

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

133

CR-353-2024 (O&M)

Date of decision: 08.02.2024

Karnail Singh

...Petitioner

Versus

Kulwinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Mayur Kanwar, Advocate for the petitioner.

VIKAS SURI, J.

1. Challenge raised in the present revision petition under Article 227 of the Constitution of India is to order dated 25.10.2023, passed by the first Appellate Court whereby the appeal preferred against the order confirming the sale by the executing Court vide order dated 28.05.2019, has been dismissed.

2. The facts of the case that need to be succinctly noticed to appreciate the issue raised in the present petition are that the suit for specific performance filed by the plaintiff-respondents was decreed for recovery of Rs.80,000/- with costs and interest @ 12% p.a. from the date of agreement to sell till the date of decree and future interest @ 6% p.a. from the date of decree till actual realization of the decretal amount.

3. The petitioner/judgment-debtor failed to make payment of the decretal amount and thereafter, in execution proceedings, the property of judgment debtor was attached. Notice under Order 21 Rule 66 CPC was served upon the petitioner-judgment debtor. Thereafter, the

sale proceedings were carried out and sale of one kanal of land was effected for an amount of Rs.2,10,000/-.

4. The petitioner-judgment debtor filed objections, which were dismissed by the executing Court vide order dated 03.05.2019. It was held that there is nothing on record to show that the sale proceedings are result of fraud and collusion and hence, there is no ground to set aside the same. Accordingly, the execution proceedings continued for confirmation of sale and those pertaining to the auction money.

5. Concededly, the petitioner-judgment debtor did not prefer any appeal against the order dated 03.05.2019, whereby the objections against the sale have been dismissed. The sale was confirmed vide order dated 28.05.2019 and the sale of land measuring 1 kanal, effected on 20.03.2019, was made absolute, observing that the decree holder/auction purchaser were at liberty to apply for issuance of sale certificate and the Ahlmad was directed to issue the same if the claim of the decree holder/auction purchaser was in order. It was further ordered that refund voucher be issued to the decree holder for an amount of Rs.2,00,750/- and refund voucher to judgment debtor pertaining to the remaining amount beyond the decretal amount.

6. The petitioner-judgment debtor preferred an appeal against the aforesaid order dated 28.05.2019 whereby the sale was confirmed. The First Appellate Court dismissed the appeal while recording the following findings:-

“5. It was conceded by Sh.Rajneesh Garg Advocate that this appeal does not impugn the order dated 3.5.2019 and impugns only order dated 28.5.2019. Perusal of order dated

3.5.2019 would show that the JD had raised objections to the sale averring that the sale which was carried out on 20.3.2019, no prior notice was served upon him, the property was under valued, sale proceedings were carried out at lesser value, attendance sheet was not prepared etc. etc. No appeal having been filed against the order dated 3.5.2019, it means that objections which were raised by the JD and which were redressed by way of order dated 3.5.2019, the same have attained finality. By way of order dated 28.5.2019, as such no objection was raised by the JD. It was on account of the fact that the auction proceedings had taken place, objections raised by JD stood decided by way of the previous order dated 3.5.2019, that the Court proceeded further according to the provisions of Order 21 Rule 92 onwards of the CPC. No ground whatsoever is made out to interfere with the impugned order dated 28.5.2019. There is no merit in the appeal.”

7. Heard learned counsel for the petitioner and perused the material on record with his able assistance.

8. Undisputedly, the petitioner-judgment debtor has not preferred any appeal against the orders dated 03.07.2018 and 03.05.2019, whereby the objection petition preferred by the petitioner-judgment debtor was dismissed by the executing Court. However, it is submitted that the order dated 03.07.2018, pertaining to dismissal of objections dated 26.03.2015 regarding the plea of service of notice under Order 21 Rule 66 CPC was not in conformity with the legal provisions. The admitted position is that the order dated 03.05.2019 passed by the executing Court dismissing the objections with regard to attachment and sale in auction on 27.03.2019 of the land of petitioner-judgment debtor, has also not been appealed against.

9. Learned counsel for the petitioner has very fairly conceded

that there is no material on record to counter the findings recorded by the Appellate Court. It is also not disputed that learned counsel for the petitioner had conceded before the First Appellate Court that the appeal from which the revision petition has arisen does not impugn the order dated 03.05.2019, but only the order dated 28.05.2019.

10. In view of the above and the fact that the petitioner-judgment debtor did not impugn the order dated 03.05.2019 whereby his objections against attachment and sale of the property in question were dismissed and thus, the scope of the appeal against the order whereby the said sale was made absolute was therefore restricted to the proceedings after 03.05.2019 only. It is in these circumstances that the first Appellate Court came to the conclusion that no ground was made out to interfere with the order dated 28.05.2019 passed by the executing Court.

11. In the light of the aforesaid, learned counsel for the petitioner has failed to point out any infirmity or perversity in the impugned order or the procedure followed by the executing Court or the first Appellate Court. It is also not the case of the petitioner that there exists any jurisdictional error.

12. In view of the above discussion, no ground is made out for interference by this Court. Resultantly, the instant revision petition being devoid of merit, is dismissed.

February 08, 2024
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No