IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 6406 of 2006 (O&M)
Date of Decision: February 04, 2020

Joginder Singh ......Petitioner

Versus

Bhola Nath and others .... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. H.S. Bhullar, Advocate
for the petitioner.

Respondent No. 1 dead.

Mr. Achin Gupta, Advocate
for respondent No.2.

Mr. S.C. Arora, Advocate
for respondent No.3.

FATEH DEEP SINGH, J. (Oral)

Fraud vitiates the most solemn of the transactions and is precisely the moot point that has come about in this civil revision preferred by Joginder Singh judgment debtor challenging impugned order dated 24.10.2006 passed by the Court of learned Additional Civil Judge (Senior Division) Faridkot, whereby, the Court below has simultaneously dismissed the objection petition and stay application of the revisionist-petitioner. The undisplaced facts that are much highlighted from the submissions of the counsel for the parties as well as the records are that one Bhola Nath (since dead) and his son Prem Kumar obtained against the revisionist/judgment debtor a decree dated 4th June 2001 for the recovery of Rs.91,500/- alongwith interest and costs. It is, subsequently, the decree holders filed execution application for recovery of Rs.1,42,916/-. It is during the course of proceedings, the Executing Court vide order dated 23.05.2002 ordered auction and sale of the properties of the JD's for recovery of Rs.1,50,000/-. It is in consequence of this order, the SDO (Civil) was appointed as Court auctioneer and, thereafter, the sale was confirmed by the Court on 23.07.2002, whereby, the entire landed property of the judgment debtor measuring 39 Kanals 1 Marla was sold off. Upon learning of this process, the JD/present petitioner filed objections on 05th October 2002 and which have been dismissed by the impugned findings. That is how the parties are before this Court.

Heard Mr. H.S. Bhullar, Advocate for the petitioner, Mr. Achin Gupta, Advocate for respondent No.2, Mr. S.C. Arora, Advocate for respondent No.3 and perused the records.

It is not displaced that the execution application was for recovery of Rs.1,50,000/- and that SDO (Civil) was appointed as the Court auctioneer and what has come about and strongly contended on behalf of the revisionist. The auction has been undertaken by a Naib Tehsildar, who certainly is subordinate of SDO (Civil) and how there has been delegation of powers specifically given by the Court to the Court auctioneer is a strong distressing feature in the present case. To the specific query of the Court, the learned counsel for the respondents could not bring anything to the notice of this Court by what means there could be permissible delegations of such powers contrary to the judicial orders. As is there, out of this attached property, which was sold, 16 Kanals of the land was under mortgage with Punjab Land Mortgage Bank. Order 21 Rule 66 of CPC by way of sub-rule 2, clause (c) ensures that in case of such a proclamation, a notice is to be drawn to the decree holder ensure and there is no encumbrance upon the property subject to being attached and sold. In the impugned order, the Court has lost sight of this material fact whereby interest of previous mortgage deed, of a financial institution, a bank has sought to be compromised and at their back, the same has been done much to their prejudice and further that how there has been assessment of value of the land so attached and sold is nobody's guess and it was the duty of the Court to have done so upon legitimate and legal evidence and mention so in the proclamation of such an estimate.

Neither the JD nor the decree holder have been called upon to give the estimate of the value of the property, subject matter of this proclamation and sale. Order 21 Rule 84 CPC ensures that on every sale of immoveable property, any person declared to be the purchaser shall pay immediately after such declaration a deposit of 25% of the amount of his purchase money. It is the own stand of the so called sub-delegated auctioneer that the money was deposited on 24th May 2002. Under the amendment to Order 21 Rule 84 CPC applicable to the States of Punjab, Haryana and Chandigarh, the words incash or cheque drawn by Scheduled Bank have been inserted w.e.f. 28.04.38**.** More so, consequent upon the proclamation and sale of the immoveable property of the JD/petitioner, no notice was issued to the JD or the bank under which part of the property was under mortgage before confirming the sale by the Court on 23.07.2002. Even after coming to know of this process, the JD had filed objections and the Court is totally in oblivion to the averments made in the objections in utter contravention of Section 47 CPC which places an embargo on the Court to first determine all the questions so raised in execution of the decree and for which as is the position of the law laid down in **Arun Lal Vs. Union of India** (2010) Voll. 14 SCC 384, no limitation has been prescribed and, therefore, the Court ought to have framed issues upon all these objections and if so necessitated to call for evidence if so required and thereupon to adjudicate which it failed to do so and even by the terms of Order 21 Rule 90 CPC and which empowers the Court to set-aside a sale where it is established that a material irregularity or fraud has come about and which has resulted in substantial injury to the JD/objector and which Court has failed to take cognizance in this impugned order. The most material point that has come about in the submissions of the two sides is that the Court failed to make necessary endeavors to express its satisfaction that how much of the property of the JD ought to have been put to auction and sale after attachment so as to satisfy the decree and for which reliance has placed on **Ambati Narasyya Vs. M. Subba Rao and another,** AIR 1990 SC 119(1) and paragraph No. 7 of the same reads as under:-

> "It is of importance to note from this provision that in all execution proceedings, the Court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the Court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree-holder. It is immaterial whether the property is one or, several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold.

> This, in our opinion, is not just a discretion, but an obligation imposed on the Court. Care must be taken to put only such portion of the property to sale the consideration of which is sufficient to meet the claim in the execution petition. The sale held without examining this aspect and not in conformity with this requirement would be illegal and without jurisdiction".

Thus, from all this what has been detailed and discussed above and the undue haste that has been shown by the Executing Court in accomplishing this illegal task and what has emancipated from the records leaves nothing to doubt that all is not well with the Court who under the garb of executing a judgment and decree passed by the Court has forgotten its solemn duty which it ought to have been observed during these proceedings.

In the light of the same, the impugned order is hereby set-aside with consequential effects by way of acceptance of the instant revision. The decree holder may approach the Executing Court afresh to give effect to the judgment and decree, if so, permissible under the Limitation Act.

February 04, 2020 **(FATEH DEEP SINGH)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No