

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101

CR No.9059 of 2017 (O&M)

Date of Decision: 16.02.2023

Kesar Singh

....Petitioner

Versus

Harbhajan Kaur @ Jasvir Kaur and others

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Narinder Singh Dadwal, Advocate for the petitioner.

Mr. Jagjit Singh, Advocate
for respondents No.1 to 3.

Harsimran Singh Sethi, J. (Oral)

The present revision petition has been filed for setting aside the order passed by the Executing Court dated 18.11.2017 by which, application filed by the petitioner for the issuance of the Sale Certificate in respect of the property which was purchased by the petitioner-applicant under the auction as ordered by the Court while hearing the execution application No.3 of 2000 dated 19.01.2013 titled as **Harbhajan Kaur and others Vs. Jagdeep Singh and others** for the satisfaction of the decree dated 01.12.2008, was dismissed.

Learned counsel for the petitioner argues that respondents No.4 and 5 suffered a decree in favour of the decree holders i.e. respondents No.1 to 3 on 01.12.2008, for the execution of which, respondents No.1 to 3 filed execution application No.3, dated 19.01.2013

titled as **Harbhajan Kaur and others Vs. Jagdeep Singh and others.**

Respondents No.4 and 5 i.e. judgment debtors were proceeded ex parte and during the pendency of the execution petition, the property belonging to respondents No.4 and 5 was attached and, thereafter, was ordered to be sold so as to satisfy the judgment and decree dated 01.12.2008.

It is a conceded position that keeping in view the order passed by the Executing Court, the property of respondents No.4 and 5 which was attached and was sold in the auction held on 01.10.2015 and the petitioner purchased the said property measuring 4 kanal 3 Marla in the open auction for a consideration of ₹2,86,500/-. The auction amount was deposited by the petitioner being the auction purchaser in the Court and out of the auction money deposited by the petitioner, a sum of ₹2,79,000/- was released in favour of respondents No.1 to 3 for the satisfaction of decree dated 01.12.2008. Though, the Executing Court was required to confirm the sale as the property was sold in the execution as ordered in the execution proceedings but after the decree was satisfied, no one appeared on behalf of the decree holder and the said execution application was dismissed in default. Though, the said execution application was dismissed in default, the Court did not confirm the sale in favour of the petitioner though, no objection qua the said auction was ever raised by the judgment debtors, who had already been proceeded ex parte.

In order to get the Sale Certificate, the petitioner filed an application for the restoration of the execution petition but the same was dismissed by the Court on 17.08.2017 on the ground that the execution application was not filed by the petitioner. After dismissal of the said application, the petitioner moved an application for issuance of Sale Certificate but the said application was also dismissed by the impugned

order by the Executing Court on the ground that as the execution application has already been dismissed, no order can be passed so as to confirm the sale. The said order dated 19.01.2013 is under challenge in the present petition.

Notice of the present petition was issued. Respondents No.1 to 3 i.e. decree holders, who have already got their money keeping in view the sale consideration deposited by the petitioner are being represented by a counsel but respondents No.4 and 5 who were the judgment debtors, have not appeared despite service. Hence, there is no option with this Court but to proceed ex parte against respondents No.4 and 5.

I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

It is a conceded position that the execution application was filed by respondents No.1 to 3 so as to satisfy the judgment and decree dated 01.12.2008. It is also a conceded position that during the pendency of the execution application, the property of respondents No.4 and 5 was attached and thereafter sold in auction through the Court. It is also not disputed that the petitioner purchased the said property in the auction conducted by the Court and deposited the full consideration within the time frame and out of the said sale consideration, the decree has been satisfied as a sum of ₹2,79,000/- was paid to respondents No.1 to 3.

The Executing Court should have been careful that while releasing the amount in favour of respondents No.1 to 3, which amount was deposited by the petitioner as a sale consideration in pursuance to the Court auction, the same should have been only extended to them after confirming the sale and releasing the Sale Certificate in favour of the petitioner so that the auction purchaser does not suffer any prejudice but

for the reasons best known to the Executing Court, though the sale consideration deposited by the petitioner was accepted and released in favour of the decree holders but auction was not confirmed and Sale Certificate was not issued which caused prejudice to the petitioner even thereafter. While dismissing the execution application for default as well as the application filed by the petitioner for restoration of the execution application, the Executing Court failed to discharge its duties towards the petitioner i.e. auction purchaser that the auction, which was ordered on the asking of the Court was not confirmed in favour of the petitioner.

The impugned order by which the application filed by the petitioner for issuance of Sale Certificate has been dismissed only recites the fact that the Sale Certificate can only be issued during the pendency of the execution proceedings, which are no longer pending. The said stand of the trial Court is not correct. First of all, the trial Court without issuing Sale Certificate, released the sale consideration deposited by the petitioner in favour of the decree holders and now, only by citing technicality that the execution application is not pending, the issuance of Sale Certificate has been declined despite the fact that the auction money already stood deposited by the petitioner and released to the decree holders. Once there was no objection to the auction by the judgment debtor even upto now, declining the issuance of Sale Certificate after confirming the auction by the impugned order is not correct approach adopted by the Executing Court.

Further, as per Order 21 Rule 94, the Sale Certificate has to be issued to the purchaser by the Court where the sale of the immovable property has become absolute. The impugned order has been passed without appreciating the Order 21 Rule 94 as the sale deed already

became absolute in favour of the petitioner. Keeping in view the fact that there was an auction purchaser and had deposited the sale consideration within time frame of which the sale consideration had already been accepted by the Court and, thereafter, decree has been satisfied out of the auction money deposited by the petitioner, in the facts and circumstances, for all intents and purposes, the sale of the immovable property belonging to respondents No.4 and 5 in favour of the petitioner had already become absolute and the Court was required to issue Certificate. These provisions of law have been ignored by the Executing Court while passing the impugned order hence, the same cannot be sustained

Keeping in view the above, the impugned order is set aside and the case is remanded back to the Executing Court to pass appropriate order by taking into consideration the Order 21 Rule 94 with regard to the prayer of the petitioner for issuance of the Sale Certificate.

The record be sent back to the trial Court.

Allowed in above-stated terms.

February 16, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*