

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

106/2

CR No.1345 of 2019

Date of Decision: 24.09.2019

The Improvement Trust, Ludhiana

...Petitioner

Versus

Nasib Singh (Deceased) and others

....Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. R.K.S. Brar, Advocate for the petitioner.

B.S.Walia, J.,

[1] Prayer in the petition under Article 227 of the Constitution of India is for setting aside order, Annexure P/1, dated 20.03.2013, passed by the learned Civil Judge (Senior Division), Ludhiana, dismissing the application filed by the petitioner-JD under Order 21 Rule 84 read with Section 151 CPC for declaring the auction held on 14.09.1992 as well as confirmation of sale and sale certificate issued after the auction as null & void. Prayer is also for setting aside Order, Annexure P/2, dated 01.07.2017, dismissing the appeal filed by the petitioner against Order, Annexure P/1, dated 20.03.2013.

[2] Brief facts of the case, leading to the filing of the revision petition are that execution petition was filed by Nasib Singh, decree holder in which property of the petitioner-JD was attached on 09.12.1991 and auctioned on 14.09.1992. Arvinder Singh, Balwinder Singh, Hardeep Kaur and Baljit Kaur, respondents Nos. 2 to 5, i.e. sons and daughters-in-laws of decree holder Nasib Singh purchased the property of the petitioner-JD in open auction. Subsequently, objections filed by petitioner-JD under Order XXI Rule 90

CPC, were dismissed, sale was confirmed and sale certificates issued. In the application under Order XXI Rule 84, it was contended that the auction purchasers were required to make payment of 25% of the auction money at the fall of the hammer with the Court auctioneer after each auction, and the Court Auctioneer was to accept the final bid of the auction purchaser after receipt of 25% of the bid amount from the auction purchaser and to give certificate that the bid of the auction purchaser had been accepted. Court Auctioneer was further required to deposit the amount on the same day with the Court or else seek extension of time to deposit the amount on the next day. However, no such application was moved by the Court Auctioneer although the amount was deposited on the next day of the auction. In the auction papers available on the file, signatures of the auction purchaser as well as the Court auctioneer had been made on some of the auction papers while on some, only the signatures of the auction purchasers were there. No certificate of acceptance of the bid after receiving 25% of the bid money had been mentioned. Objections also were that the auction purchaser being the sons and daughters in law of the decree holder had played fraud with the Court and by misrepresentation and concealing facts had obtained orders of confirmation of sale and sale certificate from the court and such type of orders could be set aside at any point of time.

[3] In reply to the objections, it was contended that the Court auction had concluded during late hours, consequentially, no time was left for the Court auctioneer to deposit 25% of the total sale consideration paid by the auction purchaser to the Court auctioneer in the bank or Court. As such, the Court auctioneer deposited the amount received by him from the auction purchaser on the next date when the banks reopened. The challans were submitted by the Court Auctioneer with the bank under signatures. All the

allegations in the application were false and frivolous. No default had been committed by the auction purchasers as alleged as the entire auction money was deposited / paid by them within the stipulated period of time. Only thereafter, the sale was confirmed in their favour and sale certificate issued. The entire amount as required under law i.e. 25% had been paid by the auction purchasers to the Court auctioneer on the same day and thereafter the remaining amount had been paid in the prescribed period. The matter had already been decided up to the Supreme Court and J.D.s were estopped from raising such pleas time and again. Application was also opposed on ground of limitation and constructive res judicata.

[4] Learned Civil Judge (Senior Division), Ludhiana, dismissed the objections filed by the petitioner-JD under Order 21 Rule 84 read with Section 151 CPC with costs of Rs. 2000/- vide order Annexure P/1, dated 20.03.2013.

[5] Aggrieved, the petitioner filed an appeal before the learned Additional District Judge, Ludhiana against order Annexure P/1 dated 20.03.2013 but the same was also dismissed.

[6] Sole argument raised by learned Counsel before this Court and as recorded in order dated 26.02.2019 is that the purchase of the property in the auction by the sons and daughter in laws of the decree holder was in fact for the benefit of the decree holder as funds for the purchase of the property in execution of the decree were furnished by the decree holder. However, on July 15, 2019, learned counsel conceded that there was no evidence to show that the purchase of the property in the auction by the sons and daughters in law of the decree holder was in fact for the benefit of the decree holder or that funds for the purchase of the property in execution of the decree were furnished by the decree holder. However, having so conceded, learned counsel

sought for and was granted time to refer to case law that on the sons and daughter in laws of the decree holder stepping into the shoes of the decree holder as his LRs, the bar under Order 21 Rule 72 would apply.

[7] As far as the argument raised by learned Counsel on 26.02.2019 that purchase of the property in the auction by the sons and daughter in laws of the decree holder was for the benefit of the decree holder and that funds for the purchase of the property in execution of the decree were furnished by the decree holder, it needs noticing that learned counsel, on July 15, 2019 conceded that there was no evidence to show that the purchase of the property in the auction by the sons and daughters in law of the decree holder was for the benefit of the decree holder or that funds for the purchase of the property in execution of the decree were furnished by the decree holder. Today also nothing in support of the argument raised on 26.02.2019 has been addressed. Accordingly, the argument is rejected. As regards the second argument, i.e. that on the sons and daughter in laws of the decree holder stepping into the shoes of the decree holder as his LRs, the bar under Order 21 Rule 72 would apply, neither any elaboration has been advanced nor any case law has been referred. Even otherwise, the property was purchased by respondent Nos. 2 to 5 i.e. the sons and daughters in law of the decree holder in their own individual capacity without there being any evidence that the purchase of the property in the auction by the sons and daughters in law of the decree holder was in fact for the benefit of the decree holder or that funds for the purchase of the property in execution of the decree were furnished by the decree holder. Mere fact that respondent Nos. 2 to 5 subsequently stepped into the shoes of the deceased decree holder as his LR's would not in any way advance the case of the petitioner of applicability of the bar under Order 21 Rule 72. No other

point has been argued. Even otherwise, the auction was conducted on 14.09.1992, whereas objections were filed on 06.03.2013. Accordingly, no ground is made out warranting interference with the well reasoned order passed by the learned Civil Judge (Senior Division), Ludhiana as upheld by the learned Appellate Court i.e. the learned Additional District Judge, Ludhiana. The petition is bereft of merit and is accordingly dismissed in limine.

(B.S.Walia)
Judge

September 24, 2019
Rajneesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No