

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

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**ESA No. 2132 of 1991  
Date of decision: 07.09.2016**

**Madan Lal**

**...Appellant**

**Vs.**

**Rama Nand & Others**

**...Respondents**

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. Jaswant Jain, Advocate  
for the appellant.

Mr. Sanjay Mittal, Advocate  
for respondent No. 1.

None for respondent Nos. 2 to 4.

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**REKHA MITTAL, J. (Oral)**

The present appeal has been directed against the order dated 07.09.1991 passed by the Additional District Judge, Narnaul, whereby miscellaneous civil appeal preferred by Rama Nand-respondent No. 1 against the order dated 08.09.1987, passed by Sub Judge, Narnaul dismissing the objection petition, has been allowed by setting aside the order dated 08.09.1987 and directing the Lower Court to firstly give the notice and then to decide how much share of the attached house shall suffice to the decretal amount.

2. Learned counsel for the appellant has submitted that a suit for recovery was filed by the appellant (decree holder) against Ved Parkash and Bihari Lal, respondent Nos. 2 and 3, and the same was decreed. In execution proceedings, one house situated at Narnaul Town was attached. Two separate objection petitions were preferred, one by Rama Nand (third party) and the other by Ved Parkash and Bihari Lal (JDs). The objection petitions filed by both the sets of respondents were dismissed by the

executing Court. Ved Parkash and Bihari Lal (JDs) did not prefer any appeal/revision against the order dismissing their objections but Rama Nand filed an appeal that was allowed vide impugned order dated 07.09.1991.

3. It is argued by counsel for the appellant that as Ved Parkash and Bihari Lal (JDs) did not challenge the order dismissing their objections to whom notice under Order 21 Rule 66 of Code of Civil Procedure (*for short 'CPC'*) was required to be given before drawing a proclamation for sale of the attached property, the order passed by the Court of appeal setting aside sale of the entire attached property cannot be allowed to sustain.

4. Learned counsel for respondent No. 1, on the contrary, has submitted that as the appeal against respondent Nos. 2 to 4 has been dismissed by this Court vide order dated 07.04.2016 and the said order has attained finality, the impugned order cannot be set aside at the back of respondent Nos. 2 and 3 in whose favour benefit of order dated 07.09.1991 has enured.

5. I have heard learned counsel for the parties and perused the paper book particularly the order impugned.

6. It is an undisputed position of the case that though the appeal was preferred only by Rama Nand but the Court of appeal set aside the sale proceedings with the findings, reads as under:

***“...I have gone whole file of the trial court; firstly passed the order to give the notice under Order 21 Rule 66 CPC but file does not show if ever notice was given and I find that there is no compliance with the mandatory provision of Order 21 Rule 66 CPC and as such I set aside the order dated 8.9.87 of the learned Subordinate Judge (Sh. B. S. Sharma), Narnaul and direct the lower court to firstly give the notice and then to decide how much share of the***

***attached house shall suffice to the decretal amount and appeal is, thus, accepted.”***

7. No doubt, the JDs did not prefer an appeal/revision to challenge the order whereby the objection petition preferred by them was dismissed by the executing Court but as the Court of appeal while deciding the appeal preferred by Rama Nand has set aside the order dated 08.09.1987 with a direction to decide the execution proceedings afresh by following the provisions under Order 21 Rule 66 CPC, the impugned order cannot be varied or set aside without giving an opportunity of hearing to the JDs as well. As the appeal against the JDs has already been dismissed by this Court on 07.04.2016, contention raised by the counsel for the appellant to set aside the impugned order cannot be accepted because if such a plea is allowed, it would result into passing contradictory orders. In this view of the matter, the appeal fails and is accordingly dismissed.

8. Appellant and respondent No. 1 through their counsel are directed to appear before the executing Court on 18.10.2016. However, the executing Court shall proceed further after giving notice to the other affected parties.

**September 07, 2016**  
*Ansari*

**(REKHA MITTAL)**  
**JUDGE**

*Whether speaking/reasoned*

*Yes/No*

*Whether Reportable*

*Yes/No*