

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Civil Revision No. 141 of 2005
Date of Decision:- 21.04.2015**

Gurdeep Singh

.....Petitioner

Versus

M/s Gopi Ram Surinder Kumar Commission Agents

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. S.K. Aneja, Advocate for the petitioner.

SHEKHER DHAWAN, J.

The present revision petition is challenge to the order dated 05.11.2014 (Annexure P-5), passed by Additional District Judge, Fazilka as well as order dated 20.03.2014 (Annexure P-4), passed by Civil Judge (Jr. Divn.) Fazilka and order dated 14.03.2014 (Annexure P-3), passed by Civil Judge (Jr. Divn.) Fazilka, whereby the objections filed by the petitioner/JD under Order 21 Rule 90 read with Section 47 and 151 CPC were dismissed and sale/auction was confirmed.

2. Facts relevant for the purpose of decision of present revision petition that the decree holder filed suit for recovery of ₹7,70,000/-, on

the basis of account books and the same was decreed on 08.09.2008. The execution proceedings were filed and land measuring 9 kanal 14½ marla was attached and thereafter sold in auction on 18.04.2013 in favour of respondent/decreed holder for ₹10,20,000/-. The decree holder was permitted by the executing Court to bid in the auction. The objection petition was filed by the petitioner and same was dismissed.

3. Mr. S.K. Aneja, Advocate, learned counsel for the petitioner took the plea that the auction proceedings are nothing but mere fake transactions prepared by the respondent/decreed holder in connivance with the revenue official and chokidar. Only two persons stated to have participated in the auction proceeding. The market value of the land was more than ₹30 lac per acre, whereas the auction was finalized at ₹10,20,000/- in connivance with abovesaid persons. The sale in auction has been wrongly and illegally confirmed under Order 21 Rule 92 CPC by passing the impugned order dated 20.03.2014. The petitioner has not been afforded any opportunity to lead his evidence in support of his claim. No proclamation was issued as per law and any copy of said proclamation was never affixed on the conspicuous place. The Additional District Judge, Fazilka did not apply its judicious mind to pass order dated 05.11.2014 (Annexure P-5) and the same is liable to be set aside.

4. Learned counsel for the petitioner took the plea that such was the requirement of law. On this point, reliance was placed upon judgment from Hon'ble Division Bench of Kerala High Court in case **Regi George Vs. Bhaskaran Nari**, 1998(3) CivCC 555 that description

of property should be sufficient to identify the property, failing which, conduct of sale may amount to material irregularity. Reliance was also placed upon another judgment from Hon'ble Division Bench of Kerala High Court in case Antony Vs. Catholic Syrian Bank (1994(2) KLT 341) on the same point.

5. Learned counsel for the petitioner also took the plea that as per Article 227 even such a power can be exercised by this Court suo motu, if the circumstances so warrant, as the power under Article 227 is unfettered. The object under Article 227, both administrative and judicial, to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as the same does not bring any disrepute to the system.

6. Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that all these points were raised before the Courts below at the time of passing orders (Annexures P-3 to P-5). The Courts below duly considered the fact that the decree was passed by the competent Court of jurisdiction and the said decree remained unexecuted after 08.09.2008. The execution petition was filed, warrant of attachment was issued and same was duly affected. Later on, application under order 21 Rule 66 CPC was filed for sale of attached property by way of auction. Even JD appeared and filed objection petition, which was dismissed on 09.01.2012. Sale could not be affected and sale warrant remained unexecuted. Decree holder moved application under Order 21 Rule 72 for seeking permission to give bid in the auction and the executing Court granted permission, vide order dated

24.09.2012. Still the sale warrant remained unexecuted on three different dates. Petitioner is taking the same pleas by filing objection petitions.

7. The Courts below have duly considered these aspects and dismissed the objections taking the plea that as per order 21 Rule 92 CPC, the sale is not to be set aside, unless the Court is satisfied that applicant has got substantial injury because of any irregularity or cause. There is no irregularity or fraud apparently on record, calling for setting aside the orders (Annexures P-3 to P-5). It appears that the petitioner is filing objection petitions one after the other at different stages just to linger on the execution proceedings and decree holder is just waiting for execution of the decree, which was passed way back on 08.09.2008. There is absolutely no material or evidence available on file that there was gross undervaluation coupled with any other circumstances making the case of fraud. The attachment has been duly effected as per order of the Court and sale has been ordered, after making repeated attempts.

8. In view of the above, there are no grounds calling for interference of this Court by exercising revisional jurisdiction, to set aside the orders (Annexures P-3 to P-5). Consequently, the revision petition stands dismissed.

April 21, 2015
naresh.k

(SHEKHER DHAWAN)
JUDGE