

ESA-64-2023(O&M)

2023:PHHC:165060

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

**ESA-64-2023(O&M)
Date of decision :21.12.2023**

Davinder Dhawan

...Appellant

Vs.

Ms. Khurana Trading Company and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V.K. Sachdeva, Advocate
for the appellant.

ANIL KSHETARPAL, J.

1. In execution of decree for recovery of the amount, the immovable property of judgment debtor was sold in a Court auction for Rs. 65 lacs. The decree holder with the prior permission of the Court has purchased the property. The objection petition filed by the petitioner was allowed by the Executing Court, however, in appeal the same was set aside. It has been found by the First Appellate Court that the sale of the property by the judgment debtor in favour of the petitioner (objector) is a fraudulent transfer in order to defeat the rights of the decree holder. It has also been found that the objector was the broker working for the judgment debtor. The correctness of the aforesaid order has been challenged in this Execution Second Appeal. Admittedly, the appellant purchased the property for a petty sum of Rs. 3.5 lacs on 05.06.2006, whereas, the money decree against the judgment debtor was passed on 22.09.2005. The Court passed a decree for recovery of Rs. 56,84,000/- against the judgment debtor. In order to defeat the execution of decree and to defraud the creditors, the sale deed was executed in favour of

the petitioner. Hence the objection petition has been dismissed.

2. The learned counsel representing the appellant contends that the rule of *lis pendens* would not apply in this case because the property was not subject matter of the suit and therefore, the appellant being *bona fide* purchaser is entitled to protect the same.

3. This Court has considered the submissions. Section 53 of the Transfer of Property Act protects the creditors from fraudulent transfer of the property by the judgment debtor, which has been made in order to defeat the rights of the creditor.

4. On a Court question, learned counsel representing the appellant failed to dispute the correctness of the findings of the First Appellate Court that the appellant was working as a broker on behalf of the judgment debtor No.1. Still further in a Court auction, the property has been sold for Rs. 65 lacs, whereas, the sale deed in favour of the appellant is for Rs. 3.5 lacs.

5. In view of the aforesaid, no ground for interference is made out.

6. Hence dismissed.

(ANIL KSHETARPAL)
JUDGE

21.12.2023

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Whether speaking/reasoned :
Whether Reportable :

Yes
Yes

No
No