IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.6437 of 1999
Date of decision:28.01.2015

Bhanwar Lal

....Petitioner

Versus

Punjab National Bank & another

......Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.C.M.Munjal, Advocate, for the petitioner.

Mr.Sandeep Khunger, Advocate, for respondent No.2.

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G.S.Sandhawalia J. (Oral)

Challenge in the present revision petition, filed by the petitioner-objector, is to the dismissal of the objections vide order dated 25.05.1995 and confirming the sale proceedings and the sale certificate, issued in favour of the purchaser-respondent No.2, Mahabir Prashad, pertaining to the shop situated in khewat No.999, for a sum of ₹1.15 lacs. The order has further been upheld in appeal by the Addl.District Judge, Ferozepur on 29.09.1999.

A perusal of the facts would go on to show that the Bank had secured a decree for recovery of ₹5,46,851/- and in pursuance of the said decree against Suraj Mal Nathu Ram, the two shops owned by the judgment debtors were sought to be sold. The auction took place on 05.02.1993 and respondent No.2 purchased one of the shops at ₹1.15 lacs being the highest bidder and the other shop was purchased by Naresh Kumar and Harinder Kumar, jointly, for a sum of ₹2 lacs. It is the admitted case that the revision petition filed against the present orders in the case of the other shop has been withdrawn and it has become final *inter se* the parties qua the said shop and CR No.6536 of 1999 titled *Vijay Kumar Vs. Punjab National Bank Etc.* was withdrawn on 06.02.2006, which was filed by Vijay

Kumar, who also happens to be the brother of the objector. Thus, the brother of the present petitioner has accepted the confirmation of the other shop in favour of the auction purchaser, namely, Naresh Kumar and Harinder Kumar, jointly, which is a factor to be kept in mind while deciding the present revision petition.

The auction proceedings were signed by Shri K.K.Sharma, the Manager of the decree holder-Bank and the Trial Court examined the auction proceedings which were conducted by Manohar Singh, the Tehsildar. The argument that Shri S.C.Jasuja, Advocate, Fazilka was the Court auctioneer, was rejected on the ground that he was the counsel for the judgment debtor itself. Similarly, the argument that the shops were sold at a thrown away price at ₹1.15 lacs and ₹2 lacs, was rejected on the ground that nothing was brought on record as to what was the value of the shops and how the price was inadequate. It was also taken into account that the shops were already under the tenancy of respondent No.2, the auction purchaser, who was, thus, interested in the sale proceedings. Accordingly, a finding was recorded that the sale proceedings were genuine and not liable to be set aside.

The Lower Appellate Court has noticed that for setting aside the sale under Order 21 Rule 66 CPC, there must be material irregularity or fraud which must be brought on record for the Executing Court not to confirm the sale and issue the sale certificate. Merely because the Tehsildar, at one stage, had confined Nathu Ram in jail on account of his official duties, was rejected by holding that it would not mean that he was biased in any manner for all times to come. The factum that the judgment debtors had failed to deposit the amount inspite of the fact that the property had been put to auction also, weighed with the Lower Appellate Court, which also noticed that once no evidence had been brought on record regarding the valuation of the shop, the statement of the Bank official that the shops were auctioned for a low value was without any basis.

It is also to be noticed that the Bank had preferred an appeal before the Lower Appellate Court against the confirmation but has chosen not to assail the order of the Lower Appellate Court. The amount realized was only ₹3.15 lacs and it was less than the decreetal amount and therefore, the Bank officials, in their zeal, have obviously deposed that the property was sold for a lessor amount though it was their duty, at that time, to be duly associated with the sale which had taken place. In the absence of any evidence coming on record regarding the value of the shops, since no report of the valuer is on record, challenging the said order, it would be a haphazard exercise, in order to come to the conclusion that the shops were sold at a low price. It is known fact that very few persons come forward to take part in the auction proceedings which are conducted in execution proceedings due to the litigating nature of both the sides. Even in the present case, it would go on to show that only the tenant had taken this risk and a period of more than two decades have gone by since the auction took place but the auction purchasers still had to get a clear title.

In ***M/s Kayjay Industries (P) Ltd. Vs. M/s Asnew Drums (P) Ltd. & others (1974) 2 SCC 213***, the Apex Court noticed that in Court sales, few people come for accepting bids and merely because the sale price was less than the market price would not be a ground to set aside the auction. Relevant observations read as under:

> "Certain salient facts may be highlighted in this context. A court sale is a forced sale 'and, notwithstanding the competitive element of a public auction, the best price is not often forthcoming. The judge must make a certain margin for this factor. A valuer's report, good as a basis, is not as good as an actual offer and variations within limits between such an estimate, however careful, and real bids by seasoned businessmen before the auctioneer are quite on the cards. More so, when the subject-matter is a specialised industrial plant, which has been out of commission for a few years, as in this case, and buyers for cash are bound to be limited. The

brooding fear of something out of the imported machinery going out of gear, the vague apprehensions of possible claims by,the Dena Bank which had a huge claim and was not a party, and the litigious sequel at the judgment- debtor's instance, have 'scare' value in inhibiting intending buyers from coming forward with the best offers. Businessmen make uncanny calculations before striking a bargain and that circumstance must enter the judicial verdict before deciding whether a better price could be had by a postponement , of the sale. Indeed, in the present case, the executing court had admittedly declined to affirm the highest bids made on May 16, 1969 June 5, 1969 and August 28, 1969, its anxiety to secure a better price being the main reason. If court sales are too frequently adjourned with a view to obtaining a still higher price it may prove a self-defeating exercise for industrialists will lose faith in the actual sale taking place and may not care to travel up to the place of auction being uncertain that the sale would at all go through. The judgment debtor's plea for postponement in the expectation of a higher price in the future may strain the credibility of the court sale itself and may yield diminishing returns as was proved in this very case.

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Indeed under the Civil Procedure Code it is the court which conducts the sale and its duty to apply its mind to the material factors bearing on the reasonableness of the price offered is part of the process of obtaining a proper price in the course of the sale. Therefore failure to apply its mind to this aspect of the conduct of the sale may amount to material irregularity. Here substantial injury without material irregularity is not enough even as material irregularity not linked directly to inadequacy of the price is insufficient. And where a court mechanically conducts the sale or routinely signs assent to. the sale papers not bothering to see if the offer is too low and a better price could have been obtained and in fact the price is substantially inadequate there is the presence of both the elements of irregularity and injury. But it is not as if the court should go on adjourning the sale till a good price is got it being a notorious fact that court sales. and market prices are distant neighbours. Otherwise decree holders can never get the property of the debtor sold. Nor is it right to judge the unfairness of the price by hindsight wisdom. May be subsequent events not within the ken of the executing court when holding. the sale may

> prove that had the sale been adjourned a better price could have been had. What is expected of the judge is not to be a prophet but a pragmatist and merely to make a realistic appraisal of the factors and if satisfied that in the given circumstances the bid is acceptable conclude the sale. The court may consider the fair value of the property, the general economic trends the large sum required to be produced by the bidder, the formation of a syndicate, the futility of postponements and the possibility of litigation, and several other factors, dependent on the facts of each case. Once that is done, the matter ends there. No speaking order is called for and no meticulous post mortem is proper. If the court has fairly, even if silently applied its mind to the relevant considerations before him while accepting the final bid no probe in retrospect is permissible. Otherwise, a new threat to certainty of court sales will be introduced."

The Apex Court in ***Valivety Ramakrishnaiah Vs. Totakur Rangarao 1986 (4) SCC 193*** has held that in the absence of any material on record in support of the averments, the sale in favour of the auction purchasers was not to be set aside. This Court in ***Ludhiana Improvement Trust, Ludhiana Vs. Nasib Singh & others 2007 (2) PLR 350*** also held that mere inadequacy in price cannot be termed as an injury so as to challenge the sale.

Nothing could be pointed out that the exercise which had been carried out by the Executing Court and by the Tehsildar was such as would entitle this Court to invoke its supervisional powers. No material irregularity can be pointed out to say that the impugned order suffers from any infirmity, which would warrant interference by this Court.

It is also to be noticed in the present case that for the same orders which are subject matter of challenge, the revision has been withdrawn qua the second shop, which was purchased by Naresh Kumar and Harinder Kumar and therefore, the said findings having been accepted by the other son of Nathu Ram, therefore, this Court would be loath to interfere and accept the revision petition.

In such circumstances, the present revision petition is dismissed. The orders confirming the sale and directing issuance of sale certificate is, hereby, confirmed.

28.01.2015 (G.S.SANDHAWALIA)
sailesh JUDGE