

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

**CR No.5554 of 2016
Date of decision:30.08.2016**

Mahinder Pal (deceased through LRs) ... Petitioner

Vs.

State Bank of India and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Sonia G.Singh, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Learned counsel for the petitioner submits that the Bank had obtained a judgment and decree dated 01.08.2014 of an amount of Rs.3,54,476/- in a suit for recovery. In the meantime, judgment-debtor, Mahinder Pal died. As per the impugned order dated 22.07.2016, there is no compliance of the provisions of Order 21 Rule 66 of Code of Civil Procedure (hereinafter referred to as "CPC"). She further submits that opportunity should have been granted as the petitioner is willing to satisfy the decree.

I have heard learned counsel for the petitioner and appraised the paper book.

For the sake of brevity, impugned order dated 22.07.2016 and as well as, the provisions of Order 21 Rule 66 CPC read thus:-

22.07.2016

“Memo of appearance on behalf of Saroj Rani filed. Ld. Counsel for DH has submitted that warrant of sale u/s 22 rule 66 be issued regarding the mortgaged property on the file. Therefore, the warrant of sale be issued to be executed by Tehsildar Assandh to make the proclamation on 16.8.16 and file its report on 26.8.16.

*Sd/- (Sohan Lal Malik)
Civil Judge (Jr. Division)
Assandh 22.7.16.”*

“66. Proclamation of sales by public auction.- (1) *Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause a proclamation of the intended sale to be made in the language of such court.*

(2) Such proclamation shall be drawn up after notice to the decree holder and the judgment debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold, or, where a part of the property would be sufficient to satisfy the decree, such part;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the government;

(C) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered;

and

(e) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property:

Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment debtor by means of an Order under rule 54, it shall not be necessary to give notice under this rule to the judgment debtor unless the court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.

(3) Every application for an Order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document

in his possession or power relating thereto.”

From reading of the aforementioned provisions, it is irresistibly concluded that opportunity of hearing, much less, notice should have been issued to the decree holder and the judgment debtor before drawing the decree as to whether they are willing or not. In my view, there is no compliance of the aforesaid provisions of law.

In view of the aforementioned observations, I am of the view that the impugned order is liable to be set aside and the trial Court is directed to comply with the aforesaid provisions of law and thereafter shall proceed further in accordance with law.

I refrain myself from issuing notice of motion to other side/respondents as there is defiance of statutory provisions of law, much less, to defray the costs of litigation.

Accordingly, revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

August 30, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No