IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6119 of 2009(O&M)
Date of Decision-08.01.2018

M/s Raj Iron Foundry & Engineering Works and others
... Petitioners

Versus

Bank of India and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjiv Gupta, Advocate and
Mr. C.B. Goel, Advocate
for the petitioners.

None for respondent No.1.

Ms. Gurdeep Kaur, Advocate for
Mr. Sandeep Sharma, Advocate
for respondent No.2.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Alok Jain, Advocate
for the applicants (in CM-21377-79-CII-2013).

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<u>RAJ MOHAN SINGH, J.</u>

[1]. This revision petition has been preferred by the petitioners against the order dated 04.04.2006 passed by Additional District Judge, Sonepat vide which order dated 17.01.2006 passed by Civil Judge (Senior Division), Sonepat, dismissing the objections filed by the petitioners was upheld.

[2]. Civil Suit No.702 dated 02.12.1983 was filed by respondent No.1/decree holder for recovery of Rs.61,843.20. Petitioner No.1 is a proprietorship firm who took loan from respondent No.1/Bank after mortgaging the suit land as security

for repayment of the loan. Loan was not repaid as per terms and conditions of the loan. The suit was decreed vide judgment and decree dated 09.06.1987 along with cost. In execution of the decree, property of the firm was put to auction and was sold for a consideration of Rs.2,80,000/- by the process of the Court. Objections were filed under Order 21 Rule 90 read with Section 47 and 151 CPC on the ground of irregularity and fraud as the property did not exclusively belong to objector Rajender Parshad. The property was worth more than Rs.40,00,000/- and was sold at a meager amount of Rs.2,80,000/- in collusion with officials of Bank/decree holder and auction purchaser. Mandatory provisions of Order 21 Rule 66 CPC were not complied with, nor the judgment debtor was served with notice under Order 21 Rule 66 CPC. The execution was filed on 25.07.1992. Ram Dhan principal judgment debtor died on 06.03.1989. On 02.11.1993, report was received by the executing Court regarding the death of Ram Dhan. Death certificate of Ram Dhan was tendered by Rajender Parshad son of Ram Dhan through whom petitioner No.1 has been impleaded. On 20.11.1993, executing Court ordered for issuance of warrant of attachment. On 20.11.1993, following order was passed:-

> *"Present: Counsel for decree holder.*
>
> *List of property filed by DH. Now warrant of attachment be issued for 05.02.1994 on previous PF and old MF etc.*

Sd/-
SJIC, Sonepat,
20.11.1993."

[3]. Attachment was effected and notice under Order 21 Rule 66 CPC was ordered to be issued to the judgment debtor for 23.04.1994 on filing application and PF etc. vide order dated 05.03.1994. After the order dated 20.11.1993, Bank/decree holder filed an application, showing the value of the land and building as Rs.10,00,000/- along with affidavit of Branch Manager. A notice under Order 21 Rule 66 CPC was allegedly issued and was allegedly served upon the judgment debtor and thereafter, auction was fixed for 27.05.1996. The auction was held on 07.06.1996 for an amount of Rs.2,80,000/-. The sale was confirmed on 14.09.1996. The objections filed by the judgment debtors/objectors under Order 21 Rule 90 read with Section 47 and 151 CPC were dismissed by the executing Court vide order dated 17.01.2006 by holding that in the execution filed by the decree holder, Shri I.S. Saroha, Advocate appeared on behalf of the judgment debtor. The aforesaid fact was established from the orders dated 02.01.1993 and 27.09.1995. When the judgment debtor did not deposit the decreetal amount, the mortgaged property was put to auction. Warrant of attachment was issued on 20.11.1993 and auction was done on 07.06.1996. The auction was confirmed on 14.09.1996. Sale certificate was issued to respondent No.2 under Order 21 Rule 94 CPC on 19.03.1997.

[4]. As per Article 127 of the Limitation Act, the time prescribed for filing application to set aside a sale in execution of a decree including any application by the judgment debtor is 60 days from the date of sale. Earlier the limitation was of 30 days, however, vide Amendment Act No.104 of 1976, the amended provision was enforced w.e.f 01.02.1977. Executing Court held that the objections were hopelessly time barred as the judgment debtor had already appeared before the executing Court through Shri I.S. Saroha, Advocate and the property was sold thereafter. The objections were filed after a period of one year and five months and therefore, the objections were held to be hopelessly time barred. Order dated 17.01.2006 was upheld by the Lower Appellate Court vide judgment dated 04.04.2006.

[5]. I have heard learned counsel for the parties.

[6]. Learned counsel for the petitioners submitted that no notice under Order 21 Rule 66 CPC was ever issued to the judgment debtor and property was never attached as per requirement under Order 21 Rule 54 CPC. There was non-compliance of Order 21 Rule 54 CPC as no notice was issued to the judgment debtor to assist the Court for fixing the date in what manner the property was to be sold. The value of the property as per statement of Architect Shri B.P. Singh (OW 3) was about Rs.40,00,000/-, whereas the value of the property was claimed by the Bank to be Rs.10,00,000/- only. Even the auction was held for

Rs.2,80,000/- without any basis. Learned counsel further submitted that mandatory provisions of Order 21 Rule 66 CPC were not complied with and the auction was held without notice to the judgment debtor. The date of auction was fixed for 27.05.1996 and the same was adjourned to 07.06.1996 without any order of the Court. No *munadi* was effected for the adjourned date as the *munadi* had already been done on 19.04.1996 for the date of auction as on 27.05.1996. No date and time was mentioned in the advertisement. Legal representative of Ram Dhan was not impleaded as party and the execution was filed against a dead person. Learned counsel also submitted that fraud has been committed from the very inception and the fraud has vitiated the entire proceedings. Learned counsel relied upon ***S.P. Changlevarya Naidu Vs. Jagan Nath, 1994(1) PLR 293 (SC)***.

[7]. Learned counsel further submitted that Shri I.S. Saroha, Advocate appeared on behalf of the judgment debtors. Order dated 02.01.1993 would show that Shri I.S. Saroha, Advocate appeared on behalf of judgment debtors No.1 to 4 as judgment debtor No.5 was stated to be dead. On 22.05.1993, none appeared on behalf of the judgment debtors and they were proceeded against *ex parte*. Thereafter, warrants of attachment were issued against the judgment debtors for 14.08.1993.

[8]. Learned counsel by referring to **M/s *Mahakal Automobiles Vs. Krishan Swaroop Sharma, 2008(3) RCR***

(Civil) 54 and ***S. Mariyappa (Dead) by LRs and others Vs. Siddappa and another, 2005(10) SCC 235*** contended that Court was obligated to sell the proportionate property to answer the claim instead of putting the entire property to sale. No reserve price was mentioned and no publication was done. Even LR of deceased Ram Dhan (judgment debtor) was not impleaded. The date of auction i.e. 27.05.1996 was changed to 07.06.1996 without any order of the Court and therefore, the entire proceedings were fraudulent. Reliance was placed on ***Satya Narain Bajoria Vs. Ram Narain Tibrewal, AIR 1999(SC) 1583*** and it was submitted that entire proceedings were vitiated as per ratio laid down in ***Desh Bandhu Gupta Vs. N.L. Anand, 1994(1) SCC 131***.

[9]. On the other hand, learned counsel for the respondents submitted that the suit was decreed on 09.06.1987 and since then, the petitioners/judgment debtors had played hide and seek with the Court. Once Shri I.S. Saroha, Advocate appeared on behalf of the judgment debtors on 02.01.1993, thereafter, judgment debtors cannot be allowed to plead no intimation in respect of pending execution. They very conveniently preferred to be proceeded against *ex parte* on 22.05.1993 and never filed any objections under Order 21 Rule 66 CPC even after conducting auction on 07.06.1996 and confirmation of sale on 14.09.1996. Judgment debtors/petitioners were required to file objections in terms of Article 127 of the

Limitation Act. The period of limitation even as per amended provision was 60 days from the date of sale. No such objections were filed by the judgment debtors. All the grounds on which reliance has been placed by the petitioners could have been agitated in the objections under Order 21 Rule 89/90 CPC.

[10]. Even if, for the sake of arguments, it is appreciated that Shri I.S. Saroha, Advocate appeared without any power of attorney on 02.01.1993 and thereafter, he did not appear on 22.05.1993. The filing of memorandum of appearance by Shri I.S. Saroha, Advocate on 02.01.1993 could have been treated to be an authority only for a date. Petitioners have not come forward to challenge the authority of Shri I.S. Saroha, Advocate on the basis of memorandum of appearance for the date i.e. 02.01.1993 at any point of time, nor any action was initiated against Shri I.S. Saroha, Advocate. Such ground could have been a ground for setting aside the *ex parte* proceedings dated 22.05.1993, but no such action was resorted to by the judgment debtors/petitioners. Petitioners cannot be allowed to deny the knowledge in respect of sale on 07.06.1996. Thereafter, petitioners were expected to act promptly in terms of filing objections under Order 21 Rule 89/90 CPC within stipulated period. Having not done so, the petitioners cannot be allowed to re-agitate the controversy from the stage of Order 21 Rule 54 CPC or from the stage of Order 21 Rule 66 CPC. Even the petitioners were having a remedy of filing objections under Order 21 Rule 89/90 CPC by depositing a sum

equal to 5 % of the purchase money. At that stage, in order to maintain the objections and for payment to the decree holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree holder. As per Order 21 Rule 90(3) CPC, no application to set aside a sale on the ground of irregularity or fraud shall be entertained upon any ground which the applicant/judgment debtors could have taken on or before the date on which the proclamation of sale was drawn up. The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under the aforesaid Rule.

[11]. Having considered the controversy in the light of aforesaid facts, I am of the view that the grounds on which the impugned orders have been assailed in the revision petition are not attracted as the petitioners/judgment debtors had the knowledge of intended sale w.e.f 02.01.1993 when Shri I.S. Saroha, Advocate appeared on behalf of judgment debtors No.1 to 4 by filing memorandum of appearance. Even if, said Advocate was not having any power of attorney for subsequent appearance, the appearance of the Advocate on 02.01.1993 was never assailed by the petitioners/judgment debtors at any point of time. Subsequent *ex parte* proceedings could have been set aside in accordance with law on the basis of alleged

incompetence of Shri I.S. Saroha, Advocate to represent the judgment debtors in execution. That exercise has not been taken by the judgment debtors at any point of time even after acquiring knowledge of the auction and confirmation of sale. The filing of objections under Order 21 Rule 90 CPC on the ground of irregularity and fraud is not competent at this juncture, particularly when the objections are hopelessly time barred.

[12]. As per record of the case, civil suit was filed on 02.12.1983. The suit was decreed on 09.06.1987. The execution was filed on 25.07.1992. The auction was held on 07.06.1996. The sale was confirmed on 14.09.1996. Objections were filed on 19.02.1998 as per the date of institution depicted on the judgment dated 17.01.2006. The filing of objections on 19.02.1998 from the date of auction and even from the date of confirmation of sale was beyond the prescribed period in terms of Article 127 of the Limitation Act. No prayer was made for condonation of delay in accordance with law. Petitioners filed the present revision petition in July 2006. Thereafter, it was re-filed after a period of three years. During the intervening period, respondent No.2 vide sale deed dated 09.05.2008 transferred the property in favour of M/s Swastik Diagnostics & Equipments Pvt. Ltd., 102 Ambar Tower Commercial Complex, Azadpur, Delhi. The aforesaid subsequent purchaser has also filed CM No.21378-CII of 2013 under Order 22 Rule 10 read with Order 1 Rule 10 and Section 151 CPC for substitution in place of respondent No.2 being a *bona*

fide/subsequent purchaser or to be impleaded as respondent No.5 in the revision petition. The subsequent purchaser also filed CM No.21379-CII of 2013 for dismissal of the revision petition on the question of delay of more than three years on the ground that original revision petition was filed on 05.07.2006. The Registry took certain objections on 17.07.2006. Re-filing was done along with application for condonation of delay in re-filing, but the same was again returned to the learned counsel for the petitioners on 29.09.2006. Thereafter, for long three years, nothing was done and finally revision petition was re-filed on 24.08.2009 and the same was returned on 04.09.2009. The same was again re-filed on 15.09.2009 and the same was listed for the first time on 10.12.2009 when notice of motion was issued. During the intervening period, the subsequent purchaser had purchased the property in a *bona fide* manner in the year 2008. On 29.05.2014, High Court dismissed the revision petition for want of *bana fides* in filing the revision petition in 2006 and re-filing the revision petition after the period of three years. However, the said order was recalled on 19.12.2014. Reply to the application i.e CM No.21378-CII of 2013 was filed by the petitioners on 06.12.2013.

[13]. In view of attending facts and circumstances of the case, subsequent purchaser is entitled to be brought on record as respondent No.5. Therefore, CM No.21378-CII of 2013 is allowed. M/s Swastik Diagnostics & Equipments Pvt. Ltd., 102

Ambar Tower Commercial Complex, Azadpur, Delhi is ordered to be impleaded as respondent No.5.

[14]. For the reasons recorded hereinabove, I do not find any justification to interfere in the impugned orders passed by the Courts below. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

08.01.2018
Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No