

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

124

2023:PHHC:150941

CR-6690-2018 (O&M)
Date of decision: 28.11.2023

JINDER PAL (DECEASED) THROUGH LRS ..Petitioners

Versus

PAWAN KUMAR AND ORS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Gupta, Advocate
for the petitioner.

Mr. Sunny K. Singla, Advocate
for respondent no.1 and 2.

ANIL KSHETARPAL, J(Oral)

1. The judgment debtor has challenged the correctness of order passed by the Executing Court on 03.08.2018, while dismissing their objection petition. A decree for recovery of approximately Rs.13,15,000/- was passed on 30.10.2014. An appeal was preferred against the aforesaid decree by the judgment debtor. In the meantime, the decree holder filed an execution petition. On 05.12.2015, the execution petition was transferred from the Court of Additional Civil Judge, Senior Division, Khanna to the Court of Additional Civil Judge, Senior Division, Nabha. On receipt of the execution petition, the transferee Court issued notice to the judgment debtor for 29.03.2016, however, the service of notice could not be completed. Again, the Court directed the issuance of notice. In the meantime, the appeal filed by the judgment debtor against the main judgment and decree was dismissed on 11.08.2016. On an application filed by the decree holder under Order V Rule 20 of the Code of Civil Procedure, 1908, the Court directed

service of notice by substituted service by way of publication in the newspaper. On 19.04.2017, it was reported to the Court that the notice has been published but the judgment debtors did not enter appearance. Thereafter, the property of the judgment debtor was sold in a Court auction held on 28.08.2017. After waiting for the statutory period, the Court auction was confirmed on 17.11.2017 and the sale certificate was issued on 28.11.2017, when warrants of symbolic possession were issued, the petitioner (judgment debtor) filed objection petition on 19.02.2018, which as noticed above has been dismissed by the Executing Court.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. The learned counsel representing the petitioner submits that the petitioners were never served with a notice of the execution petition and therefore, the objection petition filed was within the limitation period. He relies upon the judgment passed in **Satyanarain Bajoria Vs. Ramnarain Tibrewal, (1993) 4 SCC 414**. He further contends that notice issued under Order XXI Rule 66 of the Code of Civil Procedure, 1908, was not drawn in accordance with law and therefore, the petitioner has suffered prejudice. He relies upon the judgment passed in **Desh Bandhu Gupta Vs. N.L. Anand and Rajinder Singh, 1994(1) SCC 131**.

4. On the other hand, the learned counsel representing the respondents submits that efforts were made to serve the notice in the execution petition to the judgment debtors, however, they did not appear. He submits that forced by the circumstances, the Executing Court ordered the service of notice through publication. He further submits that the judgment

debtors still did not appear despite the publication of notice in the newspaper and therefore, the Executing Court was left with no choice but to proceed with the execution petition.

5. This Court has considered the submissions of the learned counsel representing the parties.

6. Admittedly, the execution petition was filed on 14.11.2014. On 05.12.2015, it was transferred to the Court of Additional Civil Judge, Senior Division, Nabha. On 09.02.2016, the Court at Nabha (transferee Court) issued notice to the judgment debtor for 29.03.2016, however, service was not effected and hence, a fresh notice was ordered to be issued. At that time, the appeal filed by the judgment debtors was pending, which was dismissed on 11.08.2016. Thereafter, an effort was made to serve the petitioners (judgment debtors) by publication in the newspaper. Despite the publication, the petitioners did not appear. In these circumstances, it would not be appropriate to hold that no effort was made to serve the notice on the petitioners in the execution petition. Moreover, the appeal filed by the petitioner against the main judgment and decree was dismissed on 11.08.2016. In view of the aforesaid facts, the petitioners cannot claim that they had no notice of the pending execution petition.

7. As per Article 127 of the Schedule attached to the Limitation Act, 1963, the period of limitation to challenge the sale by Court auction is 60 days from the date of sale. This Court has read the judgment passed in **Satyanarain Bajoria's case (supra)**. In the aforesaid case, a second execution petition was filed, in which no notice was issued to the judgment debtor. In those circumstances, the Court held that the sale of the judgment

debtors property is result of fraud. As is evident, the facts of the present case are different, hence, it is not applicable to the facts of the present case.

8. The next argument of the learned counsel representing the petitioner is also does not have substance because the judgment passed in **Desh Bandhu Gupta's case (supra)** is based on the rules (sale of property and delivery by the purchaser) framed by the Delhi High Court which provide that the Court is expected to give its tentative value of the property. The attention of the Court has not been drawn to any parallel rule either in the Code of Civil Procedure, 1908 or in the Rules framed by the High Court of Punjab and Haryana.

9. Admittedly, the decree passed by the First Appellate Court on 11.08.2016, has become final. The Court auction has also been confirmed.

10. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

11. Dismissed accordingly.

12. All the pending miscellaneous applications, if any, are also disposed of.

November 28th, 2023

Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*