

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1635-2020(O&M)

Date of decision:24.11.2020

M/s Jethu Ram Rice Mills and another

.....Petitioners

Versus

Punjab State Civil Supplies Corporation Limited (PUNSUP) and
others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Ashok Goyal, Advocate, for the petitioners

Mr. Amit Goyal, Advocate for the respondents

ANIL KSHETARPAL, J.

Through this revision petition, the judgment debtor has assailed the correctness of order dated 29.01.2020, passed by the Executing Court, dismissing its objection petition filed to question the sale of its property through court auction for satisfaction of award passed by the Arbitrator.

At the outset, it is important to note that this is second round of litigation to this Court. In the first round, auction purchaser as well as decree holder filed two civil revisions which came to be decided on 9.12.2015, by a common order. Operative part thereof reads as under:-

“5. I am not prepared to accept the contention of the judgement debtor that there had been excessive attachment or that the property had not been properly valued. Same way, mere absence of attachment which was in the nature of irregularity ought to have been objected to when the property was just to sale. This is the view held by a Division Bench

of Allahabad High Court in *Haji Rahim Bux and Sons and others Versus Firm Samiullah and Sons-AIR 1963 (Allahabad) 320*. The objections relating to the sale has been filed through an application filed under Order 21 Rule 90 CPC. The sale has taken place on 29.10.2008 and the application filed under Order 21 Rule 90 CPC has been filed on 03.01.2009. The objection must have been made within a period of 60 days from the date when the sale had taken place. The objection was barred by limitation as an objection under Order 21 Rule 90 CPC.

6. The sale is reported to have been made of property as though it was vacant when there had ben buildings and they had been demolished after the sale. The respondents have filed photographs of alleged existence of buildings and debris showing demolition. The objections are set forth in para 8 of the objections under Order 21 Rule 90 CPC. If the buildings existed at the sale and they were demolsihed after sale at the time of demolition, there was a very serious prejudice. The additional piece of evidence, through photographs, I cannot entertain, unless there was adequate supporting evidence. It is also entended that the front portion sold is such that the remaining portion allowed to be retained by the judgment debtor cannot be acceded. If these objections are the sale was void as vitiated by frudad by misdiscription of property that caused substantial prejudice, it could be brought as a matter for adjudication under Section 47 CPC. I am of the view that if the petition were to be treated as one under Section 47, the decree holder shall have opportunity to state its objections. The additional documents also cannot be received without evidence.

7. Under the circumstances, I set aside the orders passed by the lower appellate court and remit the matter to the Executing Court to give evidence about the nature of property sold, whether they contained buildings/shops and permit the photographs to be brought with appropraite evidence and prove the same in the manner required by law. The remand is for consideration of whether the auction sale was not merely an irregularity but constituted a fraud by deliberate misdiscription and hence void. The enquiry will be as under Section 47 CPC and the order that will be passed after affording an opportunity to the decree holder and auction purchaser to file his objections to the photographs & plan brought as additional evidence in appeal. The auction purchaser shall not alter the nature of

property till the disposal of the petition.

8. Both the revision petitions are ordered with direction for disposal of the objection of the judgment debtor as under Section 47 CPC in the light of the observations made above. The manner of how the amount deposited by the judgment debtor will be reckoned shall abide by the final decision of the Executing Court.”

After the aforesaid order, the Executing Court framed issues and permitted the parties to lead evidence. After the death of the judgment debtor, his son Sandeep Singla, appeared in the witness box as OW1 and tendered photographs, site plan, certified copy of the report, certified of jamabandi, certified copy of the report regarding installation of machinery in the rice mill and a copy of khasra girdawari. Learned counsel for the judgment debtor has also placed on file certain documents noticed in para 4, of the order. The decree holder as well as the auction purchaser also filed various other documents. The executing Court after analyzing the arguments, alongwith the evidence brought on record, dismissed the objections. This is how the present revision petition has been filed.

At this stage, it is important to note certain facts. Learned Arbitrator passed an award against the judgment debtor on 28.3.2003, for recovery of Rs.11,00,262.45, alongwith interest at the rate of 21% per annum, w.e.f 1.4.2002. Thereafter, execution petition was filed at district court Chandigarh which was transferred to the court of competent jurisdiction at Patiala (Punjab). The judgment debtor was found to be the owner of 51 kanals of land. The executing Court initially proposed to sell 16 kanals of land, comprised in khasra no.40//4 and 5, in order to satisfy the decree. The objection petition filed by the judgment debtor under Order 21 Rule 66 CPC, was disposed of on

7.12.2007. Thereafter, attempt to sell the land by Court auction did not succeed. Thereafter, the decree holder filed an application for adding another small piece of land, in order to make the offer of sale of land through court auction more attractive. The aforesaid permission was granted by the Court vide order dated 6.9.2008 and it was decided that 17 kanals 2 marlas of land, in place of 16 kanals, would be sold. Thus, land measuring 1 kanal 2 marlas, was added. The aforesaid piece of land, measuring 17 Kanal 2 Marlas, was sold by a public auction held on 4.3.2009, against a sum of Rs.41,71,000/-. The petitioner- judgment debtor filed objections under Order 21 Rule 90 CPC, which were dismissed by the trial Court. In an appeal, the learned first Appellate Court set aside the auction sale. Thereafter, as noticed, the High Court, set aside the judgment passed by the First Appellate Court and remanded the case to determine on certain aspects. The executing court has again dismissed the objections. Hence, this revision petition.

In the previous round, the High Court Vide order dated 9.12.2015, had remitted the matter to the Executing Court, to find whether there existed any building/shops on the land which was sold by public auction. The court was also directed to find whether the auction sale was a result of fraud by deliberate mis-description of the property.

With regard to the existence of building on the land in question, learned Executing Court has relied upon a copy of jamabandi for the year 2000-01, Ex. A-3, which proves that the building of the rice mill is located over khasra no.24//24/1/2, measuring 3 kanal and 2 marlas and there is no entry of construction over the land which was the subject matter of auction sale. Still further, no admissible evidence has

been produced by the petitioner to prove that there existed any construction over the land sold through the court auction. Still further, the Court has noticed that when the petitioner filed an objection under Order 21 Rule 66 CPC, he did not plead that there exists any construction over the piece of land attached. Still further, on perusal of the site plan the Court has found that the construction is not on the land which was subject matter of the court auction.

Learned counsel for the petitioner, although tried to again reiterate the arguments, however, failed to put forward any convincing argument. The petitioner has not produced the draftsman who prepared the site/lay out plan or examined the photographer who clicked the photographs. It has also not come on record as to when these photographs were clicked. In the absence of any convincing evidence, the learned court has rightly held that such photographs cannot be said to have been proved. The Court noticed that mere marking of exhibits on the documents does not dispense with the requirement of proving the documents.

Still further, the petitioner has failed to lead any evidence to prove that there was any deliberate mis-description of the property sold in the public auction. Last argument of the learned counsel is with regard to lack of access to the remaining land of the rice mill, after the property has been sold through court auction. This Court as well as the executing court has carefully examined the site plan/lay out plan produced by the judgment debtor itself. There is a 70 feet wide, vacant land available. Still further, it has come in evidence that the judgment debtor has, thereafter, sold another piece of land measuring 8 kanals,

vide sale deed dated 1.2.2011. As noticed above, the total land was 51 kanal, out of which 17 kanal 2 marlas, has been sold through court auction, whereas 8 kanals of land has been sold by the judgment debtor itself.

Learned counsel, for the petitioner, once again, tried to contend that more land than what was required to satisfy the court decree, was sold in the court auction. In other words, the contention is that the decree could be satisfied by sale of smaller piece of land. Although this aspect has already been concluded by the High Court vide judgment dated 9.12.2015, as reproduced above, however, this Court has, once again, carefully examined this aspect. It has come in evidence that initially only 16 kanals of land was attached and ordered to be sold through court auction. However, that piece of land could not be sold. Thereafter, on the application of the decree holder, a specific order was passed by the executing court on 6.9.2008, adding 1 kanal 2 marlas of land to the land already proposed to be sold i.e 16 kanals. Thus, total land measuring 17 kanals 2 marlas, was put to auction. It has come in evidence that as on 3.5.2009, Rs.26,32,886/-was due from the judgment debtor . Hence, it cannot be said that the executing court ordered sale of disproportionate land.

In view thereof, there is no ground to interfere.

Hence, dismissed.

24.11.2020

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Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE