

126. Review Application No.92-CII of 2016 in
Civil Revision No.5545 of 2009

Jagdish
Versus
Sardara and others

Present: Mr. Ashwani Kumar Bura, Advocate,
for the applicants-respondents 1 and 2.

1. The application for review is brought at the instance of the respondents 1 and 2 to contend that the case was disposed of in the absence of the respondents 1 and 2. It is the further contention that the auction sale held had been vitiated by irregularity and the petitioners have already furnished before the court, the auction price plus 5% solatium.

2. I will find none of these objections is tenable to subject the order already passed to any review. The respondents 1 and 2 were at all times represented by counsel and on one occasion on 27.04.2015, on the request made by the counsel, the case was adjourned to 17.08.2015. The case had been adjourned from time to time and at the request of the counsel again appearing on behalf of respondents 1 and 2 on 12.01.2016, the case was adjourned to 20.01.2016. There had been no representation for the respondents 1 and 2 at that time and the case was argued in the presence of the counsel for the 3rd respondent. Cases which are adjourned in open court at request ought to be followed by the parties through their counsel and if there is no appearance on that day, respondents 1 and 2 must take the consequences of their absence or that of the counsel

and cannot be making this to be the subject of review.

3. The counsel refers to a judgment of the Supreme Court in *Desh Bandhu Gupta Versus N.L.Anand & Rajinder Singh-(1994) 1 Supreme Court Cases 131* that refers to actual service of notice under Order 21 Rule 66 CPC as mandatory and that the sale without notice is nullity. I cannot apply this to a situation where I have considered that the Haryana Cooperative Societies Act of 1984 (for short, 1984 Act) which is a complete code and when a sale was made and the sale certificate was also issued on 20.09.1994 recording the fact of sale, without actually taking recourse to the provision of the 1984 Act to set aside the sale for any of the grounds which are available under the Act, it would be impermissible for a judgment debtor to plead irregularity in sale by virtue of the provisions of Section 83 of the 1984 Act. The said provision is to the effect that issue of title to a purchaser could not be impeached on the ground that there was no notice and that there had been any irregularity in exercise of the power of sale. The case has been considered on the relevant provisions of the Act and there is no error which is apparent on its face to subject the judgment for a review.

Review application is dismissed.

(K.KANNAN)
JUDGE

04.04.2016
sanjeev