

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

**Civil Revision No.7555 of 2017 (O&M)
Date of Order: 16.11.2017**

M/s DSC Limited

..Petitioner

Versus

M/s S.K.Enterprises and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumeet Mahajan, Sr. Advocate, with
Mr. Rohit Khanna, Advocate and
Mr. Saurabh Gautam, Advocate,
for the petitioner.

Mr. Vikram Dhakla, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J (Oral)

Judgment Debtor-respondent has filed this revision petition against the order dismissing objections filed vide order dated 23.10.2017.

Although, learned counsel for the auction purchaser has submitted that previous objections against the confirmation of sale had been dismissed and order has been upheld in the revision petition as also in the special leave petition, therefore, this Court is precluded from looking into the subsequent objections, however, this Court feels that where there is a patent illegality and arbitrariness in the auction held, this Court is not precluded from doing justice between the parties particularly when these issues have not been examined previously.

This Court has noticed the following facts:-

(1) The list of property attached is as under:-

“1. Stone lying at D.S.C.(P) Ltd., Crusher at Vill. Bidhubas, Vill. Padheni, the. Tauru Distt. Mewat quantity of stone 20155.44 Metre Ton.

2. Plot No.602 A allotted by H.S.I.F.I.D.C. Ltd. Vide |Ref. No.HSIIDC 3431 dated 22.7.09 at Phase/Block/Sector-I, Industrial Estate Udyog Vihar Gurgaon in favour of M/s Lakshya Greating Pvt. Ltd., A-97/98 Lajpat Nagar Part-I, New Delhi-110024, Share holder M/s D.S.C. Ltd. Sh. Narender Singh Narula.

Papers attached with used property.”

Tehsildar, Nuh was directed to attach the property referred to the above. Thereafter, pursuant to the warrants of attachment auction programme was issued and date of auction was fixed as 13.05.2015. On 20.05.2015, the Court ordered, which is extracted as under:-

“Warrant of sale of the property of the JD received back unexecuted despite of the facts that 5 persons had already took part in the auction rather the sale has been deferred on the lame excuse seeking the further direction whereas in the warrant of sale it has been specifically mentioned that the amount of Rs.7,40,621/- with interest 9% is out standing against the JD and the same has to be recovered after selling proportionate property of

the JD let a separate notice u/s 166 of IPC be issued against Tehsildar concerned. However, warrant of sale be again issued to realise to amount of award as per following schedule:-

Notice 27.05.2015

Spot 10.06.2015

Auction 19.06.2015

Report 01.07.2015

In case the warrants remain unexecuted, the executing official shall appear in the Court to explain the reason.”

Thereafter, it appears that Tehsildar, i.e. the auctioneer submitted a report on 29.05.2015 informing the Court that he has already held auction on 13.05.2015. Learned Tehsildar i.e. the auctioneer, further informed the Court that whole of the goods lying in the said company has been auctioned without any further order from the Court permitting sale of entire material available at the spot.

(2) At this stage, it will be noticed that auction purchaser-responderent had given its offer with respect to 20155.44 Metric Tons material including stone, dust and rori. The same is extracted as under:-

<i>1</i>	<i>Stone</i>	<i>16,000/- 2.50 x 25</i>	<i>10,00,000/- (Rupees ten lacs only)</i>
2	Dust	3000x5.75x25	4,31,250/- (Rupees Four lacs thirty lone thousand two hundred fifty only)

<i>1</i>	<i>Stone</i>	<i>16,000/- 2.50 x 25</i>	<i>10,00,000/- (Rupees ten lacs only)</i>
3	Rori	1155x6.60x25	1,90,575/- (Rupees one lac ninety thousand five hundred seventy five only)
		20155 M.Ton	16,21,825/-

The offer made by the respondent-company for 2015544 MT of material was for Rs.16,21,825/-. However, it is the assertion of the JD that the entire material lying on the spot, which is more than 1,0,1000/- MT has been auctioned without any further order from the Court, permitting sale of the entire material for Rs.16,21,285/-.

3. The price offered by the respondent-company for 20155.44 MT material was Rs.16,21,825/-. The entire material lying on the spot has been auctioned in favour of auction purchaser at Rs.16,21,825/- i.e., the price offered for 20155.44 MT, without even calling upon the auction purchaser to give revised offer.

In view of the facts noticed above, it is apparent that all is not well with the sale of the property belonging to the judgment debtors. Prima-facie this Court is of the opinion that the auction allegedly held on 13.05.2015, is not in accordance with the directions issued by the Executing Court.

However, without expressing any final opinion on the aforesaid facts noticed above, the Executing Court is directed to look into the matter and adjudicate upon the facts, which have been noticed above. Hence, the order under challenge is set aside.

Both the parties are directed to appear before the Executing Court, on 11.12.2017.

In the meantime, parties are directed to maintain status-quo with respect to the material available at the spot till the disposal of the objections petition by the Executing Court in pursuance to the directions issued by this Court.

November 16, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No