

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

CR No.6214 of 2014

Date of Decision: 22.09.2015

Naresh Kumar Sharma

..... Petitioner

Versus

Ajay Chaudhary and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present: Mr. R.S. Randhawa, Advocate for the petitioner.

Mr. Harkesh Manuja, Advocate for respondent No.1.

AMIT RAWAL, J. (ORAL)

Challenge in the present petition is to the impugned order dated 31.03.2014 (Annexure P-1) whereby the application filed under Section 151 CPC by the petitioner, for setting aside the sale deed, executed by respondent No.1 by playing fraud in execution proceedings, has been dismissed.

Mr. R.S. Randhawa, Advocate appearing on behalf of the petitioner submits that the petitioner had entered into an agreement to sell dated 17.01.2012 with the legal heirs of Ghanshyam Dass Sharma, whereas respondent No.1 had entered into an agreement with three of the LRs of Ghanshyam Dass Sharma vide agreement dated 16.02.2012. Since agreement to sell contained arbitration clause and the matter was referred to the sole arbitrator, which culminated into the passing of the award in favour of the respondents.

On acquiring knowledge of execution of the award, as respondent sought execution of the same the petitioner moved an application (Annexure P-2), though the same was to be treated as suit in view of the provisions of the Order 21 Rule 101 of CPC. However, the learned Executing Court has dismissed the same in a most fallacious manner.

Mr. Harkesh Muneja, Advocate appearing on behalf of respondent No.1-decree holder, submits that Application (Annexure P-2) cannot be treated as objection under Order 21 Rule 99 of CPC, as the petitioner has not availed any other remedy in law i.e. filing the suit for specific performance of agreement to sell and, therefore, the objections have rightly been dismissed.

I have heard learned counsel for the parties.

Admittedly, the petitioner is a third party to the decree/award. The manner and mode in which the application of third party has to be disposed of is against the provisions of Order 21 Rule 101 of CPC, as the Executing Court has not disposed of the objections in the manner as it has to be done. The petitioner has some interest in the property owing to execution in agreement to sell dated 07.06.2012. Without commenting upon the merits and demerits of the matter, the impugned order is set aside and the matter is remitted back to the Executing Court with a direction to decide the application (Annexure P-2) by treating the same as objection in accordance with law and in the manner and procedure prescribed in Order 21 Rule 101 of CPC as expeditiously as possible, preferable within six months from the date of receiving of the certified copy of the order.

In view of aforesaid, the aforementioned revision petition is

disposed of.

It is made clear that the petitioner shall be permitted to file any supplementary objections over and above what has already been objected to vide Annexure P-2.

22.09.2015

Bhumika

**(AMIT RAWAL)
JUDGE**