IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 24.5.2018

CR No. 7181 of 2017 (O/M)

Amarjit Singh Toor and another .... Petitioners

Versus

Malerkotla Construction Co. Pvt. Ltd. and others .... Respondents

CR No. 8627 of 2017 (O/M)

Kuldeep Singh Bajwa ...... Petitioner

Versus

Malkerkotla Construction Co. Pvt. Ltd. and others .... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Amit Jhanji and Mr. Vaibhav Sahni, Advocates,
for petitioners in both cases.

Mr. Gulzar Mohammad and Mr. S.K. Singla, Advocates,
for respondent No. 1 in both cases.

Mr. Arun Jain, Senior Advocate, with,
Mr. Arnav Sood, Advocate,
for respondent No. 2 in both cases.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

By this single order, I will dispose of two connected abovenoted civil revisions, filed under Article 227 of Constitution of India against same order dated 28.8.2017, passed by learned Civil Judge (Junior Division), Kapurthala, vide which separate objections filed by petitioners were dismissed. Facts of the case are extracted from Civil Revision No. 7181 of 2017.

The decreeholder-respondent, namely, Malerkotla Construction Co. Pvt. Ltd. filed a suit for recovery to the tune of Rs. 1,51, 37,067/- against Judgment Debtor-M/s Grand Multiplex Projects Ltd., NH-1, Jalandhar, Phagwara Highway, Phagwara, through its Managing Director and others. In the said suit, defendants No. 1 to 3 were proceeded against ex parte. However, remaining defendants appeared. Ultimately, learned Civil Judge (Junior Division), Jalandhar, passed judgment and decree dated 11.3.2015, to the tune of Rs. 1,02,18,339/- with interest at the agreed rate from 31.3.2008 till actual payment is made. It was further directed that only defendant No. 1 Company being a private limited company is liable to pay said decretal amount and defendants No. 2 and 3 are not personally liable for same. While suit against defendants No. 4 and 5 stood dismissed as there was no privity of contract. Said judgment and decree has become final.

It comes out that in execution filed by decreeholder, the property of JD, measuring 20 kanals 5 marlas, situated at Jalandhar- Phagwara National Highway, was attached and was ordered to be put to sale on 19.9.2015. Sale warrants were accordingly issued for sale of said property for Rs. 5,27,61,237/-, being the amount of decree and costs dated 11.4.2015. As two of directors, namely, Tirath Singh and Prem Gandhi, filed objections before the date of sale, therefore, ultimately, after disposal of said objections, sale was effected on 29.2.2016. The property was sold to the highest bidder i.e. M/S Gill Sons Construction Limited, 314, Guru Teg Bahadur Nagar, Jalandhar, through Shri Rupinder Singh Gill for Rs. 5,29,00,000/-. The highest bidder deposited cheques total amounting to Rs. 1,32,25,000/- being 25 per cent of total consideration in Court and balance 75 per cent was deposited within time. Present three persons, namely, Amarjit Singh Toor, Shaminder Singh Dhaliwal and Kuldeep Singh Bajwa, who were shareholders in JD company, filed objections. Amarjit Singh Toor and Shaminder Singh Dhaliwal filed objections under Order XXI Rule 90 CPC, 1908, and Kuldeep Singh Bajwa filed objections under Section 47 CPC, 1908. Both objections were dismissed by separate orders of same date i.e. 28.8.2017. In the objections filed by Amarjit Singh Toor and Shaminder Singh Dhaliwal, sale was challenged primarily on following grounds :-

(i) no proper attachment or munadi was done before sale ;

(ii) no proper publication was done to invite sufficient number of bidders ;

(iii) property is located at National Highway No. 1 at Jalandhar Delhi Road and its value is Rs. 60 to 70 crores, but fraud has been committed by Revenue Officer and Auction Purchaser and property has been sold for paltry sum of Rs. 5,29,00,000/- ;

(iv) no proper procedure in the auction was followed ;

(v) no reserve minimum price was fixed ;

(vi) entire amount was not deposited within fifteen days.

Mr. Kuldeep Singh Bajwa, shareholder, in his separate objections claimed that he has filed a separate suit for declaration in the Civil Courts at Jalandhar alongwith a separate action under the Company Law Board. There are no findings of trial Court as to the rate of interest and no interest was agreed to be paid.

After hearing objectors and decreeholder, objections were dismissed. Auction purchasers were not made party in objection petitions.

I have heard the learned senior/counsel for parties and have also carefully gone through the file and records.

The learned counsel for objectors has not denied that balance auction money was deposited within time. Therefore, said objection is not maintainable. The objections have been pressed mainly on the ground that as per evaluation report (Annexure-P-19), its value is Rs. 35,10,44,152/- crores and that fraud was committed and property was sold at Rs. 5,29,00,000/-. No reserve minimum price was fixed. No proper publication was done.

Regarding their right to challenge sale under Order XXI Rule 90 CPC, 1908, reliance has been placed upon authority of High Court of Calcutta in *Starlight Real Estate (ASCOT) Mauritius Limited and Ors. Versus Jagrati Trade Service Private Limited and Ors.*, [2016] 195 CompCas 434 (Cal) and authority of High Court of Bombay in *Darius Rutton Kavasmaneck Versus Gharda Chemicals Limited and Ors.*, 2014 (4) BombCR 141 and has pressed that on account of principle of derivative action, present objectors being shareholders and having interest in property of JD company have right to file objections.

Reliance is also placed on Order XXI Rule 90 CPC, wherein any person whose interests are affected by sale may apply to Court for setting aside sale on the ground of a material irregularity or fraud in publishing or conducting the same.

So far as authority of High Court of Calcutta in *Starlight Real*

Estate (ASCOT) Mauritius Limited and Ors. Versus Jagrati Trade Service Private Limited and Ors., [2016] 195 CompCas 434 (Cal) and authority of High Court of Bombay in *Darius Rutton Kavasmaneck Versus Gharda Chemicals Limited and Ors.*, 2014 (4) BombCR 141, are concerned, these are regarding award challenged on behalf of company and an application to become party.

In present case, it comes out that JD company, which is a separate legal entity then its shareholders, was party in original suit. Suit was decreed ex parte. Two of its directors, namely, Tirath Singh and Prem Gandhi, filed objections before Executing Court before sale of property, which were dismissed. Therefore, now company cannot come through three of its shareholders to file fresh objections on same or similar grounds. As per list of shareholders, there were 31 shareholders in company and now three of shareholders of company have come forward. If same is permitted, then other 28 shareholders will come one by one, and will raise same and similar objections, so as to frustrate execution for indefinite period. Therefore, I am of the view that once objections of directors of company have been dismissed, shareholders cannot come on behalf of company or as an independent person to file same or similar objections. The property is 20 kanals 5 marlas. Evaluation report dated 25.11.2016 (Annexure-P-19) is from a private valuer who has taken into consideration part construction raised on property. However, he has stated that rate of land is Rs. 6 lacs per marla. Therefore, value of land is Rs. 24,30,00,000/-.

I am of the view that this is one sided evaluation. When directors file objections, they could have filed all possible objections. If evaluation is accepted, that would mean that value of land per acre is around

Rs. 9,00,00,000/-. It is to be noted that now there is recession in the real estate market. Buyers are not available. In proceedings before the Court, legal money has to be tendered which create further difficulty. Evaluation of private valuer cannot be taken as a gospel truth. Only part structure is there which with passage of time might have been damaged.

The learned counsel for petitioners has further contended that in decree, interest was allowed as agreed. The learned counsel for petitioners has referred to agreement and has pressed that no interest was payable.

The contention of learned counsel for petitioners is controverted by opposite counsels stating that decree shows that interest was granted. Had there been no interest payable, Court would not have passed order that interest at agreed rate is allowed. In any case, I am of the view that calculation of total decretal amount is the job of Executing Court, for which proper objections could have been filed by JD company or its directors before Executing Court. Present objections are against sale only.

This Court is only to see as to whether sale is done in accordance with law ?

Further contention has been raised that no proper pubication was done and that fraud has been committed and land has been sold at paltry sum of Rs. 5,29,00,000/-. In objections, objectors are saying that value of land is given around Rs. 24 crores and with structure, it is about Rs. 35 crores. Therefore, merely on the ground of evaluation of land, it cannot be said that any fraud was committed. Fraud is to be strictly proved by objectors. In this case, when sale warrants were first issued, two of directors filed objections which were dismissed. Thereafter, Tehsildar carried out auction and it was sold to highest bidder for Rs. 5,29,00,000/-.

Sale is of 2 ½ acres of land at Rs. 5,29,00,000/- when there is crunch in real estate market and when cash is not available, particularly with legal money. Therefore, it cannot be said that any fraud was committed or that land was sold at extremely low price. Share of present petitioners is stated to be 10 to 12 per cent. In present case, two objectors filed objections under Order XXI Rule 90 CPC, 1908 and one objector filed objections under Section 47 CPC, 1908. Sole purpose of filing objections is to frustrate execution of decree.

In present case, none of objectors ever offered that he is willing to pay decretal amount, nor same was ever deposited before Court.

Order 21 Rule 89 CPC, 1908, provides as under :-

> '89. Application to set aside sale on deposit.- (1) Where immovable property has been sold in execution of a decree, [any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person,] may apply to have the sale set aside on his depositing in Court, -
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> (a) for payment to the purchase, a sum equal to five per cent of the purchase money, and
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> (b) 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.
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> (2) Where a person applies under Rule 90 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an

application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.'

Since auction amount with 5 per cent has not been deposited, therefore, sale cannot be set aside under Order XXI Rule 89 CPC, 1908. Even under Order XXI Rule 90 CPC, 1908, sale cannot be set aside on the ground of material irregularity or fraud in publishing or conducting it, unless it resulted in substantial injury to party. In present case, JD company and its directors have already tried their luck before Executing Court. Now, on behalf of two sets of shareholders, it cannot be said that company has suffered substantial injury. It is to be further noted that Punjab Amendment was made in provision of Order XXI Rule 90 CPC, 1908, which is as under :-

' Provided further that no sale shall be set aside on any ground which the applicant could have put forward before the sale was conducted.'

Therefore, as per Punjab Amendment, sale cannot be set aside on the ground which could have been put forward before sale was conducted. In this case, before the sale was conducted, two directors of JD company moved Executing Court and failed to get any relief. Now, after sale has been conducted, three of the shareholders cannot come forward to raise objections about sale. These objections are also hit by Punjab Amendment to Order XXI Rule 90 CPC, 1908, reproduced above.

The learned senior counsel appearing for respondent No. 2 has relied upon authorities of this Court in *Devinder Singh Versus Hardev Singh* *and another*, 2004 (3) RCR (Civil) 157 and in *M/s Electro Strips Industries (P) Ltd. Versus Haryana Financial Corporation, Chandigarh*, 1981 CLJ (Civil) 536 to press that sale cannot be set aside under Order XXI Rule 92 CPC, 1908, on the ground which objectors could have taken on or before date of sale. It being so, sale cannot be set aside merely on objections of three of shareholders of JD company out of 31 shareholders, particularly when objections of directors of JD company have already been dismissed.

The learned counsel for petitioners has relied upon authorities of Hon'ble Supreme Court of India in *Sanjay Versus Anil S/O Shankarsa Pawar and others*, (2017) 14 Supreme Court Cases, 605, *Gajadhar Prasad and Ors. Versus Babu Bhakta Ratan and Ors.*, 1973 (5) UJ 775 and *Gurdev Singh Versus Narain Singh*, AIR 2008 SC 630, to press that when sale is for grossly inadequate price in absence of any proper evaluation, it can be set aside.

I am of the view that any objection regarding evaluation could be submitted when notice under Order XXI Rule 66 (2) CPC, 1908, was issued. JD company could submit their own value at that time to state that this should be reserve price of disputed property. No such action was taken by JD before sale was conducted. Merely on account of evaluation submitted by present objectors, sale cannot be set aside. Moreover, it is to be noted that when property is to put to auction, it being disputed property, could fetch about 1/3rd of actual price. Auction price may go further down in view of present circumstances wherein there is crunch in real estate market and there is shortage of cash flow. In Court, legal money has to be tendered. Therefore, it is very difficult to arrange for a sum of Rs. 5,29,00,000/- as legal money.

So far as structure on disputed property is concerned, it is half constructed structure and might be useless for buyer. Therefore, considering all facts and circumstances, auction of disputed property at Rs. 5,29,00,000/- cannot be called inadequate. It appears that JD company having failed through its directors to stop auction, have taken services of its shareholders, who one by one are coming and filing objections. Sole purpose is to delay execution of decree. Moreover, the learned senior counsel for respondent No. 2 has pointed out to provisions of Section 43 (1)(j) CPC, 1908, wherein in an order passed under Order XXI Rule 92 CPC, 1908, appeal lies and not the revision. In any case, since petitioners have invoked jurisdiction of this Court under Article 227 of Constitution of India, therefore, to put at rest the controversy, the matter has to be decided.

As such, there is no force in present revisions and both revisions stand dismissed. Since main cases have been dismissed, therefore, pending applications, if any, also stand disposed of.

(KULDIP SINGH)
JUDGE

24.5.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No