

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

**Civil Revision No. 6789 of 2015 (O&M)
Date of decision:- 04.12.2015**

Harbans Singh Cheema

...Petitioner

Versus

Charanjit Singh (since deceased) through his LRs
Amarjit Pal Kaur & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. M.L. Saggar, Sr. Advocate with
Mr. Gaurav Grover, Advocate
for the petitioner.

Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This petition under Article 227 of the Constitution of India
is for setting aside order dated 17.09.2015 (P-4) passed by learned Civil
Judge (Jr. Divn.) Ludhiana.

The respondent-Charanjit Singh purchased the property
bearing No. 130-L, Model Town, Ludhiana as per the site plan dated
21.04.1980 attached in the execution application of the judgment and
decree dated 25.04.1978 in Civil Suit No. 104 of 1971 by the then Sub
Judge, First Class, Ludhiana in favour of Charanjit Singh. No objections

were filed by the judgment-debtor before confirmation of the sale and issuance of the sale certificate. The above said property was attached and sold due to non-compliance of judgment and decree dated 25.04.1978 by the then learned Sub Judge Ist Class, Ludhiana in Civil Suit No. 104 of 1971, despite the issuance of warrants of arrest against the judgment debtor and rather an application dated 28.10.1980 has been filed on behalf of the judgment debtor through his counsel to the effect that the judgment debtor has no objection if his property already attached was ordered to be sold. After the sale certificate was issued, the petitioner-Judgment Debtor filed objections dated 09.01.1982 and the objection application was dismissed by learned Sub Judge, Ist Class, Ludhiana on 06.04.1983 on the ground that the same has been filed after the issuance of the sale certificate and the only remedy to challenge the sale by means of a separate suit. The revision was filed against the order dated 06.04.1983, which was also dismissed. Thereafter, the judgment-debtor filed a civil suit No. 458 of 10.09.1983 and had challenged the sale of the property and the suit was dismissed on 18.02.1985. The appeal was dismissed by the learned ADJ, Ludhiana and R.S.A was also dismissed by this Court on 22.04.2009. The judgment debtor also filed an application for grant of ad interim injunction under Order 39 Rule 1 and 2 CPC and the same was also dismissed vide order dated 11.10.1983 and in Misc. Civil Appeal against

the said order dated 11.10.1983, an undertaking was got recorded by the Court of Hon'ble District Judge, Ludhiana not to disturb the same till the disposal of the suit in case the judgment debtor complete his evidence in the trial Court by 30.04.1984. The judgment debtor after dismissal of the suit on 18.02.1985 preferred a Civil Appeal on 216/37 of 1985 and in the said Civil Appeal, the judgment debtor has also filed an application under Order 39 Rule 1 and 2 restraining the decree holder as well as auction purchaser to dispossess during the pendency of the appeal and ad-interim staying the dispossession of the judgment debtor was passed vide order dated 20.04.1985 and the said appeal was dismissed, vide judgment and decree dated 10.01.1986. Thereafter, the judgment debtor challenged the decree dated 18.02.1983 and 10.01.1986 before this Court in R.S.A No. 278 of 1986 and in the said R.S.A, further proceedings of recovery of possession in the trial Court/Executing Court was stayed till further orders vide order dated 03.02.1986. The said R.S.A was got dismissed for want of prosecution by the judgment debtor with an intention to cause further delay in order to retain the possession of the property in dispute and now the judgment debtor again filed an application for restoration of the R.S.A, which was dismissed on 22.04.2009 and thus all the interim orders came to an end on that very day. Thus, the applicant was entitled to the delivery of possession by issuance of

warrants of possession being bonafide purchaser of the property bearing No. 130-L, Model Town, Ludhiana. Thereafter, the respondent filed four applications on 09.02.2010 i.e application under Order 21 Rule 95 CPC for issuance of warrants of possession in favour of the auction purchaser Charanjit Singh through his LR's, application for compliance of judgment and decree dated 31.05.2011, application for dismissal of the application under Order 21 Rule 95 CPC being barred by time and application for establishing the identity of the property and for appointment of local commissioner, being auction purchaser of H. No. 130-L, Model Town, Ludhiana on the basis of sale certificate dated 18.11.1991 in execution of the decree dated 25.04.1978 passed in Civil Suit No. 104 of 1971 by the Court of Sub Judge, Ist Class, Ludhiana. The deceased Charanjit Singh was the highest bidder of the property in the Court auction held on 2.9.1981, which was confirmed on 28.10.1981 and a sale certificate was issued on 28.11.1981. After the sale certificate was issued, the petitioner-Judgment Debtor filed objections dated 09.01.1982 and the same was dismissed by learned Sub Judge, Ist Class, Ludhiana on 06.04.1983. The revision was filed against the order dated 06.04.1983, which was also dismissed. Thereafter, the judgment-debtor filed a civil suit No. 458 of 10.09.1983 and had challenged the sale of the property and the suit was dismissed on 18.02.1985. The appeal was also dismissed by the learned ADJ,

Ludhiana and R.S.A was also dismissed by his Court on 22.04.2009.

However, the petitioner instead of filing reply to the above four applications, filed an application for dismissal of the applications under Order 21 Rule 95 CPC.

Vide impugned order dated 17.09.2015, the Court below, in view of the judgment dated 31.05.2011 passed by this Court, allowed two applications under Order 21 Rule 95 CPC read with Section 151 CPC and application for compliance of judgment and decree dated 31.05.2011 were allowed and the application for dismissal of the application under Order 21 Rule 95 CPC being barred by time and application for establishing the identity of the property and for appointment of local commissioner were dismissed.

Learned counsel for the petitioners has vehemently argued that vide order dated 06.04.1983, learned Sub Judge, Ist Class, Ludhiana dismissed the application filed by the petitioner-Judgment Debtor. This order was passed after framing of the issues on the application dated 09.01.1982.

Reference has been made to a judgment of Hon'ble the Supreme Court of India in a case of ***Ganpat Singh (dead) by LRs vs. Kailash Shankar and others, 1987 AIR (SC) 1443*** wherein Hon'ble the Supreme Court has laid down the difference between execution proceedings by a decree holder for delivery of possession and an

application by an auction purchaser for delivery of possession under Order 21 Rule 95 CPC as well as the applicability of Article 134 and 136 of the Indian Limitation Act.

The judgment of Hon'ble the Supreme Court in ***Ganpat Singh's case (supra)*** will not come to the rescue of the petitioner, as in the present case, sale was confirmed on 28.10.1981 and the application for delivery of possession was filed on 05.01.1982 within limitation.

Hon'ble the Supreme Court in cases of ***Balakrishnan vs. Malaiynadi Konar, 2006 (2) ALL MR 159*** has further held that limitation for the purpose of filing execution with regard to property purchased in auction is under Article 134 of the Constitution of India. In para 13, it has been observed as under:-

“13. The limitation for the purpose of Article 134 starts from the date of confirmation of sale. (See Ganpat Singh (dead) by Lrs. v. Kailash Shankar and Ors. 1987 (3) SCC 146). In Pattam Khader Khan v. Pattem Sardar Khan and Anr. (1996 (5) SCC 48) this court held that it is not from the date when sale certificate is issued that the limitation starts running. The sale becomes absolute on confirmation under Order XXI Rule 92 of the Code effectively passing title. It cannot be said to attain finality only when sale certificate is issued under Order XXI Rule 94. There can be variety of factors conceivable for

which delay can be caused in issuing a sale certificate. The period of one year limitation now prescribed under Article 134 of the Limitation Act in substitution of a three year period prescribed under Article 180 of the Indian Limitation Act, 1908 is reflective of the legislative policy of finalizing proceedings in execution as quickly as possible by providing a quick forum to the auction purchaser to ask for the delivery of possession of the property purchased within that period from the date of the sale becoming absolute rather than from the date of issuance of the sale certificate. On his failure to avail such a quick remedy the law relegates him to the remedy of a regular suit for possession based on title, subject again to limitation.”

Hon'ble the Supreme Court in the above mentioned judgment has further held that the limitation for delivery of possession is one year and the limitation starts from the date of confirmation of sale and not from issue of sale certificate.

Reference at this stage can further be made to a case titled as **“Ratan Bapu Patil (dead) by LR's and others vs. Dodhu and others, 2005 (AIR) SC 1500”** wherein in para 6 of the judgment, it has been observed as under:-

“6. We have gone through the judgment rendered in Pattam Khader Khan (supra. It has been held in the aforesaid judgment that title of the Court auction-

purchaser becomes complete on the confirmation of the sale under Order 21, Rule 92 and by virtue of the thrust of Section 65, Civil Procedure Code the property vests in the purchaser from the date of the sale. Issuance of sale certificate is only the evidence of the title which can always be supplied later on to satisfy the requirements of Order 21, Rule 95. The limitation starts running under Article 134 of the Limitation Act from the date of confirmation of the sale deed. The point involved in the present case is squarely covered by the rule laid down by this Court in Pattam Khader Khan (supra). In the present case, the sale was confirmed on 17.04.1968 and the limitation of one year provided under Article 134 would start running from the said date. The present application having been filed in the year 1985 was clearly barred by time.

The above mentioned judgments clarifies that the application for delivery of possession under Order 21 Rule 95 CPC is to be filing within one year, as contemplated under Article 134 of the Limitation Act.

In the present case, sale was confirmed on 28.10.1981 and the application for delivery of possession was filed on 05.01.1982 within the period of limitation. For all intents and purposes, the

application could not be discarded on the question of limitation.

The subsequent question for consideration before this Court is whether the revival of application, which was made within the period of limitation, could be made after the dispute between the parties had been settled, vide detailed judgment i.e R.S.A No. 278 of 1986, decided on 31.05.2011 has held as under:-

“Thus, keeping in view the provisions of the new Code, pleadings of the parties and the documentary evidence on record, this Court is of the opinion that the sale is perfectly legal, valid and binding on the parties. There is no material irregularity in the procedure which had caused any substantial injury to the plaintiff appellant. It is further held that an application for sale of the attached property could only be made by the decree holder after expiry of clear six months, the time given by the legislature, to obey the decree. It is further held that attachment is not a condition precedent for sale by the court under the new Code. It is further held that no separate suit to challenge an auction sale is maintainable. Resultantly, this regular second appeal no.278 of 1986 fails and is dismissed with costs Before parting with this judgment, this Court feels that the plaintiffappellant has been making every effort to delay the litigation through

process of RSA No.278 of 1986 -19- law. During the pendency of this regular second appeal, Harbant Singh respondent no.1 expired on 1.5.1986 and his legal representatives namely Mrs Jaswant Kaur widow; Yadwinder Singh and Asvinder Pal Singh sons and Ms Paramjit Chatha daughter were brought on record. Charanjit Singh respondent no.2 auction purchaser also expired on 15.7.1990 and his legal representatives namely Smt Amarjit Kaur widow; Manpreet Singh and Jasmeet Kaur, daughters; were also brought on record. The counsel for the respondents has placed on record jamabandi for the year 2005-2006 of the revenue estates of Taraf Karabara, Hadbast No.161 and state that the plaintiff is a big landlord and influential person having 102 kanals 17 marlas of land situated within the municipal limits of Ludhiana city. Report dated 23.4.1980 Ex.P.8 of the Bailiff, who went to attach the property No.130 L, Model Town, Ludhiana, shows that the eldest son of Harbans Singh plaintiff appellant made obstruction in the attachment proceedings, abused, misbehaved and threatened not only the decree holder but also the officials of the court. With this background of adamant attitude of the plaintiff appellant, it would be just and proper, if the trial court disposes of the execution

proceedings on day to-day basis.”

This question has been answered in favour of the respondents in view of the judgments of Hon'ble the Supreme Court i.e ***Atma Ram Mittal and others vs. Ishwar Singh Panja, 1988(2) RCJ 368, Vijendra Nath and others vs. Jazgdish Rai Aggarwal and others, 1967 AIR (SC) 600, Ramji Lal vs. Het Ram and others, 1978 PLR 291*** wherein it was held that object of subsequent application for execution was to revive application filed previously and which was still pending. Hence, subsequent application must be regarded as continuation of proceeding started on prior application made before the amendment Subsequent application for execution was held not to be barred by limitation.

Following the consistent view of Hon'ble the Supreme Court, if the executing Court did not pass any orders on the application dated 05.01.1982 specifically and consigned the said application to the record room while deciding the application on 06.04.1983, the applicant/auction purchaser cannot be made to suffer.

In view of the above, the present petition stands dismissed.

04.12.2015

G Arora

(***RITU BAHRI***)
JUDGE