

CR- 912 of 2020

Date of Decision: 7.2.2020

Pardeep Kumar

---Petitioner

versus

M/s Banwari Lal Raja Ram Commission Agents

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sandeep Jasuja, Advocate
for the petitioner**

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 7.12.2019 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Fazilka whereby application under Order 21 Rule 66 of the Code of Civil Procedure, 1908 (in short “the Code”) filed by the respondent-decree holder, has been allowed and property of the petitioner attached in execution proceedings is put to sale by fixing the dates of notice and auction etc.

It is argued that in the impugned order, presence of Sh. Pardeep Kataria, Advocate, counsel for judgment debtor has been recorded but at the same time the court has held that no one has appeared on behalf of the judgment debtor to file reply to the said application.

Contention raised by the petitioner is borne out from the impugned order wherein presence of Sh. Pardeep Kataria, Advocate, has been recorded on behalf of judgment debtor but still the court has passed an order as if there was no representation on behalf of the judgment debtor before the court. A relevant extract from order dated

7.12.2019 reads as follows:-

“Notice of application under Order 21 Rule 66 CPC issued to JD received back with the report of refusal. Case called several time since morning. Sufficiently awaited, but no one has appeared on behalf of judgment debtor to file reply to the said application. As such, sale warrant of property of JD be issued as per following schedule:-

- | | |
|-----------------|-------------|
| 1. Court Notice | 06.01.2020 |
| 2. Munadi | 29.01.2020 |
| 3. Auction | 20.02.2020 |
| 4. Report | 13.03.2020” |

In view of the above, the impugned order is set aside and the Executing Court is directed to decide the application under Order 21 Rule 66 of the Code afresh. The petitioner shall be entitle to file reply to the application within a period of 10 days failing which it shall be deemed that he has nothing to say in the matter.

Before parting with this order, it is pertinent to mention that petition has been decided without notice to respondent. It would be at liberty to file an application before this Court if it has any grievance to express.

Disposed of.

(Rekha Mittal)
Judge

7.2.2020

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No