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

**Civil Revision No.6190 of 2015
Date of Decision: 19.12.2018**

Narinder Singh

.....Petitioner

Vs

Jugraj Singh and another

....Respondents

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

Present: Mr. ADS Jattana, Advocate
for the petitioner.

None for Respondent No.1.

Mr. Jagjit Singh, Respondent No.2 in-person.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 04.08.2015 passed by the Civil Judge (Sr. Divn.) Tarn Taran in execution petition.

[2]. Brief facts are that the petitioner is the auction-purchaser, who gave highest bid in the auction. Civil Suit titled '*Jagjit Singh vs. Jugraj Singh*' for recovery was decreed ex parte vide judgment and decree dated 08.03.2010 passed by the Civil Judge (Sr. Divn.) Tarn Taran. The decree was passed for recovery of Rs.6,20,000/- on the basis of pronote Ex.P-1 and receipt Ex.P-2 dated 16.05.2007. Plaintiff was awarded

pendente lite interest @ 12% per annum from the date of filing of the suit till passing of the decree and future interest @ 6% per annum from the date of passing of decree till final realization of the amount.

[3]. In the execution of the decree, the property was put to auction after its attachment. Court notice was issued on 02.03.2013 and announcement at the spot was done on 16.03.2013. Auction was to be conducted on 30.03.2013 and report was to be submitted on 20.04.2013 as per detail of the property which was to be attached by Patwari Circle Marhana, Tehsil Patti vide Rapat No.432 dated 29.06.2010. The said property was to be auctioned and report was to be sent to the executing Court as per order dated 27.02.2013 passed by the Civil Judge (Sr. Divn.) Tarn Taran.

[4]. Before auction of the property, munadi was done in the village in accordance with the Rule and copy of summon was also pasted at the spot after making announcement and the same was served upon the judgment-debtor. Petitioner was found to be highest bidder, who gave bid for Rs.11,72,840/-. Auctioneer made report to that effect. Bid of the petitioner was accepted and 25% of the amount was deposited by the petitioner i.e. Rs.2,93,210/- on 12.04.2013. The remaining amount of Rs.8,79,630/- was to be deposited thereafter, for

which plaintiff filed a treasury challan/form PTR-16 Rule 107 of PTR Volume 1.

[5]. Petitioner had already deposited an amount to the extent of 25% of the bid amount and thereafter bidding process was finalized and the petitioner was willing to deposit remaining amount to the extent of 75%. The Tehsildar, Tarn Taran made report in respect of auction and submitted the same to the executing Court on 17.04.2013. However, the interlocutory order dated 17.04.2013 is not available on record. Petitioner also submitted the application to deposit the remaining balance amount of auction i.e. Rs.8,79,630/- on 20.04.2013. The said application is also not traceable on record.

[6]. The family of respondent No.1/judgment-debtor filed objections under Order 21 Rule 58/59 CPC on the ground that since the land had been transferred in the name of two sons namely Harpreet Singh and Lovepreet Singh, the same could not be auctioned. The case was adjourned on number of times on the objections filed by the objectors and for orders to deposit the remaining bid amount to the extent of 75%.

[7]. On 21.08.2014, the objections were dismissed, but still the executing Court again fixed the date for auction. Petitioner again filed an application dated 12.12.2014 before the executing Court to the effect that the auction process had already been

completed and report had been submitted to that effect. Petitioner had already deposited 25% of the bid amount, therefore, the order dated 21.08.2014 was required to be corrected.

[8]. The executing Court observed that since under Order 21 Rule 85 CPC, the purchaser has to deposit the money within the period of 15 days from the date of sale, therefore, the application filed by the petitioner was dismissed vide the impugned order. That is how the present revision petition came to be filed before this Court.

[9]. Learned counsel for the petitioner submitted that the petitioner had earlier made an application for deposit of the remaining bid amount to the extent of 75% along with treasury challan which was to be countersigned by the executing Court so that the petitioner could deposit the entire money. No note with regard to the said application was taken by the executing Court. The treasury challan duly filled by the petitioner was not countersigned by the executing Court so as to facilitate the petitioner to deposit the remaining bid amount to the extent of 75%. The objections filed by the objectors had already been decided on 21.08.2014 and during such time, the process remained stand still including the application filed by the petitioner and the treasury challan not being countersigned by

the executing Court. Even the application filed by the petitioner to deposit the remaining bid amount has not been traced on record.

[10]. Learned counsel further submitted that petitioner remained ready and willing throughout the intervening period to deposit the entire sale consideration as 25% of the bid amount had already been deposited by him and deposit of balance amount to the tune of 75%, the treasury challan duly filled by the petitioner which was required to be countersigned by the executing Court. Even specific application to deposit the amount in question was filed before the executing Court, however the Court kept the issue pending on the objections filed by the objectors and ultimately decided the same only on 21.08.2014.

[11]. I have considered the submissions made by learned counsel for the petitioner and also heard respondent No.2, who is present in-person.

[12]. At the time of hearing on 18.09.2015, readiness on behalf of the petitioner to pay remaining bid amount to the tune of 75% on 20.04.2013, but the challan was not signed by the Court was taken cognizance of. The original application along with original documents were requisitioned by this Court, thereafter notice of motion was issued on 11.02.2016 by way of

passing the following order:-

“Learned counsel for the petitioner, while assailing the order dated 4.8.2015, passed by learned Civil Judge (Senior Division), Tarn Taran, submitted that 25% of the auction amount was deposited after the auction proceedings and petitioner was willing to deposit the remaining 75%. Petitioner has moved an application for deposit of balance 75% amount of the bid money but that application is not traceable and objection petition was dismissed and the said order is liable to be set aside.

Notice of motion for 1.4.2016.

Meanwhile, sale of the property shall not be confirmed by the Court below.”

[13]. The service was effected upon the respondents. Respondent No.1 did not appear despite service. Respondent No.2 appeared in person. Vide order dated 05.12.2018, petitioner was directed to submit details of documents which are available on record having endorsement of the Court and the documents are not having any endorsement of the Court. It was also pointed out whether the application for deposit of 75% of the bid amount was received in Court under endorsement of the Court and what was the follow up action taken by the executing Court.

[14]. In compliance of the aforesaid order, learned counsel for the petitioner has placed on record the list of documents which were endorsed/not endorsed by the executing Court.

[15]. Respondent No.2 in-person very candidly stated that he

has no objection in case petitioner deposits the remaining bid amount to tune of 75% with interest @ 9% per annum from the date of auction till date.

[16]. Keeping in view the peculiar facts and circumstances of the case wherein the treasury challan duly filled and submitted by the petitioner was not countersigned by the executing Court at the relevant time and even the application filed by the petitioner to deposit the remaining amount has not been traced on record. The documents viz. warrant of auction, auction process and proceedings, treasury challan, auction report, objections and application for correction of zimni orders are available on record, but the documents except warrant of auction and objections have not been endorsed by the executing Court. Merely because of technical flaw as crept in, the entire process cannot be nullified as the auction was held after proper compliance of the procedure and the petitioner was the highest bidder. Petitioner cannot be deprived of his status being that of highest bidder, who had deposited 25% of the bid amount at the relevant stage and for remaining amount, he had duly filed the treasury challan and also moved the application to deposit the remaining amount in accordance with law.

[18]. In view of consensus arrived at between the petitioner and respondent No.2 and since there is no opposition to the

aforesaid consensus by the decree-holder, I deem it appropriate to allow deposit of remaining bid amount of 75% along with interest @ 9% per annum from the date of auction till date. The present revision is allowed. Impugned order dated 04.08.2015 passed by the Civil Judge (Sr. Divn.) Tarn Taran is accordingly set aside. Normal consequences to follow.

December 19, 2018

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No