

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

COCF No.1841 of 2014(O&M)

Date of Decision:-July 17th, 2018

Lachman Dass through Lrs.

.....Petitioner.

Versus

Saroj Rani Aggarwal, Sub Registrar, Tapa, District Barnala & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH.

Present:- Mr. Arihant Goyal, Advocate for the Petitioners.

Mr. Yogesh Goyal, Advocate for respondent no.1 along with
respondent no.1-Saroj Rani Aggarwal, Sub Registrar in
person.

Mr. Sardavinder Goyal, Advocate for respondent nos.2 to 4.

JASWANT SINGH, J.

Petitioner-Lachman Dass (Since deceased) has filed the present
contempt petition alleging violation of order dated 22/12/2005 (Annexure
P-1) passed by Civil judge, Barnala whereby, the property of respondent
No. 2-Gurmail Singh was ordered to be attached, in an execution
application filed by the petitioner and yet it was sold.

Learned Counsel for the petitioner has argued that petitioner
had filed a suit for recovery against respondent No. 2-Gurmail Singh which
was decreed by the Civil Court on 05/10/2005, for recovery of Rs.
2,15,000/- along with interest at the rate of 9% per annum. In order to get

16/12/2005 was filed in which, vide order dated 22/12/2005 (Annexure P-1) the property of respondent No. 2-Gurmail Singh was attached and an entry to this effect was made in the revenue record vide Rapat No. 224 dated 04/01/2006 by the revenue authorities. However, the property could not be put to sale, as the auction could not be affected due to opposition by a union at the behest of respondent No. 2. Ultimately, due to non-deposit of munadi fee, the execution application was dismissed in default under Order 9 Rule 2 of CPC vide order dated 23/02/2011. It is the contention of the petitioner that despite there being rapat entered in the revenue record, respondent No. 2 Gurmail Singh executed a sale deed dated 13/11/2013 in favour of a third-party and therefore, there is a clear-cut violation by respondent No. 2 Gurmail Singh, respondents no 3 and 4 (attesting witnesses of sale deed) as well as respondent No. 1 (sub-registrar) who registered the sale deed, despite there being an entry regarding the attachment of the property in the revenue record. As per the petitioner, since the order of attachment was never got vacated therefore the property remained attached at the time of execution of the sale deed. Thus, prayer has been made for convicting the accused under the Contempt of Courts Act, 1971.

On the other hand, learned Counsel for Sub-Registrar-respondent No. 1, assisted by respondent no.1-Ms. Saroj Rani Aggarwal, Sub Registrar, Tapa, District Barnala (who is present in the court) has argued that no contempt is made out against her because she has acted in a *bona fide* manner, as it was the duty of the Registry Clerk to report regarding any attachment being in existence of the disputed property in the revenue record. Since, the registry Clerk had made a note of “no stay” on the draft sale deed, therefore, she registered the sale deed subsequently. In

any case, it is submitted that the revenue record i.e *Jamabandi* for the year 2009-2010 (Annexure R-1/1) does not clearly reflect as to whether the property in question has been attached or not. Thus, it is argued that contempt proceeding can only be initiated in case there is a willful default of any order passed by the court. Since, from the act of the respondent No. 1 it is not made out that there was any willful default on her part, prayer has been made for discharging the rule initiated against the respondent no 1.

Learned counsel for respondent No. 2 to 4 has argued that the present petition is not maintainable in the eyes of law, as the petitioner has concealed material facts from the court. It is argued that once the execution application was dismissed in default on 23.02.2011 (Annexure R-1/A), interim order dated 22/12/2005 (P-1) immediately stood vacated and therefore, on the day when the sale deed was executed, no attachment order was in existence. Consequently, prayer has been made for discharging the rule against respondents No. 2 to 4 as well.

I have heard learned counsel for the parties at length and have also perused the paper book and have given personal hearing to respondent No. 1 (sub-registrar) to explain herself regarding the circumstances in which sale deed was executed by her. However, I am of the opinion that the present petition is devoid of any merit and the same deserves to be dismissed.

Admittedly, an execution petition was filed by the petitioner in which interim order dated 22/12/2005 (P-1) was passed whereby the property in question was attached by the civil court. However the said property could not be sold in auction conducted through process of court, for one reason or the other on numerous dates and ultimately, the said

execution petition was dismissed in default vide order dated 23/02/2011 (Annexure R-1/A) on account of Munadi fee having not been deposited. It was more than 2 years thereafter that respondent No. 2 Gurmail Singh sold part of the property allegedly attached, to a third party vide registered sale deed dated 21/11/2013 (Annexure P-7). On getting to know about the execution of the said sale deed, present contempt petition was filed in the year 2014 by petitioner.

As far as respondent No. 1 is concerned she has given a satisfactory explanation qua the circumstances under which sale deed was registered by her. It is apparent from vernacular of sale deed that registry Clerk had made an entry of “no stay” on the sale deed proposed to be registered, and the basis of this entry, she acted in a *bona fide* manner to register the sale deed. It is not humanly possible for an officer to personally verify the details of each and every sale deed before registration. The said duty has been delegated to the Clerk concerned, who is required to be careful and diligent while perusing the revenue record as well as other documents. In this view of the matter, rule against respondent No. 1 stands this discharged as there is no willful default on her part.

Even otherwise, this court is of the opinion that no contempt is made out in the present case because there has to be a violation of interim order dated 22/12/2005 (P-1) whereby the property was attached by civil court. Admittedly, the execution application itself, in which the interim order was passed, was dismissed in default vide order dated 23/02/2011 (R-1/A). Thus, what is required to be seen is that whether on the day when the sale deed was executed by respondent No. 2, interim order dated 22/12/2005 was in existence or not. As per the provisions of Order 21 Rule 57 of CPC,

any property which has been attached in execution of a decree and the court for any reason passes an order dismissing the execution application itself, the court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue and the date on which such attachment shall cease. Sub Rule (2) of Rule 57 further provides that if the court omits to give such directions, the attachment shall be deemed to have been ceased. Meaning thereby, there has to be a categoric order by the executing court regarding continuance of attachment order, if any. In the present case, it is not in dispute that while dismissing the execution application on 23.02.2011 (R-1/A) no such order was passed. In this view of the matter, this court has no hesitation to hold that no order of attachment was in existence as on the date when the sale deed was executed by respondent No. 2. This view is further fortified from the judgement passed by Hon'ble Supreme Court in **Indira Devi Arya Vs Bajrang Lal Khaitan** cited as 2001(1) PLJR (SC) 134.

In view of the above, no contempt is made out and the rule is discharged against all the respondents and accordingly the present contempt petition is hereby dismissed.

(JASWANT SINGH)
JUDGE

July 17th, 2018
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No