

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

**ESA No.36 of 2015 (O&M)
Date of Decision: December 20, 2018.**

Tek Chand through his LR's Chander Kala and others
.....**APPELLANT(s).**

VERSUS

Central Bank of India and others
.....**RESPONDENT(s).**

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Anurag Jain, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal by Tek Chand (auction purchaser) through his legal representatives, challenging order dated 16.05.2009 passed by the executing Court, Hisar and dated 20.12.2014 passed by Additional District Judge, Hisar, dismissing the execution as fully satisfied and giving liberty to the legal representatives of Tek Chand to seek refund of the money deposited by him at the time of auction.

A money decree was passed in favour of Central bank of India and against Mohinder Singh and Teja Singh, judgment-debtors (for short-JDs). In the execution, the plot of JDs bearing No.1 situated opposite New Cloth Market, Sirsa Road, Hisar was attached and put to auction. JDs deposited the auction money in the court and prayed for setting aside the auction.

Brief facts are taken from para 16 of the order passed by

Executing Court and the same is reproduced as follows:-

“16. Brief facts of the case are that a decree for the recovery of Rs.37753.26 was passed on 11.1.1979, case No.305/76 '*Central Bank of India Vs. Mohinder Singh etc.*' The decree holder, Central Bank of India, transferred the decree in favour of Hari Kishan and Somawanti, his wife and on 26.2.1982, Hari Kishan etc. brought out execution petition seeking execution of the decree dated 11.1.1979 and in execution of that decree, property of Mohinder Singh J.D. was attached and was sold in auction on 3.1.1983. Mohinder Singh had filed objection petition under Section 47 CPC on 7.1.1983 for dismissing the execution petition. Another application was filed by Mohinder Singh on 10.1.1983, requesting the Court to determine the decretal amount payable by him so as to enable him to deposit the said amount and to file an application for setting aside the sale. The executing court passed order on this application on 11.1.1983, directing the JD to deposit Rs.37531.30 on or before 14.1.1983 and this amount was deposited by Mohinder Singh on 12.1.1983. On 12.1.1983, another application was filed by Mohinder Singh JD under Order 21 Rule 89 CPC, for setting aside the sale after notice to auction purchaser and the decree holder. The trial Court ordered issuance of notice of this application for 15.1.1983. Another application was filed by Mohinder Singh JD on 18.1.1983, intimating that all applications/objections filed by him be dismissed as withdrawn and sale of the property be confirmed in favour of auction purchaser. On the same day, i.e. on 18.1.1983, Piara Singh and Kishan Chand also moved a petition alleging that they are in fact owners of the plot which was put to auction and Mohinder Singh was only a benamidar. They also prayed that the sale be set aside

and the amount already deposited by Mohinder Singh be paid to the decree holder and the execution petition be consigned as fully satisfied. On the same day, i.e. 18.1.1983, the learned trial Court heard arguments of the decree holder, the JD and the auction purchaser and vide order dated 18.1.1983, set aside the sale of the plot and ordered the execution petition to be filed as fully satisfied.”

It is not disputed that with the permission of the court, JDs have deposited the decretal amount and application was filed under Order 21 Rule 89 CPC for setting aside the auction. In the interim proceedings, parties approached the Court of Additional District Judge, this Court and even the Apex Court. In the revision petition filed by Tek Chand, direction was given to the executing Court to decide the execution after hearing him. The executing Court observed that sale in favour of Tek Chand had already been cancelled, as such, it could not be confirmed in his favour and auction purchaser/his legal heirs have liberty to apply to get the amount deposited by them for purchase of the property of the JDs.

The observation of the executing Court to this effect is contained in para 28 as follows:-

“28. As the sale has already been cancelled and the same could not have been confirmed in favour of Tek Chand or his LR's i.e. auction purchaser. So, they are at liberty to apply before the Court to get their money back deposited at the time of auction i.e. ₹2,41,000/- and in this way, order dated 15.11.1984 passed by Hon'ble Additional District Judge and order dated 20.12.1985 passed by Hon'ble High Court have been complied with.”

With these observations, the execution petition was dismissed

as satisfied.

The appellant through his LRs filed appeal before the Additional District Judge, which was also dismissed.

The facts as emanate on perusal of the orders passed by the Courts below are that appellant Tek Chand was auction purchaser of the property of JDs and had deposited the sale price. Thereafter, JDs with the permission of the Court deposited the decretal amount and later on moved an application for withdrawal of the same, which was not permitted. At later stage, auction purchaser moved application for confirmation of sale, which was allowed. However, the executing Court as well as first Appellate Court on perusal of the facts have observed that Mohinder Singh JD was not allowed to withdraw the application, the sale could not be confirmed as the decretal amount has already been deposited. Keeping in view these facts, the proceedings of issuance of sale certificate were held to be not legal and valid and consequently, appellant Tek Chand was held not entitled to delivery of possession of the property purchased by him in the auction.

In view of the above facts and circumstances, I have inquired from learned counsel for the appellant, as to what is the basis for the appellant to claim possession of the property purchased by him. He has not disputed that before confirmation of the auction, decretal amount had already been deposited and the application filed by the JDs to withdraw that amount was declined by the Court and sale through auction of property of J.D. was set aside. Once the decretal amount had been deposited, the auction purchaser has remedy to seek refund of sale price/auction money as per law.

As a sequel of my above discussion, I find no legal or factual infirmity in the impugned orders, calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

December 20, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***