

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1429 of 2019 (O&M)
DECIDED ON: MARCH 27, 2019

DESH RAJ (NOW DECEASED) THROUGH LR. VIPAN KUMAR

.....PETITIONER

VERSUS

**M/S MANGAL CHAND BHARAT BHUSHAN COMMISSION AGENT
AND OTHERS**

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. P.K. Ganga, Advocate
for the petitioner.

Mr. Rajesh Sethi, Advocate
for the respondents.

AVNEESH JHINGAN, J (ORAL)

The present civil revision petition has been preferred against the order dated 04.02.2019 passed by Executing Court, Ellenabad whereby, an application filed by the petitioner-judgment debtors under Order XXI Rule 64 of the Code of Civil Procedure, 1908 (for short 'the Code') has been dismissed.

The facts are summarized below:-

The suit for recovery of ₹4,80,000/- alongwith interest was filed by the respondents No.1 and 2/plaintiffs No.1 and 2 (hereinafter referred to as the

'respondents'). The said suit was decreed vide judgment and decree dated 20.03.2002. The decree was for recovery of ₹1,60,611.43/- alongwith interest @12% per annum. Both the parties challenged the afore-said judgment and decree by way of filing an appeal. During the pendency of the appeal, parties entered into a compromise before the Lok Adalat. On the basis of the said compromise the judgment and decree dated 20.03.2002 passed by the Civil Court was modified and the decree was passed for recovery of ₹4,80,000/-. It was settled that the said amount, if paid upto 30.06.2004, it would be without interest and in addition to the said amount, the petitioner was to pay an amount of ₹7,000/- for litigation expenses. There was another clause that in case of failure to make the payment upto 30.06.2004, respondents shall be entitled to recover 18% interest per annum on the amount of ₹4,80,000/- from 17.05.1997 till the date of actual payment.

The said compromise and the modified judgment and decree was not honoured. An execution petition was filed by the decree holder. The petitioner/judgment-debtor failed to make the payment even before the executing court. His share of land i.e. 58 kanals, comprised in Khewat No. 241 (22-8) and (11-5), khewat No. 242 (16-8), khewat No. 243 (1-13), 244 (19-7), khewat No. 246 (8-11) and khewat No. 249 (1-13) situated in the revenue estate of Village Dhanoor, was put on auction twice but there was no buyer. In subsequent auction proceedings, the decree holder bidded for property for an amount equivalent to sum due as per the modified judgment and decree. Thereafter, objections were filed under Order XXI Rule 64 of the Code by the LR of judgment debtor. The said objections were dismissed, hence, the present

petition.

Notice of motion was issued on 01.03.2019, as the grievance of the petitioner was that the property has been sold to the decree holder on a price lower than the rates fixed by the Collector. The case was adjourned to 25.03.2019. On 25.03.2019, after arguing the matter at some length, learned counsel for the petitioner sought time for having instructions whether the petitioner is ready to satisfy the modified judgment and decree, even now. Today, petitioner and proforma respondent No.4 are present in Court. They have sought time of one month to pay the balance due amount. It was stated that in an earlier round of litigation, an amount of ₹5,00,000/- was paid by the petitioner and the same be adjusted.

Learned counsel for the respondents had no objection if the payment is made even after one month from today and the amount of ₹5,00,000/- paid in an earlier round of litigation is adjusted towards the due amount.

Parties have settled the matter and affidavits of petitioner and proforma respondent No.4 have been filed in Court today. The same are taken on record. Terms and conditions of their affidavits be read as part of this order.

Learned counsel for respondents on instructions from respondents states that in case the payment is made as per the affidavit filed by the petitioner, respondent No.1 shall have no right or interest in the property bidden for by respondents in the execution proceedings.

The present civil revision petition is disposed of, in the afore-said terms. The matter is pending before the executing court, the same shall adjourn beyond 29.04.2019 to await the compliance of terms of compromise. The amount as per the affidavit shall be paid in the executing court on or before

27.04.2019. Needless to say that in case the payment is made on time, as per the statement, respondents would be having no right or interest in the auctioned property. In case of any default by the petitioner, the sale will be confirmed and petitioner shall hand over the possession of the property.

MARCH 27, 2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned ***Yes/No***
Whether reportable ***Yes/No***