

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 106

EFA No.4 of 2017 (O & M)
Date of Decision: July 28, 2017

Bhupinder Pal Singh

..... APPELLANT

VERSUS

Aashmeen & another

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Arvind Thakur, Advocate for the appellant.

Mr. Sunil Chadha, Senior Advocate, with Mr. K.S.
Chawla, Advocate, for the respondents.

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Jaspal Singh, J

CM No.4312 – CI of 2017

Application is allowed.

Delay in refiling the appeal is condoned.

CM Nos.4315 – CI of 2017

Application is allowed as prayed for. Papers are taken on
record.

EFA No.4 of 2017 (O & M)

1. Judgment Debtor – Dr. Bhupinder Pal Singh has preferred
the instant appeal against order dated December 14, 2016 passed by the
District Judge -cum- Judge, Family Court, Faridkot in Execution Application

filed by the decree holders whereby the objection petition filed on behalf of the appellant – JD has been dismissed.

2. Briefly stated the facts giving rise to the instant Execution First Appeal are that an objection petition was preferred by the JD – Dr. Bhupinder Pal Singh against sale of his property by way of open auction in an Execution Application filed by the Decree Holders for recovery of ₹ 14,35,000/-. The Court permitted both the DHs to participate in the auction proceedings. One of the DHs namely Aashmeen did not participate but Shehbaz Singh (minor) participated through his mother – Dr. Mandeep Kaur. JD took the ground that arrears of maintenance due on account of DH Shehbaz Singh are to be adjusted but remaining amount was not deposited by him within 15 days, therefore, sale be taken to nullity and earnest money to be fortified. Second ground taken in the objection petition is that Dr. Mandeep Kaur participated in her individual capacity and not on behalf of minor Shehbaz Singh. Thus, she was required to deposit the earnest money at the spot. Third objection raised was that no amount is due against him (JD) as he has already paid maintenance in the matrimonial proceedings. He took the objection that no notice prior to sale was served upon him. 44 kanals 9 marlas of his property was attached and as per Collector rate, rate of property was ₹ 18,50,000/- per acre. The time for auction was fixed at 9:30 AM whereas it was conducted at 5:04 PM. He was not allowed to file any objection at the spot. No third person was allowed to bid. The property worth crores has been auctioned only for ₹ 14,50,000/-. Thus, JD prayed that auction proceedings are liable to be set aside.

3. The objection petition was contested by the DHs taking objections that under Order 21 Rule 90 CPC, JD was required to deposit 5%

objections, therefore, objection petition was not maintainable. There was no stay regarding sale. Dr. Mandeep Kaur has been pursuing the cases of minor and therefore, she has right to watch their interests. Decree Holders participated through their mother. The highest bid was given on behalf of the DHs.

4. Issues were framed by the Executing Court in order to decide the objections. JD led evidence while no evidence was led on behalf of the DHs. After hearing learned counsel for the parties and perusing the record available, the court below dismissed the objection petition filed by the JD/Objector.

5. Heard learned counsel for the parties.

6. As regards the contention of DHs with regard to non-maintainability of objection petition for want of deposit 5% of total sale consideration alongwith the objection petition. In case **Rajesh Chopra vs. State Bank of India & others, 2015(4) PLR 437**, this Court, while relying upon the judgment of Hon'ble Apex Court in **Annapurna vs. Malikarjun & another, (2014) 6 SCC 397** held that in order to maintain objection in terms of Order XXI, Rule 89, Rule 90, Rule 91 and Rule 92 CPC, deposit of 5% of the total sale consideration is a condition precedent for maintaining the objection and this was *sine qua non* for submitting the application before the Court. Since mandatory requirement has not been complied with by the objector – appellant as per requirement of law, the objection petition was rightly not maintainable and has been rightly rejected by the court below.

7. As far as the contention of JD – appellant regarding inadequacy of sale price is concerned, a property put to sale by way of public auction as a result of a court order would ordinarily not be able to get

show that this was inadequate price. Similar view has been adopted by the Hon'ble Apex Court in **M/s Kayjay Industries (P) Ltd. vs. M/s Asnew Drums (P) and others**, AIR 1974 Supreme Court 1331 as well as this Court in **Om Parkash vs. Land Acquisition Collector, Urban Estates, Punjab**, 1997(3) RCR (Civil) 185. The property of the JD was ordered to be sold by way of open auction. If the price fetched is below the price mentioned in the list, it does not vitiate the sale proceedings. Thus, mere inadequacy of price is not a ground to set aside the auction sale. The land was auctioned for ₹ 14,50,000/-. Moreover, the auctioned land is not free from encumbrances as the objector – JD alongwith his parents had raised a loan of ₹ 60 lac against this land. In case, land is transferred in the names of DHs, in lieu of their maintenance, they will have to pay the share of loan already taken by the appellant. Thus, sale price fetched by way of auction sale cannot be said to be inadequate. This Court in case **Ludhiana Improvement Trust, Ludhiana vs. Nasib Singh & others**, 2007(2) RCR (Civil) 199 has observed that mere inadequacy of price is no ground to set aside the auction sale. The JD must place on record sufficient convincing material of higher price of the property to establish a grave irregularity in the conduct of auction to his prejudice failing which presumption is of adequacy of price fetched in auction sale. In the case in hand, there is no evidence to show that the auctioned land was of higher price.

8. As regards the objection of JD – appellant that decree holders were required to deposit 25% of the sale price. The decree holders, who are to recover their maintenance, were not liable to deposit this amount. Moreover, it was an open auction to recover the arrears of maintenance, under order XXI Rule 84(1) CPC and the court may dispense with this

9. The irregularities in auction proceedings, alleged by the appellant, are also no ground to set aside the sale. Decree holders, Aashmeen and Shehbaz Singh had preferred a petition for maintenance through their mother Dr. Mandeep Kaur, being minor and she had been pursuing their case from the very inception. Decree holders were permitted in the auction proceedings vide order dated April 06, 2016 passed by the executing court. In the interregnum, Aashmeen had attained majority and is pursuing her MBBS course at a far place. In this situation, participation of their mother in auction proceedings is no irregularity.

10. In the light of what has been discussed above, there is no merit in the instant appeal and the same is dismissed.

11. No costs.

July 28, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No