

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.148 of 2012(O&M)

Date of Decision:05.12.2016

Mohan Singh

.....Petitioner

Versus

Harjit Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.S. Kohli, Advocate
for the petitioner.

Mr. C.M. Munjal, Advocate
for respondent No.1.

Ms. Anju Arora, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 26.09.2011 passed by Additional District Judge, Ludhiana in Execution Application No.4 dated 20.05.1995 whereby sale effected on 25.06.2011 was confirmed in favour of auction purchaser.

[2]. Petitioner filed a petition under Section 13 of Hindu Marriage Act against the respondent-wife for dissolution of marriage by decree of divorce. The petition was dismissed by the Court of Additional District Judge, Ludhiana vide judgment and decree dated 20.02.1996. The aforesaid judgment and decree was challenged by the petitioner in this Court by way of filing FAO No.82-M of 1996. During pendency of the said

appeal, this Court granted an amount of Rs.2000/- as maintenance along with Rs.5000/- as litigation expenses vide order dated 19.12.1996. Petitioner remained unsuccessful in SLP filed against the aforesaid order dated 19.12.1996. SLP was dismissed on 22.09.1997. Thereafter, FAO No.82-M of 1996 was dismissed for non-prosecution on 19.03.1998.

[3]. Respondent-wife filed an execution for releasing of the amount awarded by this Court. Executing Court issued warrant of attachment of the property of the petitioner on 30.09.2000. Against the said order dated 30.09.2000, petitioner filed Civil Revision No.152 of 2001. Vide order dated 18.04.2001, it was ordered by this Court that sale proceedings may go on, but the sale was to be not confirmed. At that time, date of sale was not fixed. Date of sale was fixed on 25.06.2001 by the executing Court by passing the following order on 21.05.2001:-

“Present: Counsel for parties.

Ld. Counsel for JDs has produced photo state copy of an order of the Hon'ble High Court dated 18.04.2001 in which permission has been given to this Court to go on with the sale proceedings but the sale is not to be confirmed. As such, w/sale is ordered to be issued as under:-

- 1. Notice at the Court door 07.06.2001.*
- 2. Munadi at the spot 09.06.2001.*
- 3. Date of sale 25.06.2001.*

4. Report to the Court 16.07.2001.

PF/Warrant fee be filed within 3 days

*Sd/
ADJ
21/5/2001”*

[4]. Pursuant to aforesaid order, sale of the property of the petitioner was carried out, but the same was not confirmed as per said order passed by this Court. Petitioner filed an application before the executing Court seeking permission to deposit an amount of Rs.1525/- being 5% of the auction amount plus Rs.30,500/- plus Rs.875/- in view of Order 21 Rule 89 CPC.

[5]. Trial Court vide order dated 21.07.2001 passed the following order:-

“Present:- Sh. Jyoti Sarup counsel for the JD.

File taken up today on an application filed by counsel for the JD with permission to deposit Rs.1525/- as 5% of the auction amount plus Rs.30,500/- plus Rs.875/-. The amount in question may be deposited at own risk and cost of the JD and notice of deposit shall be given by the JD to the DH/Court Auctioneer by filing PF within 2 days of the date of deposit for the date fixed i.e. 25.07.2001.

*Sd/-
ADJ
21.07.2001”*

[6]. Petitioner deposited the amount and the Court noticed

the aforesaid fact by passing the order dated 25.07.2001 in the following manner:-

“Present: Counsel for the parties.

Sale amount deposited by JD with commission of Court Auctioneer and purchaser, reply/objections by DH be filed on 2/8/2001.

*Sd/-
ADJ
25.07.2001”*

[7]. Thereafter, petitioner filed an application for setting aside the sale. Executing Court in the order dated 06.10.2001, noticed the following facts:-

“6.10.2001: Present: Counsel for the parties.

The property of the JD in this case was put to auction. The JD has deposited certain amount for payment to the DH and has filed an application for setting aside the sale. However, confirmation of the sale stands stayed by the Hon'ble High Court, which impliedly means that this court should not hear the matter of confirmation of the setting aside of the sale till further orders of the Hon'ble High Court. It is, therefore, in the fitness of things that the matter regarding confirmation of setting aside of the sale should not be heard by this court till the receipt of further orders from the Hon'ble High Court. The matter in the Hon'ble High Court is stated to be pending in

the month of January, 2002. To come up for further proceedings in this Court on 28.01.2002.

In the meantime, refund voucher of the amount of Rs.30,400/- be issued in favour of the decree holder out of the amount deposited by the auction purchaser. In case, ultimately, the sale is set aside, then the amount deposited by the JD along with the commission of the auction purchaser shall be paid to the auction purchaser.

*SD/-
Addl. Distt. Judge, Ldh.”*

[8]. Civil Revision No.152 of 2001 was ultimately dismissed by this Court vide order dated 28.01.2010. Though the factum of auction was noticed by this Court in para No.3, but the said Civil Revision was filed against the order dated 30.09.2000 vide which warrant of attachment of the property of the petitioner was issued. No further proceedings were assailed therein. Thereafter, executing Court passed an order dated 26.09.2011 confirming the sale effected on 25.06.2001 in favour of Harbans Singh i.e. the highest bidder. It is relevant to note that Harbans Singh Auction Purchaser is the husband of the sister of the decree holder (Jija of the respondent-wife). Out of 7 biswas of land so auctioned and purchased by the auction purchaser, 5 biswas was agricultural land and remaining 2 biswas of land

was *abadi* in nature.

[9]. I have heard learned counsel for the parties.

[10]. Learned counsel for the petitioner vehemently submitted that before confirmation of sale, the executing Court should have adverted to the intervened proceedings vide which the judgment debtor filed an application under Order 21 Rule 89 CPC by making a necessary deposit in compliance of the provision and therefore, sale should not have been confirmed, rather the claim of the highest bidder should have been satisfied. Learned counsel relied upon **Challamane Huchha Gowda Vs. M.R. Tirumala and another, 2003 Supp(6) SCR 506** to contend that elaborate procedure has been prescribed in the Civil Code for execution of orders and decrees. Sale is one of the mode prescribed for execution. Order 21 Rule 89 CPC is the only mode by which a judgment debtor can escape from a sale that has been validly carried out. The object of the rule is to provide a last opportunity to the judgment debtor to put an end to the dispute by depositing the amount before the sale is confirmed. Order 21 Rule 89 CPC has to be appreciated on two premises i.e. sum equal to 5% of the purchase money has to be paid to the purchaser and secondly, the amount specified in the proclamation of sales less any amount received by the decree holder since the date of such proclamation, in the Court. If these

two conditions are satisfied, then the Court shall make an order for setting aside the sale under Rule 92(2) of Order 21 CPC on the application filed by the judgment debtor. If the compliance in terms of Order 21 Rule 89 CPC is made, then it is mandatory upon the Court to set aside the sale under Order 21 Rule 92 CPC after giving notice under Rule 92(2) of the Code to all the affected persons.

[11]. Learned counsel for the respondent has vehemently argued that vide order dated 21.07.2001, the executing Court only allowed the petitioner to deposit the amount at his own risk and cost and the same cannot be treated to be a valid deposit in terms of Order 21 Rule 89/90 CPC.

[12]. I have considered the submissions made by either sides.

[13]. In this revision petition, order dated 26.09.2011 vide which the sale has been confirmed is under challenge. Order 21 Rule 89 CPC gives unfettered right in favour of judgment debtor to put an end to the controversy by depositing the amount prescribed under the rules. Once the controversy is complied with, then in terms of Rule 92(2) of Order 21 of the Code, the Court shall make an order to set aside the sale after giving notice to the affected parties.

[14]. Apparently, the amount was deposited by the petitioner

in the year 2001 itself in compliance to provision of Order 21 Rule 89 CPC. The said fact was not noticed by the executing Court while confirming the sale on 26.09.2011. Even though the said facts were not brought to the notice of this Court at the time when Civil Revision No.152 of 2001 was decided on 28.01.2010, but the fact remains that the cause of action arising from provision of Order 21 Rule 89/92 CPC were never came to be interpreted by this Court in CR No.152 of 2001. Moreover, the said revision petition was directed against the order dated 30.09.2000 vide which order of attachment of the property of the petitioner was made.

[15]. As per interlocutory orders reproduced in earlier part of the order, the requisite amount required under Order 21 Rule 89 CPC was deposited by the petitioner in the year 2001 itself. The proceedings undertaken by the executing Court in the year 2001 were not noticed by the executing Court at the time of confirming the sale vide impugned order dated 26.09.2011. The requisite amount was deposited within time. The deposit of the amount in the executing Court was a condition precedent and was *sine quo non* to the application for setting aside the execution of sale.

[16]. In **Annapurna Vs. Malikarjun and another, (2014) 6 SCC 397**, the Hon'ble Apex Court after considering Article 127

of the Limitation Act held that although Order 21 Rule 89 CPC does not prescribe any period of limitation for making an application for deposit of the amount, but Article 127 of the Limitation Act prescribes 60 days within which such an application should be made.

[17]. Learned counsel for the respondent/decreed holder could only point out that the deposit made by the petitioner was only at own risk and cost. The fact remains, if the deposit was made in time, it was obligatory on the executing Court to adhere to the provisions of Order 21 Rules 89, 90 and 90(2) CPC. Apparently, such a course was not adopted by the executing Court.

[18]. In view of aforesaid, I find considerable force in the arguments raised by learned counsel for the petitioner. This revision petition is accordingly accepted. Impugned order dated 26.09.2011 passed by Additional District Judge, Ludhiana in Execution Application No.4 dated 20.05.1995 is hereby set aside. Executing Court is directed to initiate follow up action in accordance with law.

05.12.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No