

S.No.233

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

CM No.22585-CII of 2019 in/and

CR No.1273 of 2016 (O&M)

Date of Decision:31.01.2020

M/s Jethu Ram Prem Chand and another

.....Petitioners

Vs.

**Bhagwan Dass (deceased) through LRs
and others**

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Harsh Aggarwal, Advocate for the petitioners.

Mr. Puneet Gupta, Advocate for respondent No.1(i) to (iv).

Mr. Ajit Singh, Advocate for respondent No.2.

Rajbir Sehrawat, J.(Oral)

This is a petition challenging three orders dated 19.01.2016; whereby the objections filed by the petitioners under 21 Rule 90 were dismissed, the application filed by the petitioners for framing issues qua the deposit of amount by auction purchaser within the time prescribed by the CPC; was dismissed, and further; the amount of auction consideration was ordered to be released in favour of the decree-holder.

Learned counsel for the petitioners has submitted that the Court had issued the proclamation notice qua the sale of the property which was affixed on the notice board of the Court on 16.05.2014. Thereafter, the auction of all the properties of the petitioners, being the judgment debtors, was held on 27.06.2014. Learned counsel has further submitted that the provision of Order 21 Rule 84 CPC requires the auction purchaser to pay 25% of the sale price to the officer conducting the sale, failing which the property would be put to resale forthwith. Still further, the provision of Order 21 Rule 85 CPC mandates upon the auction purchaser to deposit the

balance and full amount on or before 15th day during the Court working hour from the date of sale of property. Still further, Order 21 Rule 86 CPC further provides that if the full money is not deposited as mentioned above then the property shall be resold and the money deposited by the defaulting purchaser shall be forfeited. However, the auction purchaser in this case had neither deposited the initial money of 25% nor was the full sale consideration paid to Court within 15 days from the date of sale.

Accordingly, the petitioners had filed his objection, as is provided under Order 21 Rule 90 CPC, for setting aside the sale.

Relying upon the one judgment of Hon'ble Supreme Court in **1954 AIR (SC) 349 – Manilal Mohanlal Shah and others v. Sardar Sayed Ahmed Sayed Mahmad and another**, and two judgments of this Court in **1985 (1) PLR 697 – Ram Singh v. Uttam Chand** and **2010(3) CivCC 706 – Hardev Singh v. Harbans Lal and others**, counsel for the petitioners has submitted that although the legal position is quite clear that in case of the default in depositing the money within the time prescribed by the above said Rules, the sale is bound to be declared illegal and the property is liable to be resold, however, the Executing Court has wrongly dismissed the objections filed by the petitioners; without even dealing this proposition of law. Not only this, when the petitioners made a prayer to the Executing Court for framing specific issues; for determination of the default of the auction purchaser on facts and on law, the same has also been dismissed without considering the same in any material details. Accordingly, it is prayed that the impugned orders be set aside and the matter be remitted back to the Executing Court for determining the factual

and legal aspects of the default in depositing the money within the time specified by the provisions of C.P.C.

Learned counsels for the respondents do not even have any serious objection to the case being sent back to the Executing Court for determination of the issue as claimed by the petitioners. However, it is pointed out that the petitioners cannot be permitted to take any shelter under Order 21 Rule 84 CPC qua the non-deposit of initial amount of 25% of the sale price on the spot. The Executing Court itself had fixed the amount to be deposited on the spot at the time of auction; to be only “one rupee per hundred of the bid amount”. The said amount was duly deposited at the time of the auction by way of demand draft. Hence, no fault could be laid on the door of the auction purchaser in this regard. If the petitioners were aggrieved of the direction of the Court qua deposit of the amount less than 25% of the bid amount at the time of the sale, then the petitioners should have challenged the same. However, they had chosen not to question this order of the Executing Court. Therefore, they cannot now question the sale; on the ground that initial amount of 25% was not deposited at the time of sale. Counsel has relied upon Order 21 Rule 90 CPC to support the contention that any irregularity or default, which was prior to the date of auction cannot be taken as a ground for subsequent proceedings to question the same.

This Court finds substance in the argument of counsel for the respondents that the petitioners cannot now be permitted to question the sale on any ground which was available for them to be challenged before the date of sale. Since the auction purchaser had deposited the initial 1% of the

bid amount only at the time of auction only pursuant to the Court order, which was never challenged by the petitioners, therefore, no fault or default can be laid at the door of the auction purchaser in this regard. Hence, the argument of the learned counsel for the petitioners; qua the sale being defective on account of non-deposit of 25% of the auction price at the time of sale; is held to be non-sustainable.

However, counsel for the petitioners has seriously contested the claim of the respondents qua deposit of the full amount with the Court within a period of 15 days. This issue has not been given specific consideration by the Executing Court. Hence, at this stage, this Court finds that this issue needs to be determined by the Executing Court; by granting the respective parties; opportunity to lead evidence in support of their respective claims.

Accordingly, the impugned orders; whereby the objections filed by the petitioners have been dismissed, as well as the order whereby the application filed by the petitioners for framing of the issue has been dismissed, are set aside., However, the order of confirmation of the sale is ordered to be kept in abeyance till the Executing Court re-determines the issue of the default in deposit of money within the prescribed time periods. The fate of this order shall be deemed to have been decided according to the decision on main issue of validity of sale as mentioned above.

Either of the parties would be at liberty to move an application for resumption of the proceedings before the Court, pursuant to present order.

Hence, the present petition is disposed of by setting aside the

above-said two orders; but with a further direction to the trial Court to frame and decide the issue as under:-

“Whether the auction purchaser has paid the full amount of sale consideration to the Court; within 15 days, as required under Order 21 Rule 85 CPC or not, if not, to what effect?OP Auction Purchaser.”

Disposed of accordingly.

January 31, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No