

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

CR No.937 of 2016 (O & M)  
Date of Decision:08.05.2018

Balbir Singh

...Petitioner

Versus

Rattan Singh and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Gagandeep Singh Sirphikhi, Advocate  
for the petitioner.

Mr. Ashwani Kumar Chopra, Senior Advocate with  
Ms. Palak Dev, Advocate  
for respondent No.1.

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**ANIL KSHETARPAL, J.**

Petitioner/auction-purchaser is in the revision petition against the order passed by the learned First Appellate Court setting aside the auction sale and remanding the case to the learned Executing Court.

A decree for recovery of Rs.4,00,000/- was passed against the judgment-debtor on account of damages for the murder. In the criminal case, judgment-debtor was convicted and was confined to jail. Civil Court decree was sought to be executed upon. A look at the daily orders passed by the learned Executing Court proves that the learned Executing Court without application of mind passed an order of attachment and thereafter sale of the property. Daily order, which is hand written and is difficult to read, are reproduced as under:-

*“Report of the execution clerk perused. Be registered.*

*Now warrants of attachment be issued for 26.05.1999 on*

*filing of list of property within 7 days.”*

Even while ordering sale of the property by way of public auction vide order dated 31.07.2004, the learned Executing Court does not appear to have applied its mind. The order dated 31.07.2004 is extracted as under:-

*“Heard. Counsel for the D.H. has filed an application u/o 21 rule 66 C.P.C. wherein he has submitted that property already attached is free from any incumbrance and is sufficient to realise the decretal amount. Thus, in view of submission of counsel for D.H. the present application is hereby allowed and now sale warrants be issued as per following schedule:*

- |                          |          |                   |
|--------------------------|----------|-------------------|
| <i>1. Notice</i>         | <i>:</i> | <i>20.8.2004</i>  |
| <i>2. Munadi at spot</i> | <i>:</i> | <i>10.9.2004</i>  |
| <i>3. Sale</i>           | <i>:</i> | <i>30.9.2004</i>  |
| <i>4. Report</i>         | <i>:</i> | <i>16.10.2004</i> |

*Sale warrants be issued on filing of P.F. and Munadi fee.”*

Learned counsel for the petitioner has submitted that the judgment-debtor while filing objections Annexure P-1 did not give any detailed reasons and sale of the property through the public auction was confirmed and, therefore, learned First Appellate Court committed an error in overlooking the provisions of the Code of Civil Procedure specially Order 21 Rule 90 CPC, wherein no application to set aside public auction can be entertained upon any ground which applicant could have taken on or

view of the aforesaid provision, the order under challenge is liable to be set aside. He has further submitted that it is not necessary for the Court to give its own valuation of the property to be auctioned and, therefore, also the order under challenge is erroneous.

On the other hand, learned senior counsel appearing for judgment-debtor has submitted that the judgment-debtor had filed detailed objections pointing out various illegalities. However, learned trial Court did not advert to the same. Learned counsel has drawn attention of the Court to the assertions made in the detailed objections filed whereas it has been pointed out that no notice as required under Order 21 Rule 66 was served on the judgment-debtor. The market value of the property is much more whereas in the Court auction, the property has been sold for ridiculously low amount. It has further been pointed out that there are various material irregularities in the conduct of auction.

This Court has examined this similar issues while deciding Civil Revision No.815 of 2016, after noticing various provisions of Order 21. This Court has concluded that Executing Court is required to apply its mind before ordering attachment of the property of the judgment-debtor. The zimini/daily orders passed by the learned Executing Court have been examined. None of the order passed by the learned Executing Court even remotely suggest that the learned Executing Court either before ordering attachment or even thereafter while drawing up procedure for auction of the property, ever applied its mind as to what extent the property is required to be sold to satisfy the decree. Order 21 Rule 17 of the Code of Civil Procedure provides that the property sought to be attached in execution of

under the decree.

Still further, Order 21 Rule 64 of the Code of Civil Procedure also envisages that the learned Executing Court must apply its mind and to arrive at a conclusion as to how much property shall be necessary to be sold to satisfy the decree.

In view of the aforesaid discussion and for the detailed reasons given in CR No.815 of 2016 decided on 06.03.2018, the order under challenge is upheld. Revision petition filed by the auction purchaser is dismissed. However, taking into consideration the fact that the auction of the property was held in the year 2004, judgment-debtor is made liable to pay 9% interest on the amount deposited by the Auction Purchaser from the date of deposit till the date, amount is refunded to him.

With the aforesaid modification, the revision petition filed by the petitioner is dismissed.

08.05.2018  
*sheetal*

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether Speaking/Reasoned: Yes/No  
Whether Reportable : Yes/No