

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

ESA No. 14 of 2013 (O&M)

Date of Decision: January 24, 2019.

Dharmender Kumar

.....APPELLANT.

VERSUS

Oriental Bank of Commerce and others

.....RESPONDENTS.

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jai Vir Yadav, Advocate
for the appellant.

Mr. R.N. Lohan, Advocate
for the respondents.

SURINDER GUPTA, J.(Oral)

Heard.

This is appeal against the order dated 22.10.2012 passed by Additional District Judge, Faridabad, whereby the auction of land during execution proceedings and subsequent execution of the sale deed 18.10.2010 in favour of the appellant was set aside.

The suit filed by Oriental Bank of Commerce against M/s Rangila Cloth House was decreed for recovery of ₹1,25,802/- with interest @ 16.5% vide judgment and decree dated 31.05.1999. In the execution proceedings, the property of JD was attached and in the auction conducted on 12.05.2008 sold to highest bidder for ₹1,35,000/- which was not

accepted by the Executing Court and vide order dated 01.05.2009 Court auctioneer was directed not to auction the attached land at the rate less than ₹2,000/- per square yard and less than ₹8 lakh. Thereafter, the auction warrants were again issued and attached property was sold to auction purchaser for a sum of ₹1.90 lakh. The auction purchaser deposited 25% of the bid amount at the spot and remaining 75% amount in the treasury. On 09.02.2011, application seeking cancellation of auction was moved, which was dismissed by the Executing Court with the observations that it had been filed beyond the prescribed period of limitation i.e. 60 days. In appeal, the Ist Appellate Court took note of the fact that the property could not be sold below the minimum price fixed by the Executing Court, as such, the auction is bad in the eyes of law. The appeal was accepted and the auction and consequent issuance of sale deed dated 18.10.2010 in favour of appellant was set aside.

Learned counsel for the appellant has raised two issues during the course of arguments, firstly, that the application moved by the bank seeking cancellation of auction proceeding was barred by limitation and secondly, the Executing Court vide order dated 04.09.2009 had allowed the decree holder to participate in the auction proceedings and also to arrange for a bidder and this order amounts to review the order dated 01.05.2009 vide which the minimum price of the property put to auction was fixed. In support of his contentions, he has relied observations in the cases of ***Varinder Thakur and others versus Punjab National Bank Shikha Ji Cama Place and others, 2015 (2) PLR 473*** and ***Ramji Lal versus Sarab Singh (dead) through LRs, 2011 (6) R.C.R.(Criminal)2515.***

Firstly, I take up the plea of learned counsel for the appellant that the application filed by the bank was barred by limitation. It is not disputed that the application was moved beyond the period of limitation. However, the relevant fact to be seen is that the auction was conducted in violation of order of the Executing Court dated 01.05.2009, whereby the minimum price of land, put to auction, was fixed. In such eventuality, the Executing Court was required to take suo-moto action to cancel the auction proceedings. It was lapse on the part of the Executing Court while allowing deposit of 75% of auction price and registration of the sale deed without taking note of the order dated 01.05.2009. The act of the auction purchaser putting the property to auction in violation of order of the Executing Court cannot be defended on the ground that the application moved by the bank was beyond period of limitation. The citations referred by learned counsel for the appellant are on different set of facts and circumstances, as such, are of no help to advance his submissions. This submission of learned counsel for the appellant that vide order dated 04.09.2009, the order dated 01.05.2009 was modified, also has no substance as the perusal of this order shows that order dated 01.05.2009 was never modified. Only liberty was given to the decree holder to participate in the auction proceedings and to arrange bidders. The mentioning of word “failing which it will have to face consequences” in order dated 4.09.2009 nowhere signifies that the Executing Court had reviewed its order or given concession to Court auctioneer to sell the land at price lesser than fixed vide order dated 01.05.2009.

Learned Ist Appellate Court has rightly took note of the fact

that in such circumstances, where illegality has been committed in conducting the auction in violation of order of the Court, the Executing Court or the Ist Appellate Court could not remain a mute or helpless spectator. In such circumstances, the order setting aside the auction proceedings can be passed even without an application being filed by the decree holder.

As a sequel of my above discussions, I find no legal or factual infirmity in the judgments of the Courts below calling for any interference.

This appeal has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

January 24, 2019
Jyoti-II

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No