

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

**ESA No.24 of 2014 (O&M)
Date of decision: March 09, 2017**

RAKESH KUMAR AND OTHERS

....APPELLANTS...

VS.

CAPT. CHAND SINGH AND OTHERS

....RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ashok Singla, Advocate,
for the appellants.

Mr. Binderjit Singh, Advocate with
Mr. Amarpreet Singh, Advocate,
for respondent No.1.

Mr. Ravish Bansal, Advocate,
for respondent No.3.

JASPAL SINGH, J.

Challenge in the instant appeal is to the order dated 24.01.2014 passed by Additional District Judge, Bathinda whereby an appeal preferred against order dated 28.11.2006 has been dismissed, vide which objections filed under Order 21 Rule 58 etc. of the Code of Civil Procedure, in Execution application No. 29 of 09.09.2002 were dismissed by Civil Judge (Junior Division), Phul and consequently, sale of shop-cum-flat has been confirmed for a sum of ₹14,00,000/- and further sale certificate has been ordered to be issued.

2. Undoubtedly, ld. executing court after considering the evidence as well as the arguments of learned counsel for the parties, dismissed the

objections preferred by the petitioner under Order 21 Rule 58 CPC vide order dated 28.11.2006 passed in Execution Application No. 29 of 09.09.2002 and an appeal preferred against the said order dated 28.11.2006 was also dismissed vide impugned order dated 24.01.2014 by Additional District Judge, Bathinda. A scrutiny of the impugned orders as well as other documents available on file, reveal that when an appeal was pending before the ld. Additional District Judge, Bathinda the judgement debtor/appellants deposited a sum of ₹1,14,000/- on 13.06.2007 i.e. much prior to the auction and sale of the shop-cum-flat belonging to the judgment debtor/Ashok Kumar. But, neither the arguments have been addressed on this point before the executing court nor before the ld. appellate court. Similarly, the factum of deposit of the amount and the decretal amount along with interest and costs by the judgment debtor has not been discussed by either of the courts below. Certainly, the deposit of the decretal amount that too, prior to the sale by way auction of the attached property belonging to judgment debtor is of serious concern. Thus, in such a situation, provisions contained in Order 21 Rule 55 would be attracted, according to which, the attachment is deemed to be withdrawn, in case, of payment of the decretal amount with cost and of other charges and expenses which had resulted from the attachment of the property. The deposit of the amount on 13.06.2007 is not in dispute and the question is only whether it was deposited with the prior permission of the Court or otherwise. But certainly, it has an impact on the execution proceedings. Whether the property is ancestral coparcenary property or property in question was already partitioned by way of family settlement, pales into insignificance. Since, the aspect with regard to the deposit of the auction amount and its effect or impact has not been taken into

consideration, which compels this Court to set aside the impugned order(s) while dismissing the appeal. Accordingly, by way of acceptance of the instant appeal both the orders referred to above passed by the courts below are set aside and the matter is remitted to the executing court to reappraise the evidence available on record and after affording opportunity of hearing to the parties to pass a fresh order. In case either of the party move an application for the amendment of the objection petition or for additional evidence, those shall be decided by the court concerned in accordance with law.

3. Parties along with their counsel are directed to appear before the executing court on 02.05.2017.

March 09, 2017
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(JASPAL SINGH)
JUDGE

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