

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

**CR No.815 of 2016 (O&M)
Date of Decision:06.03.2018**

The Ludhiana Improvement Trust, Ludhiana

...Petitioner

Versus

Ujjagar Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mukesh Chand Berry, Advocate for the petitioner.
Mr.M.L.Sarin, Sr. Advocate with
Mr.Hemant Sarin, Advocate for respondent No.5.

ANIL KSHETARPAL, J.

Ludhiana Improvement Trust-Judgment debtor has filed this revision petition under Article 227 of the Constitution of India, challenging the order dated 10.11.2012 passed by the learned executing court, dismissing their objection petition, confirmed in the appeal by the learned first appellate court, vide order dated 14.9.2015.

Although, execution petition has remained pending before the executing court for quite long and the parties on earlier occasions had come up to the High Court and even went up to the Hon'ble Supreme Court, however, mere delay in disposal of the case should not come in the way of the court to do justice between the parties.

Few facts are required to be noticed. Ujjagar Singh and others were owners of 8 Kanals and 11 ½ marlas of land, which was acquired by Ludhiana Improvement Trust (for short 'Trust'). The Land Acquisition Tribunal constituted under the Town Improvement Act enhanced the

compensation vide judgment dated 21.10.1985. The first execution petition filed by Ujjagar Singh and others was dismissed as not fully satisfied on 21.9.1991. Second execution application dated 27.9.1991 was filed for recovery of amount of Rs.4,27,068.20 paisa along with future interest @9% from the date of application till the date of recovery. Prayer in the execution application is extracted as under:-

“It is, therefore, prayed an amount of Rs.4,27,068-20P along with future interest at the rate of 9% per annum from the date of application may be recovered from the judgment debtors through attachment of properties of judgment debtors for the payment to the decree holders.”

Learned executing court asked for report from the Clerk, attached to the Court. Although, the zimni orders (daily orders) passed by the courts are not clear, however, sincere effort is being made to reproduce the same as under:-

“Present: Sh.S.P.Singh Counsel for the DH.

“Report perused. It be registered warrant of attachment be issued on 30.11.1991 on deposit of PF and list of property.

Sd/-3.10.1991

Present: Sh.S.P.Singh Toor, Counsel for the DH.

Warrant of attachment not issued as PF and list of property not filed. The same be filed within two days. Warrant of attachment be issued for 22.02.1991 on deposit of PF and list of property within seven days.

Sd/-30.11.1991

Present: None.

Case taken up today as I will be on leave from 10.02.1992 to 24.02.1992. This case is adjourned to

25.04.1992 for issuance of warrant of attachment. Warrant of attachment be issued for the date fixed. The parties as well as their counsel be also informed accordingly.

Sd/-8.2.92

Present: Sh.S.P.Singh, Counsel for the DH.

Due to Lok Adalat, this case was adjourned to 23.05.1992 for filing the application under Order 21 Rule 66 CPC. Property of JD be attached.

Sd/-25.4.92

Present: Sh.S.P.Singh Sood, Counsel for the DH.

Notice under Order 21 Rule 66 CPC duly served but nobody has put in appearance on behalf of the JD. Now warrants of sale be issued as per following dates on depositing the necessary.

<i>Charges</i>	<i>:</i>	<i>30.05.1992</i>
<i>List of Notice</i>	<i>:</i>	<i>13.06.1992</i>
<i>Munadi</i>	<i>:</i>	<i>17.07.1992</i>
<i>Auction</i>	<i>:</i>	<i>12.08.1992</i>
<i>Report</i>	<i>:</i>	<i>24.08.1992</i>

Sd/-25/5/92

Present: Sh.Ahsok Mittal, Counsel for the DH.

Sale has been duly effected as reported by Reader. The auction purchaser has already deposited 1/4th of the sale auction amounting to Rs.5,66,250/-. Now the auction purchaser has filed an application to deposit 3/4th of the sale consideration and to come up on 19.09.1992 for further proceedings.

Sd/-24.8.92

Present: Counsel for the DH.

To come up for consideration on 26.09.1992 as prayed.

Sd/-19.9.92

Present: Counsel for the DH.

*Sh.P.K.Jain, Advocate for the J.D./Objector
Sh.R.K.Talwar, Advocate counsel for the Auction Purchaser*

Application for setting aside the attachment and auction has been moved by JD/Objectors. Copy given. To come up on 30.09.1992 for reply and consideration.

Sd/-

It will be significant to note here that perusal of the file proves that initially the decree holder filed an application dated 16.11.1991 for attachment of Bank Account bearing No.483 in Oriental Bank of Commerce, Chhora Bajar, Ludhiana belonging to the petitioner-Trust, however, later on, another application was filed on 21.3.1992, requesting the court to attach the following property:-

“Plot/Land bearing Khewat No.867, Khatauni No.971, Khasra No.272, measuring 7K-18M as entered in the Jamabadi for the year 1988-89, situated at Jawaddi No.160, Tehsil & District, Ludhiana (copy of Jamabandi attached) which is in the name of LUDHIANA IMPROVEMENT TRUST, LUDHIANA. and is required to be attached for realisation of the amount.”

Application under Order 21 Rule 66 of Code of Civil Procedure ('CPC' for short) read with Section 151 CPC for proclamation of sale of the property situated at Pakhowal Road, Near Railway Crossing, Ludhiana, shown red in the plan attached and comprised of Khewat No.867, Khatauni No.971 Khasra No.272, as per Jamabandi for the year 1988-89, village Jabaddi, Hadbast No.160, Tehsil and Distt. Ludhiana was filed.

Decree holder filed an application dated 29.4.1992, requesting the court to issue proclamation of the sale of the property. The heading of the application reads as under:-

“Application under order 21 rule 66 CPC read with

Section 151 CPC for proclamation of sale of property situated at Pakhowal Road, Near Railway Crossing, Ludhiana, shown red in the plan attached and comprised of Khewat No.867, Khatauni No.971 Khasra No.272, as per Jamabandi for the year 88-89, village Jabaddi, Hadbast No.160, Tehsil and Distt. Ludhiana.”

In para 3 of the application, it was mentioned that tentative cost of the property is about 8 lacs. As per the finding of the executing court the total area of land comprised in Khasra No.272 is 7 kanals and 18 marlas equivalent to 4700 square yards (approximately). The property which was sold by way of auction on 12.8.1992 was approximately 7000 square yards comprised in Khasra Nos. 271 and 272. Petitioner filed an application on 26.9.1992 for setting aside the auction and attachment of the property.

Both the courts have found that notice for service on the petitioner was handed over to the Process Server on 12.5.1992, which is alleged to have been served on one of the employees of the Trust.

The property was sold for a sum of Rs.22.65 lakh. The learned executing court has also found that a report was submitted to the executing court, informing that the property attached is in fact constructed building having godown, store and residence of the Chowkidar.

As noticed earlier, the application for setting aside ex parte court auction was dismissed by the learned executing court and affirmed in the appeal. However, this Court and the Hon'ble Supreme Court has sent back the case to the learned executing court for fresh decision.

The learned executing court has again dismissed the application even after noticing glaring illegalities, which have been brushed aside, on

the ground that at this stage when the sale has been confirmed and the amount has been deposited such illegalities cannot be permitted to be raised by the judgment debtor. Certain illegalities noticed by the court are;

(i) The property, which has been auctioned, is comprised in Khasra Nos.271 and 272, whereas as per list of the property given by the decree holder for attachment was with respect to land comprised in Khasra No.272. The courts have ignored this objection on the ground that when application under Order 21 Rule 66 of the Code of Civil Procedure ('CPC' for short) was filed, the lay out plan was attached and, therefore, the attachment was as per the lay out plan and not by identifying the property through Khasra Number;

(ii) Although, it was reported to the court that the property was having building as noticed in the auction report submitted by the court auctioner, however, the petitioner could not prove the alleged construction, as the petitioner-Trust only produced on file a lay out plan and blue print of some construction;

(iii) Although in the execution petition, the date of decree, i.e. 21.10.1985 was wrongly mentioned as 21.9.1991, however, this was only typographical mistake as 21.9.1991 was the date of dismissal of first execution petition;

(iv) Although the court sold the larger property for a sum of Rs.22.65 lakh against recovery of Rs.4,27,068.20 paisa, however, it is not proved on the file that the property sold in auction could be divided and sold in part;

(v) Attachment by way of proclamation and affixation at the spot amounts to constructive knowledge of the judgment debtor and it was incumbent on the judgment debtor to file objection under Order 21 Rule 58 CPC. Failure to do so amounts to waiving off the objections as well as right to object.

Courts have found that service of notice under Order 21 Rule

66 CPC is proved to have been effected on one of the employees namely

Malkit Kaur, however, she has not been produced in the court in support of application.

With these broad findings, the learned executing court dismissed the application filed by the petitioner-Trust. The first appeal preferred was also dismissed for similar reasons, vide order dated 14.9.2015.

At this stage, it shall be appropriate to notice certain provisions of Order 21, dealing with the execution of the decrees. Order 21 Rule 11 CPC deals with application to be filed for execution. Order 21 Rule 17 CPC lays down the procedure for dealing with the application for execution application. Order 21 Rule 17 CPC is extracted as under:-

“17. Procedure on receiving application for execution of decree-(1) On receiving an application for the execution of a decree as provided by Rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of Rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, (the Court shall allow) the defect to be remedied then and there or within a time to be fixed by it.

[(1-A) If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in clauses (g) and (h) of sub-rule (2) of Rule 11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so

provisionally decided.]

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.”

Proviso to Order 21 Rule 17 lays down that value of the property attached shall as nearly as may be correspond with the amount due under the decree.

Order 21 Rule 54 CPC provides for procedure to be followed for attaching the property, which is extracted as under:-

54. Attachment of immovable property-*(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.*

[(1-A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for setting the terms of the proclamation of sale.]

(2) The order shall be proclaimed at some place

on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate [and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village].

PUNJAB, HARYANA AND CHANDIGARH.- (1) *At the end of sub-rule (2), substitute a semi-colon for full stop and add:*

“Where the property is land situated in a Cantonment, copies of the order shall also be forwarded to the Cantonment Board and to the Military Estates Office in whose area that Cantonment is situated.”

(2) Add the following as sub-rule (3):

“(3) The order shall take effect, as against persons claiming under gratuitous transfer from the judgment-debtor, from the date of the order of attachment, and as against others from the time they had knowledge of the passing of the order of attachment or from the date of the proclamation, whichever is earlier.” 7.4.1932).”

Order 21 Rules 66 and 67 CPC deals with proclamation of sale by public auction, which is extracted as under:-

66. Proclamation of sales by public auction.- (1) *Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause a proclamation of the intended sale to be made in the language of such court.*

(2) *Such proclamation shall be drawn up after notice to the decree holder and the judgment debtor and shall state the time and place of sale, and specify as fairly and accurately as*

possible—

- (a) the property to be sold, or, where a part of the property would be sufficient to satisfy the decree, such part;*
- (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the government;*
- (C) any incumbrance to which the property is liable;*
- (d) the amount for the recovery of which the sale is ordered;*
- and*
- (e) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property:*

Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment debtor by means of an Order under rule 54, it shall not be necessary to give notice under this rule to the judgment debtor unless the court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.

(3) Every application for an Order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the court may summon any person whom it thinks necessary to summon and may examine

him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

PUNJAB, HARYANA AND CHANDIGARH.- *Add the following words to clause (e) of sub-rule (2) of Rule 66:*

“Provided that it shall not be necessary for the Court itself to give its own estimate of the value of the property; but the proclamation shall include the estimate, if any, given by either or both of the parties.”

After sub-rule (2) of Rule 66, add the following as sub-rule (3), and re-number the existing sub-rule (3) and (4) as (4) and (5) respectively:-

“(3) Where the property to be sold is movable property which has been made over to a custodian under sub-clauses (a) or (c) of clause (1) of Rule 43 of this Order, the Court shall also issue a process by way of notice to the custodian, directing him to produce the property at the place of sale, at a time to be specified therein with a warning that if he fails to comply with the directions, he shall be liable to action under Section 145 of the C.P. Code.”

“67. Mode of making proclamation— *(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by Rule 54, sub-rule (2).*

(2) Where the Court so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.”

A careful reading of the aforesaid provisions would establish

that the executing court has to apply mind, while ordering attachment and sale of the property by way of public auction. As per proviso to Order 21 Rule 17 CPC, the court is required to attach only such property price which is corresponding with the amount due under the decree. Under Order 21 Rule 66 CPC before proclamation is drawn up and the Court is to apply its mind to the effect that whether the entire property should be sold or a part thereof would be sufficient to satisfy the decree.

A reading of the daily orders (zimni orders) which have been extracted above does not show that any stage either while passing an order of attachment under Order 21 Rule 17 CPC or even at the time of ordering issuance of proclamation for sale and auction of the property by way of a public auction of the property, the court ever applied its mind to the fact that the amount sought to be recovered is Rs.4,27,068.20. Still further, as per the list of property filed by the judgment debtor on 31.3.1992, the property sought to be attached was comprised in Khasra No.272. Even application under Order 21 Rule 66 CPC refers to property comprised in Khasra No.272, of course a lay out plan was attached. The court auctioneer brought to the notice of the court that in fact the land is not a vacant piece of land but is a constructed building. The executing court ignored these fact without applying its mind. A reading of the daily orders/zimni orders extracted above clearly proves that the court did not follow the procedure as required under Order 21 CPC.

At this stage, it would be significant to notice the objection of learned counsel for the auction purchaser that under Order 21 Rule 90 CPC, the application to set aside a sale cannot be entertained by the court on

mere procedural irregularity or on small defects in the publication of the auction notices or conduct of auction. The executing court and the first appellate court were much impressed by the provisions of Order 21 Rule 90 CPC and went on to hold that at this stage when the sale has been confirmed and the amount has been deposited, the court cannot set aside the sale on procedural lapses. Order 21 Rule 90 is extracted as under:-

“[90 . Application to set aside sale on ground of irregularity or fraud— (1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.—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 this rule.]”

On careful reading of the provisions extracted above, proves that the Order 21 Rule 90 CPC only deals with irregularity or fraud in publication or conduct of auction. Order 21 Rule 90 (2) CPC safeguards the rights of judgment debtor if the judgment debtor satisfies the court that

he has sustained substantial injury by reason of such irregularity or fraud. Under Order 21 Rule 90 CPC further puts embargo on the court to entertain an application for setting aside the sale upon any ground which applicant could have taken on or before the date on which proclamation of sale was drawn up.

Intention of the Legislature was to give some protection to the auction purchaser from setting aside of the court auctions. However, in the considered opinion of this Court, the intention of the Legislature was not to absolutely bar the jurisdiction of the court to examine the irregularities and illegalities committed by the executing court while attaching the property or while ordering the property to be put to auction. The courts have to maintain a balance between the rights of the judgment debtor and the auction purchaser. Scale cannot be allowed to be tilted in favour of auction purchaser.

The facts of the case clearly prove that the petitioner-Trust-a public authority managing the public property has not been dealt with fairly. The petitioner pointed out errors, omissions and irregularities in the attachment and the sale of the property. However, the courts below have brushed aside the same only on the ground that such illegalities are only procedural irregularities and, therefore, as per the provisions of Order 21 Rule 90 CPC application cannot be entertained at this stage.

Learned counsel for the petitioner-Improvement Trust has submitted that the executing court has ordered attachment and thereafter sale of the property without application of mind. The mandatory provisions of the Code of Civil Procedure have not been followed. He has further

submitted that the court auction is result of material illegality which has resulted into substantial injury to the petitioner. He has further pointed out that the executing court did not even notice that there was substantial difference between the property which was ordered to be attached and the property which has been sold. He has also drawn attention of the court to report of the court auctioner wherein it was reported to the Court that there was a building on the plot.

On the other hand, learned counsel for the auction purchaser has vehemently opposed the prayer and has submitted that in view of Order 21 Rule 90 (3) CPC the Improvement Trust cannot be heard at this stage. He submitted that the grounds on which the application has been moved were available to the petitioner before proclamation of sale was drawn up. He has further submitted that after the sale has been confirmed, no application thereafter can be entertained. Learned counsel for the respondent has relied upon a judgment passed by Hon'ble the Supreme Court in ***Dhirendra Nath Gorai and others Vs. Sudhir Chadra Ghosh and others, AIR 1964 SC 1300***. He has further referred to judgment passed by Hon'ble the Supreme Court in ***Saheb Khan Vs. Mohd. Yousufuddin and others, (2006) 4 SCC 476***. The judgment passed by Hon'ble the Supreme Court in ***Saheb Khan's case (supra)***, wherein it has been held that the safest rule to determine what is an irregularity and what is nullity is to see whether the party can waive the objection, if he can waive it, it amounts to an irregularity if he cannot, it is a nullity.

In the case of ***Dhirendra Nath (supra)***, Hon'ble the Supreme Court was dealing with the situation when there was non compliance of

Section 35 of Bengal Money Lenders Act. The Hon'ble Supreme Court arrived at a conclusion that non compliance does not render the sale a nullity. In **Saheb Khan's** case (supra), twin tests have been laid down, while considering the judgment of Hon'ble Supreme Court rendered in **Dhirendra Nath Gorai's** case (supra). It has been held that before the sale is set aside, two conditions must be satisfied (i) the sale was result of material irregularity or fraud (ii) it is established to the satisfaction of the court that material irregularity or fraud has resulted in substantial injury to the applicant.

Paras 13 and 14 of the aforesaid judgment rendered in **Saheb Khan's case (supra)** are extracted as under:-

“13. Therefore before the sale can be set aside merely establishing a material irregularity or fraud will not do. The applicant must go further and establish to the satisfaction of the Court that the material irregularity or fraud has resulted in substantial injury to the applicant. Conversely even if the applicant has suffered substantial injury by reason of the sale, this would not be sufficient to set the sale aside unless substantial injury has been occasioned by a material irregularity or fraud in publishing or conducting the sale. (See: Dhirendra Nath Gorai v. Sudhir Chandra Ghosh, Jaswantlal Natvarlal Thakkar v Sushilaben Manilal Dangarwala and Kadiyala Rama Rao v. Gutala Kahna Rao

14 A charge of fraud or material irregularity under Order 21 Rule 90 must be specifically made with sufficient particulars. Bald allegations would not do. The facts must be established which could reasonably sustain such a charge. In the case before us, no such particulars have been given by the respondent of the alleged collusion between the other respondents and the auction purchaser. There is also no

material irregularity in publishing or conducting the sale. There was sufficient compliance with the orders of Order 21 Rule 67(1) read with Order 21 Rule 54(2). No doubt, the trial court has said that the sale should be given wide publicity but that does not necessarily mean by publication in the newspapers. The provisions of Order 21 Rule 67 clearly provide if the sale is to be advertised in the local newspaper, there must be specific direction of Court to that effect. In the absence of such direction, the proclamation of sale has to be made under Order 21 Rule 67(1) "as nearly as may be in the manner prescribed by Rule 54, sub-rule(2)". Rule 54 sub-rule (2) provides for the method of publication of notice and reads as follows:-

54 (2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village."

Now this Court has to examine whether attachment and auction of the property was result of material irregularity which has caused substantial injury to the petitioner.

In the present case, Ludhiana Improvement Trust is a local body managing public property . Its property was auctioned for recovery of Rs.4,27,068/-. A look at the zimni orders, which have been extracted above, clearly shows that the executing court before ordering attachment or before drawing up sale proclamation did not even apply its mind. It is obligatory

for the executing court to apply its mind before ordering attachment of the immovable property in execution of recovery of money. Proviso to Order 21 Rule 17 CPC specifically provides that the property to the extent which is required for satisfaction of the decree is to be attached. The value of the property attached shall as nearly as possible correspond with the amount due under decree. A reading of the orders would show that the executing court did not even examine this aspect. The executing courts are not to act in a mechanical manner. The courts must be conscious of the fact that if a judgment debtor is to be deprived of his property, the court must apply its mind so that the minimum damage is to be done to the judgment debtor.

Still further, while noticing the facts, this Court has already noticed that the learned executing court did not even notice that the property being put to auction was not only comprised in Khasra No.272 but it was also comprised in Khasra No.271. Decree holder never disclosed to the court even while filing an application under Order 21 Rule 66 CPC that the land comprised in Khasra No.271 is also sought to be sold in public auction. The executing court has ignored this objection on the ground that a lay out plan was attached. A look at the lay out plan does not show that the court was ever apprised of that the land comprised in Khasra No.271 is sought to be put on public auction along with land comprised in Khasra No.272.

Still further, the executing court itself has noticed that the total area of land comprised in Khasra No.272 is 7 kanals and 18 marlas, which comes to 4700 square yards, whereas plot which has been sold measures 7000 square yards approximately. Further, against recovery of Rs.4,27,068/- the court proceeded to auction the property through public

auction and it fetched a price of Rs.22.65 lacs. The orders reproduced above does not show that the court ever applied its mind as to how much property is required to be sold for satisfaction of the decree. Further the executing court did not ever notice that the property sought to be sold is not a piece of land only as projected by the decree holder but there are constructed buildings. The court auctioneer after conducting the auction reported to the court that there are buildings constructed thereon. The executing court did not examine this aspect before ordering confirmation of the auction.

Now in these facts, if this Court applies the twin conditions precedent for setting aside the sale, it is proved that the sale of the property in dispute was conducted by way of public auction without any application of mind and without assessing as to how much property would be required to be sold for satisfaction of the decree. Petitioner has not been given opportunity in the present execution petition to pay the amount under the decree.

Further, prejudice to the petitioner-judgment debtor is established as property having constructed building on it and consist of a godown, a store and a servant quarter which has been sold without knowledge of the executing court. Different buildings constructed over an area of 7000 square yards which was sold for Rs.22.65 lakhs against execution of decree for a sum of Rs.4,27,068/-. Had the executing court applied its mind before ordering attachment and sale of attached property, sale of a small portion of the property would have satisfied the decree.

Public auction is always a desperate sale and do not fetch the normal market

price. Public auction is although the only method left with the court to satisfy the decree, however it does not always represent the correct market value.

Cumulatively, taking into consideration the aforesaid facts, this Court is of the considered view that the twin conditions as required stand fulfilled. The court auction is result of material irregularity resulting into substantial injury to the petitioner, a local body. Hence, while allowing the revision petition, the orders passed by the learned executing court confirmed in the appeal are set aside. This Court is conscious of the fact that the respondent-auction purchaser deposited the amount of Rs.22,65,000/- way back in the year 1992.

Keeping in view the aforesaid facts, the petitioner is directed to return the aforesaid amount along with interest @9% per annum from the date of deposit till the date of payment. The excess amount if any lying deposited with the court shall be liable to be adjusted against the payment due to the auction purchaser.

In view of the above, the revision petition is allowed. Pending application, if any, shall also stand disposed of.

06.03.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No