

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

104

Civil Revision No.4658 of 2014

Date of Decision:13.10.2015

Baldev Raj

....petitioner

Versus

Sukhjinder Singh and another

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.Sandeep Punchhi, Advocate
for the petitioner

ARUN PALLI, J.(ORAL):-

Vide order being assailed, dated 11.05.2012, rendered by the Executing Court i.e.Additional Civil Judge (Sr.Divn.), Sirsa, objections filed by the petitioner/JD, under Order 21 Rule 89 CPC, had since been rejected and the application moved by the auction-purchaser for confirmation of sale and delivery of possession had been allowed. As even the appeal preferred against the said order failed, and, was dismissed by the Appellate Court, vide order dated 21.01.2014, the JD/Objector, is before this Court, vide this revision petition.

The conclusion arrived at by the Executing Court and affirmed by the Appellate Court, reads as thus:

**"8. No doubt, as per the mandate of Order
21 Rule 89 of CPC where immovable property has**

been sold in execution of a decree, the said sale can be set aside by the Executing Court but in order to set aside the sale, the JD must come to the executing order within time. In the present case, the property was sold out in auction proceedings on 31.8.2007, whereas the present application has been moved on 10.4.2012 which is certainly barred by limitation as the same has been filed approximately after a gap of five years. It has been held by Hon'ble Supreme Court in Dadi Jagannadham vs. Jamulu Ramulu and others AIR 2001 Supreme Court 2699 that in an application for setting aside sale of immovable property the period of limitation for making deposit is of 60 days prescribed under the Limitation Act though the period of limitation has not been mentioned in Order 21 Rule 92(2) of CPC but the said application should be filed within 60 days from the date of sale under Article 127 of Limitation Act." Said view of Hon'ble Supreme Court has been accepted by Hon'ble Punjab and Haryana High Court in case of Ramji Lal and anr.vs. Sarab Singh(dead) through LRs and Ors, 2010 (4) Civil Court Cases 501 that the limitation to set aside auction sale is 60 days from the date of sale and delay in filing the said application cannot be condoned. In the present execution petition, it is quite clear that he has come forward before this Court after a gap of about five years, as such the said delay cannot be condoned in any manner. Hence, the application under Order 21 Rule 89 of CPC for setting aside the sale is hereby dismissed.

9. Whereas the application moved by auction pruchaser Sukhdev Singh regarding

confirmation of sale is concerned, it is observed that the property of JD was sold out more than five years ago and the sale price was deposited by auction purchaser on 4.9.2007 and 12.9.2007 which is lying in this Court. The appeal preferred by JD was dismissed by first appellate Court as well as by Hon'ble High Court on 23.2.2011. Since, the auction-purchaser has deposited the sale consideration of the disputed land, as such, the said application regarding confirmation of sale moved by the auction-purchaser is hereby allowed. Refund voucher of amount of Rs.6,66,383/-be issued in favour of decree holder Sukhjinder Singh. Remaining amount, if any, lying in this Court after satisfaction of execution, be refunded back to the JD against proper receipt. Sale certificate be issued in favour of auction-purchaser as per Order 21 Rule 94 of CPC."

Ex facie, even earlier, the petitioner had prayed for time to deposit 5% of the decretal amount but, subsequently, he in collusion with his sons, had assailed the auction proceedings vide ESA No.18 of 2008 before this Court. This Court had afforded adequate time to the petitioner to deposit the decretal amount, which the petitioner concededly failed to deposit. Resultantly, the appeal preferred by the sons of the petitioner was dismissed by this Court on 23.02.2011. Indisputably, the suit property was sold in an open public auction on 31.08.2007. Petitioner/JD moved an application to set aside the sale after almost 5 years on 10/11.04.2012. Whereas the provisions of Article 127 of the Limitation Act, 1963, postulate a period of 60 days to move any such application. Thus,

the application moved by the petitioner was grossly bared by time. And since, the entire sale consideration was deposited by the auction-purchaser, with the Court, on 04.09.2007 and 12.09.2007, the Executing Court rightly ordered confirmation of the sale and delivery of possession to auction purchaser.

Learned counsel for the petitioner could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality. No other argument was advanced.

That being so, no interference, in exercise of revisional jurisdiction, under Article 227 of the Constitution of India is warranted. The petition being devoid of merit is accordingly dismissed.

13.10.2015

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(ARUN PALLI)
JUDGE