IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.3536 of 2006 (O&M)
Date of decision: 19.08.2015

Amir Chand .... Petitioner

versus

The Commissioner Jalandhar Division, Jalandhar and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.B.S. Kathuria, Advocate, for the petitioner.

Mr. Om Pal Sharma, Advocate, for respondent No.4.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. *(Oral)*

1. The surety given by the petitioner at the time of ordering release on bail of accused person in a criminal case had to suffer action for recovery by enforcement of bond when the accused made himself scarce. The District Judge had ordered the amount for which the petitioner stood surety to be recovered by transmitting the papers to the Collector for recovery. The Tehsildar, Phillaur directed that the Kanoongo Halqa to issue a proclamation for a sale of the property of the petitioner on 23.05.2005. The auction was fixed to

take place on 28.05.2005. The property was sold and the respondent is the purchaser.

2. The petitioner challenges the sale as in violation of the provisions of the Punjab Land Revenue Act and its rules. Section 81 (3)(vi) of the said Act requires that the sale would be conducted after the expiry of 30 days from the date of making proclamation. Proclamation could have been issued at best only on the same day when the notice was received by Kanoongo for 23.05.2005 and the auction that was ordered to take place and did take place on 28.05.2005 was, therefore, clearly in violation of the mandate of Section 81.

3. The counsel for the respondent, who is the purchaser, states that the petitioner had at all times the knowledge of his liability and the warrant for recovery had been issued and the petitioner was taking time on various dates for 18.01.2003, 28.01.2003, 27.12.2004 before the property was sold. He had, therefore, knowledge of the amount which he was liable to pay under the surety bond and he had more than 30 days time which the law contemplates to thwart the auction sale from taking place if he had paid money of which he was liable. The respondent would be grossly prejudiced if the sale were to be set aside.

4. The relevant time for reckoning must be only from the period when a proclamation is issued and the date when the sale did

actually take place. A mere warrant for recovery is only setting the process in motion. A proclamation is an imminent threat which is graver and the law contemplates a period of 30 days as a time that would be appropriate to provide as a breather for any person under legal liability to make the payment and prevent the sale. If the time which he had taken in court at various occasions could not be relevant, we will be importing new parameters into Section 81 which sets only the date of proclamation as relevant. The order passed by the court below dismissing the objection given by the petitioner cannot be legally supported. The impugned order is set aside and the revision petition is allowed.

5. The petitioner has deposited the amount in the Registry of the court on 02.07.2006. The said amount is ordered to be refunded to the respondent No.4 with interest accumulations thereon, if which will provide a solatium for having lost the property which he purchased. The sale in favour of the respondent is also set aside as a consequence to the revision being allowed.

(K.KANNAN)
JUDGE

19.08.2015
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