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

ESA-8-2009 (O&M)
Date of decision: 01.03.2018

Bahadur Chand

…..Appellant

versus

Madan Lal and others

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Ravish Bansal, Advocate for the appellant
Mr.Chetan Mittal, Senior Advocate with
Mr.Kunal Mulwani, Advocate for respondent no.5

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J.

This is second appeal against the order passed in the execution proceedings by learned Civil Judge (Senior Division), Faridkot, vide which, objections filed by M/s Dashmesh Aartia Cotton Factory, Jaitu through its partner against the auction of the attached property as well as objections filed by JD No.2 Bahadur Chand dated 16.5.2007 under Order XX1 Rule 90 read with Section 151 CPC to set aside the sale dated 20.4.2007 were dismissed. Two appeals, one preferred by Manohar Lal and the other by Bahadur Chand were also dismissed by learned Additional District Judge, Moga vide order dated 18.10.2008. The present appeal has been filed only by Bahadur Chand impugning the orders of the Courts below, vide which, his objections under Order XXI Rule 90 CPC were dismissed.

I have heard learned counsel for the appellant, learned counsel for respondent no.5 auction purchaser and have also carefully gone through the file.

The short background of the case is that in a suit filed by Madan Lal Goyal, decree holder plaintiff against firm Bahadur Chand Dina Nath Commission Agents through its partners Bahadur Chand, Dina Nath and Manohar Lal, a decree for recovery of Rs.4,42,427/- was passed. In the execution proceedings, the decree holder supplied the list of the properties, which were two shops, land measuring 25 kanals 16 marlas and land measuring 17 kanals 14 marlas belonging to M/s Dashmesh Aartia Cotton Factory, Jaitu, in which the said partners of firm Bahadur Chand Dina Nath had a share. The shops were stated to have already been sold. Therefore, the Court proceeded to attach the property of M/s Dashmesh Aartia Cotton Factory, Jaitu. Dina Nath, Bahadur Chand and Manohar Lal JDs were amongst the six partners of said M/s Dashmesh Aartia Cotton Factory, Jaitu. It comes out from the rapat no.711 dated 10.7.2006, Jaito III that out of said 19 kanals 9 marlas, the land measuring 5 kanals 7 marlas was attached for Rs.4,42,427/- along with interest @ 12% per annum. All the said three persons, namely, Dina Nath, Bahadur Chand and Manohar Lal had jointly 25.5% share in the said firm. The said property was then put to sale and it was sold for Rs.10,10,000/- on 20.04.2007 in favour of auction purchaser – respondent no.5 vide auction conducted by Tehsildar on 16.5.2007.

Learned counsel for the appellant has argued that in the proclamation of sale description of property was not given.

I am of the view that in the proclamation of sale, the property attached vide rapat no.711 was mentioned which is sufficient. Only the share of JD partner was attached. When a notice under Order XXI Rule 66 CPC was issued, only JD no.4 Mohan Lal appeared and remaining JDs did not appear despite notice. It was thereafter, that property was put to sale. Auction was held on 20.4.2007 and only the attached property was put to sale.

Learned counsel for the JD has argued that property worth Rs.one crore has been sold for Rs.10,10,000/- and he is ready to pay the double of the said amount.

I am of the view that such plea is not acceptable at this stage. When Notice under Order XXI Rule 66(2) CPC was issued, the present JD Bahadur Chand should have come forward with such offer and paid the amount. After the attachment and when notice under Order XXI Rule 66(2) CPC was issued, no such offer was made. Now such an offer is an afterthought and the sale which was conducted way back on 20.4.2007 cannot be set aside merely because of the said offer.

Learned counsel for the appellant has relied upon the provisions of Rule XXI Rule 49 CPC which provides mode for attachment of partnership property. It is stated that at the first instance only interest of the partners should have been attached and liberty should have been given to other partners to redeem such interest and the notice should have been issued to the JD and on his partners.

I am of the view that such objections should have been raised when the attachment was effected and notice under Section XXI Rule 66 CPC was issued. Other partners have not come forward to claim the share of JD/ partners which was attached by Court.

In *Saheb Khan vs. Mohd. Yusufuddin and others, 2006 AIR (SC) 1871,* the Apex Court took a view that under Order XXI Rule 90 CPC the auction can be set aside only on account of fraud or material irregularity which has resulted into substantial injury to the applicant. For this purpose, the bald allegations are not sufficient. Fraud has to be alleged and established. The relevant extract from the said judgment is reproduced 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 and Suibal Chandra Shaw and Ors. Vs. Sudhir Chandra Ghosh and Ors. (1964) 6 SCC 101; Jaswantlal Natvarlal Thakkar Vs. Sushilaben Manilal Dangarwala & Ors. (1991) Supp. 2 SCC 691; Kadiyala Rama Rao Vs. Gutala Kahna Rao (dead) by & Ors. (2000) 3 SCC 87).*
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> *14. A charge of fraud or material irregularity under Order XXI 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 XXI Rule 67(1) read with Order XXI 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 XXI 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 XXI 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:-

> *"(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)".*

15.The proclamation of the sale by beat of drum was not mandatory, so long as the sale notice was proclaimed at or adjacent to the property. Admittedly, the Advocate Commissioner distributed the pamphlets advertising the sale in the locality several days prior to holding of the sale and also affixed a copy of the sale notice on the property itself.

This Court in *Ludhiana Improvement Trust, Ludhiana vs. Nasib Singh and others, 2007(2) RCR (Civil) 199,* took a view that JD cannot be allowed to put forward thos objections at any stage after the auction which he did not raise before the auction took place.

Learned counsel for the appellant has relied upon the authority of the Kerala High Court in *Sobhana vs. Catholic Syrian Bank Ltd., 1989 AIR (Kerala) 246* to state that in the execution of decree against the partners in personal capacity, the partnership property cannot be attached. It is further argued that in this case, sufficient particulars of the property sought to be sold were not given in the notice under Order XXI Rule 66 CPC. Therefore, the sale has to be set aside. Reliance is placed on *Desh Bandhu*

Gupta vs. N.L.Anand and Rajinder Singh, 1994(1) LJR 60. Further reliance is placed on *Balakrishnan vs. Malaiyandi Konar, 2006(2) RCR (Civil) 168*.

I am of the view that in this case, in the notice under Order XXI Rule 66 CPC (2), description of the property was given, which was attached vide rapat no.711 dated 10.7.2006, which is sufficient description. At the time of auction, only the share of JDs in the partnership firm was sold, which was earlier attached by the Court vide rapat no.711 dated 10.7.2006.

Both the Courts below have recorded findings of facts that sufficient description of the property was given and that only share of the JD was attached. When no property of the JDs is available, the only way was to attach the property of JD in another firm and put the same to the sale. There is no illegality or infirmity in the impugned orders passed by the Courts below. Hence, the present second appeal against the order passed in the execution is dismissed.

01.03.2018 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: No