

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

Civil Revision No.7436 of 2010

Date of decision: **09.12.2015**

Ashok Kumar

... Petitioner

versus

M/s Jethu Ram Rice Mills and others

.... Respondents

II. Civil Revision No.351 of 2011

Punjab State Civil Supplies Corporation Limited and another.

... Petitioners

versus

M/s Jethu Ram Rice Mills and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Amit Jain, Advocate,
for the petitioner in CR No.7436 of 2010.

Mr. Rakesh Gupta, Advocate,
for the petitioners in CR No.351 of 2011.

Mr. Ashok Singla, Advocate,
for respondents 1 to 3.

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.

1. Civil Revision No.7436 of 2010 is at the instance of the auction purchaser and the Civil Revision No.351 of 2011 is at the instance of PUNSUP at whose instance the auction had been held.

Through the impugned order, the appellate court has set aside the court auction held in relation to the property of the judgement debtor. The objections of the judgement debtor were upheld to the extent of observing that the property that had been attached was much more than the extent necessary for realisation of the indebtedness of the judgement debtor. The property had not been properly valued and the description was also not correct in omitting to make reference to a superstructure adjoining the main road. The appellate court held that the whole proceedings had been vitiated and while setting aside the auction, it directed the judgement debtor to make the payment of the amount that was relased at the auction with the interested 12%.

2. The contentions raised are that the appellate court had erred in finding that there had been no valid attachment. The counsel appearing on behalf the purchaser would make the efforts to point out to the court that the property had already been attached and the findings to the contrary by the lower appellate court was erroneous. It is also the contention that the judgement debtor was taking objections which ought to have been taken before the sale. He was barred from contending that there had been any excessive attachment and it is also contended that the property had been properly valued and the auction sale fetched even more than what was the value as prescribed in the circle rate at the Registrar's office.

The objections relating to the sale is founded on a fundamental premise that they had been no attachment in respect of the property sold.

3. I have gone through the necessary documents that were filed before the executing court. Admittedly, the property that had been sold was a property situated in Rect. No.24 Khasra No.25/1 in extent of No.1 Kanal No.2 Marlas that was immediately adjoining the building comprising of the rice sheller. The learned counsel appearing on behalf of the purchaser points out to me that the property that was directed to be attached by the court through its order dated 29.10.2005 included the property Khatuani 601. The Jamabandi for the year 2000-2001 made reference to khatuani 601 as comprising of the property in old khasra No.336. But the property that was put for sale in 2005-2006 the extent of property in 25/1 was also mentioned is comprised in khasra No.336. The attempt was therefore to point out that the property was comprised in old khasra no. 336 was actually attached and the later khasra No.25/1 was actually the property that had been already attached.

4. The counsel appearing on behalf of the respondents would point out that when the decree holder gave an application for the property to be attached he had made the specific mention about the property of several khasra numbers but they did not include the property in khasra No.25/1. The court, while it was issuing notice to

the Collector, has also referred to several khasra numbers in its communication dated 6th December 2006 but this communication did not make reference to attachment of the property in khasra No.25/1. It is definitely not clear whether there had been any attachment of the property in khasra No.25/1. The court below has held that there had been attachment of the property in khasra No.25/1 before it was put for sale. If the identity of the property itself assumes enormous significance for what was ultimately purportedly sold was only the vacant land situated between Samana main road and the building constructed within the premises which was comprised of a rice sheller and other machineries. The open land between the rice sheller and the road was also interspersed with shops lined across the major breadth of the front portion belonging to the judgement debtor. There were 4 shops which fell within the extent the property that had been sold but it would appear that after the purchase the buildings also been demolished. There has been an attempt on the part of the purchaser to remove the important evidence of the existence of buildings at the property itself.

5. I am not prepared to accept the contention of the judgement debtor that there had been excessive attachment or that the property had not been properly valued. Same way, mere absence of attachment which was in the nature of irregularity ought to have been objected to when the property was just to sale. This is the view

held by a Division Bench of Allahabad High Court in **Haji Rahim Bux and Sons and others Versus Firm Samiullah and Sons-AIR 1963 (Allahabad) 320**. The objections relating to the sale has been filed through an application filed under Order 21 Rule 90 CPC. The sale has taken place on 29.10.2008 and the application filed under Order 21 Rule 90 CPC has been filed on 03.01.2009. The objection must have been made within a period of 60 days from the date when the sale had taken place. The objection was barred by limitation as an objection under Order 21 Rule 90 CPC.

6. The sale is reported to have been made of property as though it was vacant when there had ben buildings and they had been demolished after the sale. The respondents have filed photographs of alleged existence of buildings and debris showing demolition. The objections are set forth in para 8 of the objections under Order 21 Rule 90 CPC. If the buildings existed at the sale and they were demolished after sale at the time of demolition, there was a very serious prejudice. The additional piece of evidence, through photographs, I cannot entertain, unless there was adequate supporting evidence. It is also intended that the front portion sold is such that the remaining portion allowed to be retained by the judgment debtor cannot be accessed. If these objections are the sale was void as vitiated by fraud by misdescription of property that caused substantial prejudice, it could be brought as a matter for

adjudication under Section 47 CPC. I am of the view that if the petition were to be treated as one under Section 47, the decree holder shall have opportunity to state its objections. The additional documents also cannot be received without evidence.

7. Under the circumstances, I set aside the orders passed by the lower appellate court and remit the matter to the Executing Court to give evidence about the nature of property sold, whether they contained buildings/shops and permit the photographs to be brought with appropriate evidence and prove the same in the manner required by law. The remand is for consideration of whether the auction sale was not merely an irregularity but constituted a fraud by deliberate misdescription and hence void. The enquiry will be as under Section 47 CPC and the order that will be passed after affording an opportunity to the decree holder and auction purchaser to file his objections to the photographs & plan brought as additional evidence in appeal. The auction purchaser shall not alter the nature of property till the disposal of the petition.

8. Both the revision petitions are ordered with direction for disposal of the objection of the judgment debtor as under Section 47 CPC in the light of the observations made above. The manner of how the amount deposited by the judgment debtor will be reckoned shall abide by the final decision of the Executing Court.

9. Both the revision petitions are disposed of on the above terms.

(K.KANNAN)
JUDGE

09.12.2015

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