

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-21805-CII-2019 in/and
CR-2524-2019

Date of Decision:-24.10.2019.

Balwant Singh

.....Petitioner

Versus

Chamkaur Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Kulwant Singh Boparai, Advocate for the petitioner.

Mr. S.S. Grewal, Advocate for the respondent.

SANJAY KUMAR, J. (Oral)

CM-21805-CII-2019

The application is ordered as prayed for.

Annexures P-3 and P-4 are taken on record.

CR-2524-2019

The petitioner in this revision petition, filed under Article 227 of the Constitution of India, laid a challenge to the order dated 23.04.2018 passed in Execution Petition No.25 of 2016 on the file of the learned Civil Judge (Senior Division), Payal. The said execution proceedings arose out of the judgment and decree dated 07.1.2015 in CS No.139 of 2013. However, as the said judgment and decree were *ex parte* in nature, the petitioner filed an application under Order 9 Rule 13 CPC to set it aside. In the meanwhile, the decree holder initiated execution proceedings in relation to the said judgment and decree. Thereupon, the petitioner filed an application in the

pending execution petition to stay further proceedings owing to the pendency of the Order 9 Rule 13 CPC application. By order dated 23.04.2018, the executing Court directed the petitioner to create a fixed deposit for a sum of Rs.7,10,000/-, being the principal amount of Rs.5 lakhs along with interest thereon. This fixed deposit was to be drawn up in the name of the decree holder but kept in judicial custody till the proceedings attained finality. Subject to these conditions, the executing Court granted stay of further proceedings. Aggrieved by the conditions imposed by the executing Court, the petitioner preferred an appeal in CAO Reg. No.76 dated 16.05.2018 before the learned Additional District Judge, Sangrur. However, by order dated 13.02.2019, the appellate Court dismissed the appeal. Aggrieved thereby, the petitioner approached this Court.

Heard the learned counsel for the parties.

Learned counsel for the petitioner would inform this Court that as the execution proceedings were not stayed due to the failure on the part of the petitioner to create a deposit as directed, the properties belonging to the petitioner were brought to sale, as is evidenced by Annexures P-3 and P-4. Significantly, the said properties were purchased by none other than the respondent-decree holder, after obtaining necessary permission from the executing Court.

Learned counsel for the petitioner would draw the attention of this Court to the provisions of Order 21 Rule 92 CPC and assert that in terms thereof, the sale in favour of the respondent-decree holder in respect of the properties covered by Annexures P-3 and P-4 cannot be confirmed till the disposal of the pending Order 9 Rule 13 CPC application.

In terms of the proviso added to Order 21 Rule 92 (1) CPC,

where any property is sold in execution of a decree pending the final disposal of any objection to the attachment of such property, the Court should not confirm such sale until the final disposal of such objection. Pendency of the application filed by the petitioner to set aside the *ex parte* decree would partake the nature of an objection, envisaged by the aforestated proviso. Therefore, until the disposal of the said application, the statutory mandate forbids the executing Court from confirming the sale effected in favour of the respondent-decree holder under Annexures P-3 and P-4.

The Civil Revision is accordingly disposed of directing the Court of the learned Additional District Judge, Sangrur, not to confirm the sale in favour of the respondent-decree holder insofar as the properties covered by Annexures P-3 and P-4 are concerned till the final disposal of the pending application filed by the petitioner under Order 9 Rule 13 CPC.

No order as to costs.

(SANJAY KUMAR)
JUDGE

October 24, 2019.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.