

[122] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-377-2020 (O&M)
Date of Decision : 13.12.2023

Ved Parkash ...Petitioner
versus

Jaspal Singh and anotherRespondents

Coram : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Sanjiv Gupta, Advocate for the petitioner.
Mr. Raj Kumar Bhatia, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

[1] The petitioner herein is a judgment debtor. He assails the correctness of order passed on 06.01.2020 by the Executing Court while confirming the Court auction in favour of the decree-holder and consigning the execution petition to the record after having been fully satisfied. Though, in the beginning, the petitioner filed an appeal before the District Judge, however, subsequently revision petition was filed during the pendency of the appeal. The petitioner was granted an opportunity to choose from one of the remedies availed, and as a result the appeal filed before the learned District Judge has been withdrawn.

[2] In order to comprehend the issue involved in the present case, the relevant facts in brief are required to be noticed. In a Civil Suit titled as 'Jaspal Singh and anotherversus Ved Parkash', the Civil Court passed a decree of recovery of Rs.1,58,240/- against Ved Parkash on 12.09.2006. It is the case of the petitioner that subsequent to the decree of recovery, the decree-holder lodged an FIR No.269, dated 13.09.2007, under Section 420 IPC at Police Station Sadar, Sirsa, against the

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dispute and the decree-holder agreed to withdraw the civil as well as the criminal case. An agreement to this effect was reduced into writing on 21.05.2009. Ultimately, in terms of the compromise arrived at between the parties, the petitioner was discharged as the matter was compounded. The aforesaid order was passed by the competent Court on 30.05.2009. On the other hand, the decree-holder did not pursue the execution petition, forcing the Executing Court to dismiss the execution petition in default for non prosecution on 24.10.2009. The petitioner (JD) thought that the decree-holder has withdrawn the execution petition. With the passage of time, he shifted to Jaipur. However, the decree-holder filed an application for restoration of the execution petition on 30.01.2019 i.e. after a period of nearly 09 years from the date the execution petition was dismissed in default. In the application for restoration, notice was issued to the judgment debtor (petitioner herein). However, on report of refusal, the Court proceeded *ex parte* against the petitioner and the execution petition was restored to its original number on 10.07.2019. In the execution petition, the residential house of the petitioner was attached. On 06.12.2019, the petitioner filed an application for setting aside the *ex parte* proceedings / orders passed by the learned Executing Court. In the aforesaid application, the petitioner stated all the facts which have already been noticed in detail. However, the Court rather than passing any order on the aforesaid application, directed the sale of the property if the Judgment Debtor failed to pay the amount in the stipulated time. Thereafter, the property was sold on 04.01.2020, and the decree-holder

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noticed the sale was confirmed and the execution petition was disposed of.

[3] Heard learned counsel representing the parties at length and with their able assistance perused the paper book.

[4] Learned counsel representing the petitioner, while highlighting the facts which have already been noticed by this Court, submits that the Executing Court was required to decide the application filed by the petitioner on 06.12.2019. He submits that in absence of the decision, the Executing Court was not correct in ordering the sale of the property in dispute and for disposing the execution petition. On the other hand, learned counsel representing the respondents submits that on 09.12.2019, the petitioner appeared in the Court in person and was directed to make the payment by the executing Court. He submits that once the petitioner had joined the execution proceedings, no further order on the application filed by the petitioner was required to be passed.

[5] This Court has considered the submissions and analyzed the arguments of learned counsel representing the parties.

[6] It is evident that the Executing Court has failed to decide application filed by the petitioner on 06.12.2019. While filing the application, the petitioner had disclosed certain facts and a settlement arrived at on 21.05.2009. In the peculiar facts of the present case, the Executing Court was required to examine the correctness and validity of the aforesaid settlement before ordering sale of the Judgment Debtor's property. Without an *iota of doubt*, on 09.12.2019, the Judgment Debtor

payment to the decree-holder and warned him that the warrants of sale would be executed for the date already fixed if the payment due to the decree-holder is not paid within the stipulated time period. Thus, there was no adjudication on the application filed by the petitioner on 06.12.2019. The Executing Court has committed a manifest error in selling the property through Court auction without deciding application dated 06.12.2019. In the application filed before the Executing Court, the Judgment Debtor had already stated that there was a settlement arrived at between the parties on 21.05.2009.

[7] Keeping in view the aforesaid facts, the Court auction of the Judgment Debtor’s property on 04.01.2020 and its confirmation on 06.01.2020 is *set aside*. The Executing Court, at the first instance, is requested to decide the application dated 06.12.2019, in accordance with law. Now this application shall be treated as an objection petition filed on behalf of the Judgment Debtor. After granting an opportunity to the decree-holder to file a reply, the Court shall proceed to decide the application.

[8] With these observations, the revision petition is *allowed*.

(ANIL KSHETARPAL)
JUDGE

13.12.2023
'Rajneesh'

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