

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.6661 of 2013
Date of decision:21.01.2015

Sadi Mohd.

....Petitioner

Versus

Mahan Singh

.....Respondent

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

Present: Mr.Jai Bhagwan, Advocate, for the petitioner.

Mr.Varun Jain, Advocate, for the respondent.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition is to the order dated 06.07.2013 (Annexure P1), whereby the draft sale deed was prepared and filed by the decree holder in the Executing Court. The Court, thereafter, directed the appointment of the Local Commissioner for the execution of the registration of the sale deed on behalf of the judgment debtor and in favour of the decree holder and the case was adjourned for awaiting the report of the Local Commissioner. It is a matter of fact that thereafter, as per the order dated 12.08.2013, the sale deed was executed in favour of the decree holder and the case was adjourned on account of the counsel putting appearance on behalf of the objector.

Counsel for the petitioner has contended that as per the provisions of Order 21 Rule 34 (2) CPC, it was mandatory upon the Court to call a draft sale deed, to be served upon the judgment debtor together with a notice requiring his objections, if any, to be made within such time as the Court may fix. It is submitted that in view of the mandatory provisions, the Executing Court was not justified in accepting the draft sale deed, directing the Local Commissioner to execute the sale deed in favour of the decree holder.

The present case is a classic case where the travails of the litigant, who has obtained a decree wayback on 09.09.2004 are failing to come to an end. It is an admitted case that the suit for specific performance was decreed against the petitioner by the Addl.Civil Judge (Sr.Divn.) Malerkotla. Thereafter, the appeal was dismissed on 07.09.2006. The decree holder filed the execution petition on 21.03.2007. Notice in the execution petition was issued to the petitioner, who was served but he chose not to come present. He was proceeded against *ex parte* on 30.07.2007 and chose, thereafter also, not to join the proceedings. A draft sale deed was prepared and placed on record on 27.11.2007 by the decree holder, for scrutiny. Thereafter, objections filed by the third party to the proceedings kept pending before the Executing Court and eventually, on 14.05.2013, the objectors were proceeded against *ex parte*. The Court, thereafter, directed to file a draft sale deed on 05.07.2013, without noticing the fact that a draft sale deed had already been placed on record, almost 6 years back. The draft sale deed was then placed on record and accordingly, necessary directions were issued on 06.07.2013, which is the order impugned.

The purpose of the provisions of Order 21 Rule 34(2) CPC are for giving an opportunity to the judgment debtor to object to the draft sale deed and show to the Court if any prejudice is caused to him. In the present case, as noticed, apart from the argument raised that the mandatory provisions have not been complied with, as such, as no draft sale deed was sent to him, nothing has been brought to the notice of this Court that the petitioner was prejudiced in any manner. The order was passed on 03.07.2013, the judgment debtor chose not to approach the Executing Court though, it is apparent that he was watching the proceedings, sitting outside. He immediately approached this Court on 06.11.2013, on the technical objection that the draft sale deed had not been sent

record as to in what manner, the sale deed, which has been executed, is detriment to the petitioner or that his interests have been prejudiced, in any manner. The purpose of Order 21 Rule 34(2) CPC is to give the person an opportunity to object. In the present case, notice had already been issued earlier in the execution proceedings and the petitioner was well aware and had been served. It is not the case of the petitioner that he has not been served or that he had been proceeded *ex parte* wrongly. It is apparent that the petitioner was watching the proceedings from outside.

In such circumstances, this Court is of the opinion that the litigant, who is only delaying the proceedings is not entitled to any discretionary benefit under Article 227 of the Constitution of India, by exercising the supervisional powers of this Court.

Accordingly, the present revision petition is dismissed.

21.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE