

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(260)

**CR-1809-2022 (O&M)
Date of Decision: 05.07.2023**

Gurdaspur Improvement Trust, GurdaspurPetitioner

Versus

Hardial Singh (Deceased) Through LR's and ors.Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vikas Singh, Advocate, for the petitioner.

Mr. Inderjit Sharma, for respondent No.1(ii).

HARKESH MANUJA, J.(ORAL)

1. By way of present revision petition filed under Article 227 of the Constitution of India, prayer has been made for setting aside the orders dated 03.03.2022 and 04.03.2022 passed by the Executing Court, whereby two separate applications filed at the instance of petitioner/judgment debtor praying for setting aside of the orders dated 20.12.2017 and 15.02.2018 vide which auction was held, besides allowing them to pay the entire balance decretal amount stand rejected.

2. In the present case, the land owned by the private respondents, situated in village Shehzada Nangal, Tehsil and District Gurdaspur was acquired way back in the year 2005, wherein Award was passed by the Collector @ Rs. 12 Lakhs per acre which came to be enhanced to Rs. 24 Lakh per acre in reference by the Land Acquisition Tribunal vide order dated 22.02.2012.

3. During execution proceedings No.1255 of 2013, certain property measuring 21 Kanal, owned by the petitioner-Trust was put to auction on 15.02.2018 in which, one of the decree holders, namely, Paramjit Singh also

participated. Though, 25% of the auction amount which was supposed to be

deposited by the bidder, in the present case the decree holder-one of the land owners, was exempted therefrom as the enhanced award amount was due towards them from the petitioner-Trust. Challenge to the auction held on 15.02.2018 was upheld vide order dated 03.04.2019 passed in CR No.6208 of 2018. Nonetheless, the auction purchaser failed to deposit the remaining auction amount as prescribed under Order 21 Rule 85 CPC within 15 days from the sale of property as the said amount was deposited on 05.04.2022, thus, no sale deed was ever executed in their favour.

4. During pendency of the execution proceedings, the petitioner-Trust moved two separate applications for seeking permission to deposit the remaining decretal amount due towards the land owners/private respondents besides praying for recalling the earlier orders dated 20.12.2017 and 15.02.2008, passed by the Executing Court, vide which auction of their property was held. The Executing Court dismissed both the said applications vide orders dated 03.03.2022 and 04.03.2022 respectively, which have now been impugned by way of present revision petition.

5. Learned counsel for the petitioner submits that the auction held on 15.02.2018 cannot be sustained and the land cannot be transferred in the name of the auction purchaser, who having been failed to deposit the complete auction amount within 15 days from the date of sale as prescribed under Order 21 Rule 85 CPC and thus, prays for an opportunity to deposit the compensation amount in favour of the land owners/private respondents towards satisfaction of the award while submitting that the auction proceedings be nullified.

6. On the other hand, learned counsel representing the private respondents/land owners vehemently opposes the prayer made in the present revision petition. Learned counsel submits that though the auction took place

on 15.02.2018 and the remaining auction amount was deposited by it on 05.04.2022, however, the delay in deposit was primarily on account of repeated applications being presented by the petitioner-Trust before the Executing Court and practically there was no delay on the part of the auction purchasers/private respondents.

7. I have heard learned counsel for the parties and gone through the paper book as well as the records.

8. In the present case, the land was acquired in the year 2005 and the dispute relates to the payment/disbursement of the enhanced amount of compensation wherein during pendency of the execution, some land owned by the petitioner-Trust was put to auction on 15.02.2018 in which some of the land owners i.e. private respondents participated with permission of the Executing Court, having granted the benefit set-off towards the bid amount against the decretal amount as per Order 21 Rule 72 CPC. Further, the order made which the auction was held even came to be upheld by this Court vide order dated 03.04.2019 passed in CR No.6208 of 2018. Having failed to deposit the full amount towards purchase money as mandated under Order 21 Rule 85 CPC, within 15 days from the auction, sale deed could not be executed in their favour. Nonetheless, the remaining amount was deposited on 05.04.2022 with the permission of the executing Court.

9. Once statutory period has been prescribed for deposit of the full amount of sale money as contemplated under Order 21 Rule 85 CPC, the discretion exercised by the Executing Court permitted the auction purchaser to deposit amount beyond it was wholly uncalled for, although the auction purchaser being one of the decree holder, was entitled for set-off as provided under proviso to Rule 85 Order 21 CPC and in case the decretal amount qua the share of auction purchaser fell short of remaining sub price, the auction

has to go. My aforesaid view can also be derived from a decision made by Hon'ble Supreme Court, in the case of **“Manilal Mohanlal Shah and others Vs. Sardar Sayed Ahmad Sayed Mahmud and others, AIR, 1954 Supreme Court, page 349,** Relevant paragraphs 7 to 9 thereof are reproduced hereunder:

7. The scheme of the rules quoted above may be shortly stated. A decree-holder cannot purchase property at the Court- auction in execution of his own decree without the express permission of the Court and that when he does so with such permission, he is entitled to a set-off, but if he does so without such permission, then the Court has a discretion to set aside the sale upon the application by the judgment-debtor, or any other 'person whose interests are affected by the sale (Rule.72). As a matter of pure construction this provision is obviously directory and not mandatory - See Rai Radha Krishna and Others v. Bisheshar Sahai and Others (1). The moment a person is declared to be the purchaser, he is bound to deposit 25 per cent. of the purchase-money unless he happens to be the decree-holder, in which case the Court may not require him to do so (Rule 84).

8. The provision regarding the deposit of 25 per cent. by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. The full amount of the purchase-money must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set-off. The provision for payment is,. however, mandatory... (Rule 85). If the payment is not made within the period of fifteen days, the Court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the Court to re-sell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claim to the property (Rule86).

9. It is not denied that the purchasers had not obtained any decree on foot of their mortgage and the claim of Rs. 1,20,000 which they put forward before the execution Court had not been adjudicated upon or determined. The mortgagees, one of whom is a pleader, applied on the day of the sale claiming a set-off on foot of the mortgage. The Court without applying its mind to the question immediately passed the order allowing the set-off. This claim was obviously not admissible under the provisions of rule 84 which applies only to the decree-holder. The Court had clearly no jurisdiction to allow a set-off. The appellants

misled the Court into passing a wrong order and obtaining the advantage of a set-off while they knew perfectly well that they had got no decree on foot of the mortgage and their claim was undetermined. There was default in (1) 49 I.A. 312. depositing 25 percent of the purchase-money and further there was no payment of the full amount of the purchase- money within fifteen days from the date of the sale. Both the deposit and the payment of the purchase-money being mandatory under the combined effect of rules 84 and 85, the Court has the discretion to forfeit the deposit but it was bound to re-sell the property with the result that on default the purchaser forfeited all claim to the property. These provisions leave no doubt that unless the deposit and the payment are made as required by the mandatory provisions of the rules, there is no sale in the eye of law in favour of the defaulting purchaser and no right to own and possess the property accrues to him.”

10. Thus, the discretion exercised by the Executing Court while passing the orders dated 03.03.2022 and 04.03.2022 in ignorance of the abovementioned procedure is hereby set aside.

Accordingly, the present revision petition is disposed of with a direction to the Executing Court to decide the matter afresh in view of the aforesaid observations, especially considering the provisions of Order 21 Rule 84-85 CPC

11. Pending application(s), if any, are also disposed of in view of the discussion made above.

(HARKESH MANUJA)
JUDGE

05.07.2023
anil

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