Court auctioneer.

4. Decree holder filed appeal. The Appellate Court found that the auction was made on 8.7.1989. The 1/4th amount i.e. 25% of the sale proceed was deposited by the auction purchaser i.e. ₹ 3,150/- by draft dated 10.7.1989, which implied that 1/4th amount of the sale proceed was not deposited with the Court auctioneer immediately after the bid was accepted. It was also pointed out that the auction purchaser did not place on record any receipt regarding payment of 1/4th amount by the auction purchaser soon after the bid was accepted on 8.7.1989. In view of aforesaid, appeal was accepted and the objections filed by the decree holder were entertained.

5. Learned counsel for the petitioner relies upon Order 21 Rule 89, 90, 91 and 92 CPC to submit that where the

immovable property has been sold in execution of a decree, the person claiming an interest in the property sold at the time of 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 the Court a sum equal to 5% of the purchase money. The aforesaid analogy is also applicable in application to set side sale on the ground of irregularity or fraud. According to learned counsel, the aforesaid provisions are applicable as objections filed by the decree holders are intended to get the auction set aside on the ground of irregularity and fraud. The land was sold in execution of a decree. Where no application is made under Rule 89, Rule 90 or Rule 91 of Order 21 CPC or where such application is made and the same is dis-allowed, the Court shall made an order confirming the sale and thereupon the sale shall become absolute. Where such application is made, the applicant/ objector is required under Rule 89 of Order 21 CPC to deposit 5% of the total sale consideration within 60 days from the date of sale. The aforesaid requirement is in consonance with Order 21 Rule 92 (2) CPC.

6. In order to supplement the aforesaid argument, learned counsel for the petitioner refers to **Annapurna vs. Malikarjun and another (2014) 6 SCC 397**. Hon'ble the Apex Court, after considering Article 127 of the Limitation Act, held

that although Order 21 Rule 89 CPC does not prescribe any period of limitation for making an application for the required deposit but Article 127 of the Limitation Act prescribes 60 days as the period within which such an application should be made. The deposit of requisite amount in the Court is a condition precedent and is a sine-qua-non to the application for setting aside the execution of sale and such an amount be deposited within the prescribed time for making the applicant otherwise the application must be dismissed.

Para 6 and 7 of the **Annapurna's case (supra)** read as under:-

> *"6. According to learned counsel for the Appellant, the High Court erred in ignoring the relevant provisions such as Rules 89 and 92 of Order XXI of the CPC and Article 127 of the Limitation Act otherwise it would have come to the only possible conclusion that in absence of required deposit being made within 60 days, the Executing Court had no option but to reject the petition under Order XXI Rule 89 of the CPC. In support of his submission, learned counsel placed reliance upon a recent judgment of this Court in the case of **Ram Karan Gupta v. J.S. Exim Ltd. & Ors. 2013 (1) R.C.R. (Civil) 837: 2013 (1) Recent Apex Judgments (R.A.J.) 150: (2012) 13 SCC 568,** and a Constitution Bench judgment in the case of **Dadi Jagannadham v. Jammlu Ramulu & Ors. 2001 (4) RCR***

> ***(Civil) 267: (2001) 7 SCC 71*** *which has been referred to and relied upon in the case of Ram Karan Gupta (supra).*
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> *7. On the other hand, learned counsel for Respondent No.1, judgment- debtor, submitted that the High Court has adopted a just and proper course to give another chance to the judgment-debtor to prove his objection that the property sold in the court auction was not valued properly. He submitted that such a course of action was warranted by the peculiar facts and circumstances of the case."*

7. Learned counsel for decree holder, on the other hand, refers to the report of the Court auctioneer, wherein reference of draft of ₹ 3,150/- dated 10.7.1989 has been given and therefore, the said amount cannot be presumed to have been deposited on the date of the auction. Besides that learned counsel for the decree holder states that there is no publication of the auction schedule and, therefore, this is also one of the material illegality which goes to the very root of the case. With reference to pleadings in para No.4 of the objection petition filed by the decree holder, learned counsel for the respondent admits the aforesaid and says that according to his instructions, the land involved in the present case was ½ marla. The alleged inadequacy of sale consideration on the strength of para 4 of the objection petition cannot be considered to be inadequate. While framing issues, the Executing Court framed issue No.2 to the effect that whether " the sale is liable to be set aside as alleged ? OPO"

8. Apparently, the onus was on the decree holder/ objector to bring on record necessary material to show that the sale in question is liable to be set aside. The decree holder has not produced on record any such material rather relied upon the report of the Court auctioneer to say that the amount was not deposited in time, whereas, as per necessary requirement of law in terms of Order 21, Rule 89, Rule 90, Rule 91 and Rule 92 CPC the proposition of law enunciated in **Annapurna's case (supra)** has been admitted.

Order 21, Rule 89, Rule 90, Rule 91 and Rule 92 CPC read as under:-

> *"**89.Application to set aside sale on deposit.-** (1) Where immovable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, 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 **o**f 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.

(2) Where a person applies under rule 90 to set aside the sale of his immovable property he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

90.Application to set aside sale on ground of irregularity or fraud.- *(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside sale on the ground of a material irregularity or fraud in publishing or conducting it:*

(2) No sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have takenon or before the date on which the proclamation of sale was drawn up.

91.Application by purchaser to set aside sale on

ground of judgment-debtor having no saleable interest

.- *The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.*

92.Sale when to become absolute or be set aside.- *(1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.*

Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.

(2) Where such application is made and allowed, and 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, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

Provided further that the deposit under thissub-rule may be made within sixty days in all such cases where the *period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure.*

(3) No suit to set aside an order made under this rule shall he brought by any person against whom such order is made.

(4) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree holder and the judgment-debtor shall be necessary parties to the suit.

(5) If the suit referred to in sub-rule (4) is decreed, the Court shall direct the decree-holder to refund the money to the auction purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court otherwise directs, be revived at the stage at which the sale was ordered."

9. I have considered the arguments. Apparently, onus of issue No.2 was on the objector/ decree holder. No evidence has been led by the decree holder to show that the land was sold for inadequate consideration, rather as per his own stand in para No.4 of the objection petition, the minimum price of the land was projected to be ₹ 20,000/- per marla. Apparently, ½ marla of land is involved in the present case. Secondly, on the point of deposit of 20%, there may be some ambiguity in terms of report of the Court auctioneer in the context of mentioning date of

demand draft as 10.7.1989 but in order to maintain objection in terms of Order 21, Rule 89, Rule 90, Rule 91 and Rule 92 CPC, deposit of 5% of the total sale consideration is a condition precedent for maintaining the objection and this was sine-qua-non for submitting the application before the Court. Since mandatory requirement has not been complied with by the objector as per requirement of law, which has been settled in **Annapurna's case (supra).**

10. In auction of sale of property, the Court has power to set aside auction sale on deposit of required amount by judgment debtor, but such powers are discretionary and are based on sound principle of law. Such a discretion can be exercised if after the auction sale and confirmation thereof, the judgment debtor immediately deposits the amount on first opportunity. Case titled **Sukumar De vs. Bimlala Auddy and others 2014 (2) RCR (Civil) 480** is not statedly applicable to the facts of the present case in which there was no such effort by the objector to deposit the requisite amount along with objections.

11. Mere establishing material irregularity or fraud is not sufficient unless and until objector establishes that material irregularity or fraud has resulted in substantial injury to the objector. Such irregularities under Order 21 Rule 90 CPC must be specifically made out with sufficient particulars. Under Order

21 Rule 54 (2) CPC, proclamation of sale by beat of drum is not mandatory so long as the sale notice is proclaimed at or adjacent to the property. In this regard, reference can be made to **Saheb Khan vs. Mohd. Yusufuddin and others 2006 (4) SCC 476.**

12. Looking to the entirety of the facts and circumstances of the case, this Court finds that the judgment dated 26.2.1997 passed by Additional District Judge, Jalandhar is not legally sustainable and is hereby set aside. Consequently, order dated 29.7.1994 passed by the Senior Sub Judge, Jalandhar, dismissing the objection petition, is hereby restored.

Revision petition is accepted in the aforesaid terms.

(RAJ MOHAN SINGH)
JUDGE

Augst , 2015
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