

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

**RSA No.2553 of 1994(O&M)
Date of Order:13.03.2019**

The Mansa Central Co-operative Bank Ltd.

..Appellant

Versus

Kartar Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harit Sharma, Advocate,
for the appellant.

Mr. Vishal Rattan Lamba, Advocate
for respondent no.1

ANIL KSHETARPAL, J(Oral)

Defendant-appellant-auction-purchaser is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

Plaintiff-Kartar Singh, who has since died had defaulted in repayment of the loan which resulted in arbitration proceedings under the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as 'the Act of 1961'), wherein awards were passed against the plaintiff dated 31.12.1972, 16.04.1973 and 31.12.1972 for little more than Rs.60,000/-. Pursuant to the aforesaid awards, agricultural land measuring 48 kanals and 12½ marlas was sold in auction held on 08.04.1988. Plaintiff-respondent filed this suit challenging the arbitration awards as well as auction proceedings.

Defendants contested the suit and pleaded that since the

plaintiff-respondent failed to pay the amount, therefore land has been auctioned.

Both the court on appreciation of the evidence have found no reason to interfere with the arbitration awards passed against the plaintiff. However, the courts have found that the auction-purchaser or decree holder have failed to establish that the procedure as prescribed was followed before auctioning the land. The courts have further found that the price of the land offered in open public auction is shockingly disproportionate to the actual market price. Thus, the auction was set aside.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel appearing for the appellant has submitted that the jurisdiction of the Civil Court is barred under Section 82 of the Act of 1961. He further submitted that the order directing auction of the land was required to be placed by the plaintiff or the sales officer and therefore, the auction in favour of the defendant-appellant could not be set aside. He further submitted that it is proved on file that a notice was sent before auction to the plaintiff which was received by his wife as the plaintiff was not available. Learned counsel for the auction-purchaser further contends that the plaintiff has not paid the amount till date.

On the other hand, learned counsel for the respondent-plaintiff has defended the judgments passed by the courts below.

No doubt, Section 82 of the Act of 1961 do bar the jurisdiction of the Civil Court. However, on careful reading of Section 82 of the 1961 Act, it is apparent that Section 82 of the 1961 Act in turn makes a reference

to Section 55 of the 1961 Act which provides for settlement of the disputes through arbitration. Sub-Section 2 of Section 55 of the Act of 1961 deals with the disputes for recovery of debt or demand. In exercise of powers under the Act of 1961, the Punjab Cooperative Societies Rules, 1963 (hereinafter referred to as 'the Rules of 1963') have been framed. Rule 72 of the Rules of 1963 lays down the procedure for putting the immovable property to auction. Sub Rule 11 of Rule 72 of the Rules of 1963 lays down a detailed procedure under which attachment and sale of the immovable property is to be ordered. Clause (e) of sub-rule 11 of Rule 72 provides that proclamation of sale shall be published by affixing a notice in the office of the Recovery Officer and Tehsil office at least 30 days before the date fixed for sale by way of auction and also by beat of drums in the village or locality on two consecutive days previous to the date of sale and on the day of sale prior to the commencement of the sale. Thus, the requirement is that the notice must be affixed in the office of Recovery Officer and the Tehsil office at least 30 days before the date of sale and there should be proclamation by beat of drums in the village or locality for 2 consecutive days previous to the date of sale as also on the day of sale.

In the present case, the concerned file of the Sales Officer has not been produced. Still further, the order through which the competent authority ordered auction has not been produced.

As regards argument of learned counsel for the appellant that the jurisdiction of the civil court is barred under Section 82 of the Act of 1961, it is well settled that Civil Court would assume jurisdiction, if it is established that the procedure as prescribed under the Act and the Rules has not been followed. Reference in this regard can be made to *State of*

Haryana vs Vinod Kumar, PLR (1986) 89 P&H 222. In absence of evidence before the Civil Court to prove that the procedure was followed, the courts have rightly ordered setting aside of auction proceedings. In the present case, even Chowkidar who conducted the alleged proclamation has not been produced. There is no evidence that auction was held before getting proclamation done through beat of drums in the village consecutively 2 days prior to the auction and thereafter on the day of auction. Hence, there is no ground to interfere.

As regard the next argument that the plaintiff has not paid the amount till date, it may be noted that non-payment of the amount would not regularize failure to comply with the procedure laid down in the rules. Still further the appellant being auction-purchaser has nothing to do with the recovery.

The competent authority shall be free to proceed in accordance with law.

In view thereof, this court does not find ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

March 13, 2019
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(ANIL KSHETARPAL)
**JUDGE **

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No