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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24.08.2023

+ CM(M) 194/2023 & CM APPLs. 6046/2023, 8100/2023

AMRIT PAL SINGH

..... Petitioner

Through: Mr. Kunal Madan and Mr. Manmay,
Advocates.

versus

DAMANPREET KAUR & ORS.

..... Respondents

Through: Dr. R.S. Sasan, Advocate for R-1.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed on 17.01.2023 under Article 227 of the Constitution of India impugns the order dated 08.02.2021 passed by the Additional District Judge -02, West District, Tis Hazari, Delhi in Execution Petition no. 219/2018 ('Executing Court') whereby the Executing Court has dismissed the objections filed by the Petitioner herein under Order 21 Rule 90 of the Civil Procedure Code, 1908 ('CPC') for setting aside the auction sale dated 20.06.2019.

2. The Petitioner herein is the Judgment Debtor No.2.

2.1. Respondent Nos. 1 and 2 are Decree Holders and the original plaintiffs in the civil suit.

2.2. Respondent No.3 is the Judgment Debtor No.1 and Respondent No. 4 is the Judgment Debtor No.3.



2.3. Respondent No.5 is the Auction Purchaser appointed by the Executing Court.

3. A civil suit bearing No.1207/11/2010 (New No. 9789/2016) was filed by Respondent Nos. 1 and 2 seeking partition of property bearing no. WZ-230, Gali no. 4, Guru Nanak Nagar, MBS Nagar Tilak Nagar, Delhi-110018 measuring 75 sq. yards. ('subject property') on 09.12.2010.

3.1. The Judgment Debtors who were impleaded as defendants in the civil suit were proceeded ex-parte on 15.12.2010.

3.2. *Vide* judgment dated 21.07.2016 a preliminary decree was passed by Additional District Judge -05 West District, Tis Hazari Courts Delhi ('Trial Court') declaring that the Decree holders (i.e., the plaintiffs) are entitled to $\frac{1}{4}$ th undivided share in the subject property jointly. It further held that the remaining $\frac{3}{4}$ th share belonged to Judgment Debtors No. 1, 2 and 3 respectively in equal shares.

3.3. The final decree was passed by the Trial Court on 12.01.2017 holding that the property had to be sold in auction sale and the sale proceeds be divided in four (4) equal shares between the Decree Holders and the Judgment Debtors respectively.

4. The execution petition was filed by Respondent No. 1 and 2 in February 2018 and initially, the Executing Court appointed an Advocate for conducting the auction of the subject property on 18.02.2019. However, before the auction could be held, Petitioner herein i.e., Judgment Debtor No.2 filed an application before the Trial Court offering to value the subject property at Rs. 94 lakhs and pay the Decree Holders and Judgment Debtors No. 1 and 3, $\frac{1}{4}$ th share each. In other words, the Judgment Debtor No.2 offered to pay Rs. 23.5 lakhs each to the Decree Holders, Judgment Debtor No.1 and Judgment



Debtor No.3 respectively.

4.1. The Executing Court accepted the offer of the Judgment Debtor No.2 and stayed the order of auction of the subject property. However, subsequently, it transpired that the Judgment Debtor No.2 was unable to make any payment in terms of the statement made before the Court and the Judgment Debtor No.2 came forward before the Court to withdraw his offer and requested the Executing Court to proceed with the auction at the hearing dated 05.04.2019.

4.2. In these circumstances, the Executing court directed that the auction sale of the subject property be proceeded with and fixed the date of 20.06.2019 for the auction. The reserved price of the subject property has been fixed at Rs. 44,30,000/-.

4.3. The auction was conducted by the Court Auctioneer on 20.06.2019 after complying with all the procedures of publication, affixation and proclamation and an auction purchaser i.e., Stable Developers Private Limited (i.e., Respondent No.5), was declared as the highest auction purchaser to offer to pay a sum of Rs. 45 lakhs to purchase the subject property. The auction purchaser deposited 25% of the amount i.e., Rs. 11,25,000/- by way of a bank draft with the Court Auctioneer on the same date.

5. Thereafter, the Petitioner (i.e., Judgment Debtor No.2) herein filed objections under Order 21 Rule 90 of the CPC to the said auction purchase, which were dismissed by the impugned order dated 08.02.2021 upholding the auction.

5.1. Pertinently, in the said objections, the Petitioner failed to point out any substantial injury which may have been caused to him and he did not make any averment that he was precluded from participating in the bidding process



or that he intended to offer any higher bid.

6. Similarly, Judgment Debtor no.1 also filed objections under Order 21 Rule 90 of the CPC which were identical in content and the same were dismissed by the Executing Court on 31.08.2021. Thereafter, the Judgment Debtor No. 1 challenged the order dated 31.08.2021 before this Court in CM(M) 636/2021. The said petition was dismissed by this Court *vide* order dated 21.09.2021 wherein this Court held that the objections were barred by delay and laches.

6.1. In the meantime, the auction purchaser i.e., Respondent No.5 deposited the balance amount of Rs. 33.75 lakhs with the Executing Court and in this manner the entire amount of Rs. 45 lakhs stood deposited with the Court (deposited in 2019).

7. The impugned order dismissing the objections filed by the Petitioner was passed on 08.02.2021 and passed an order making the sale absolute in favour of the auction purchaser by a separate order of even date.

8. The Petitioner herein has after a period of two (2) years on 17.01.2023 filed the present petition seeking to impugn the order dated 08.02.2021. This matter was first listed before this Court on 08.02.2023.

In the interregnum, the sale certificate has also been executed and registered in favour of the auction purchaser on 01.02.2023. In the opinion of this Court, the present petition is barred by delay and laches.

9. Learned counsel for the Petitioner before this Court has raised a singular contention that a perusal of the Court Auctioneer's Report shows that the auction was conducted at 3:30 P.M. and the highest bid received was Rs. 45 lakhs. He states that the report further records that the equivalent 25% of the bid amount was deposited by the auction purchaser with the Auctioneer



immediately thereafter. He states that this fact is incongruous in as much as how could a pre-determined amount of the final bid be readily available with the auction purchaser. He states that it is his case that the auction was not conducted legally and it is his contention that the auction was not conducted at 3:30 P.M. as mentioned in the report of the Court Auctioneer.

10. This Court has perused the impugned order of the Executing Court dated 08.02.2021 wherein the Executing Court had duly dealt with the conduct of the sale and returned its satisfaction with respect to the reserved price mentioned therein. The Executing Court has also recorded that the Petitioner herein during the course of oral arguments before the Executing court on 08.02.2021 offered an enhanced amount of Rs. 46 lakhs as the bid amount whereas the Court Auctioneer had recorded the highest bid received on 20.06.2019 as Rs. 45 lakhs. The Executing Court therefore recorded its satisfaction that the Petitioner herein by offering a bid of Rs. 46 lakhs had confirmed the reasonableness of the bid offered by the auction purchaser.

It would be relevant to note that the bid amount of Rs. 45 lakhs was offered by the auction purchaser on 20.06.2019 and deposited with the Executing Court immediately thereafter in 2019.

11. The Petitioner herein offered before the Executing Court an increased amount of Rs. 46 lakhs in the year 2021 however almost two (2) years later only increased the bid marginally by an amount of one lakh.

12. This Court therefore finds no error in the finding of the Executing Court that the Petitioner herein has not been prejudiced in any manner by the acceptance of the bid amount of Rs. 45 lakhs on 20.06.2019, as the bid amount offered by the Petitioner two years later was only higher by an amount of Rs. 1 lakh, which would have brought merely an enhanced amount of Rs. 25,000



to the Petitioner herein.

13. Further, in view of the fact that on identical objections raised by Judgment Debtor no.1, the objections were dismissed by the Executing Court and the dismissal has also been upheld by the Coordinate bench of this Court *vide* order dated 21.09.2021, would also have bearing on the maintainability of this petition as no distinct objection or submission has been raised by the Petitioner. This Court is bound by the decision passed by the Coordinate Bench on 21.09.2021.

14. The auction sale having made absolute on 08.02.2021 and sale certificate having been registered on 01.02.2023 in favour of the auction purchaser; the filing of the present petition two (2) years later by the Petitioner clearly evidences that the Petitioner is merely obstructing the execution of the decree and seeking to defeat the rights of the auction purchaser.

15. Accordingly, the present petition is dismissed. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

AUGUST 24, 2023/msh/ms

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