



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No. 4038 of 2024 (O&M)
Date of Decision: 25.07.2024

Bhagwat Dayal

..... Petitioner

Versus

M/s. S.D. Precision Tech. Pvt. Ltd., New Delhi
through its authorized representative Sharad Singhal
and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Samir Rathaur, Advocate
for the petitioner-Auction Purchaser.

Mr. Munish Kumar Garg, Advocate
for the caveator–respondent No. 1 / Judgment Debtor.

HARKESH MANUJA, J. (ORAL)

By way of present petition, the petitioner-Auction Purchaser seeks setting aside of an order dated 24.04.2024 (Annexure P-1) passed by the learned Additional District Judge, Palwal (**hereinafter to be referred as “First Appellate Court”**) in ***CMA No. 24 of 2020***, titled ***“M/s. S.D. Precision Tech. Pvt. Ltd. Versus Pawan Saini and others”***, whereby an appeal filed at the instance of respondent No. 1-Judgment Debtor, about challenge to an order dated 05.10.2020 (Annexure P-11) passed by the Court of Civil Judge (Senior Division), Palwal (**hereinafter to be called as “Executing Court”**) confirming the sale in favour of petitioner-Auction Purchaser, was accepted; thereby setting aside the order dated 05.10.2020 as well as the auction sale conducted on 17.03.2020.

[2] Briefly stating, a suit for declaration, mandatory injunction and permanent injunction, filed at the instance of respondent Nos. 2 & 3 (Pawan Saini & Gaurav respectively), was decreed by the trial Court vide its judgment and decree dated 26.07.2016 against respondent No. 1-defendant No. 2 (M/s. S.D. Precision Tech. Pvt. Ltd., New Delhi). Execution thereof was filed at the instance of Decree Holders on 07.12.2016. During its pendency, agricultural land measuring 7 Kanals 15 Marlas situated within the revenue estate of Palwal, owned and possessed by respondent No. 1—Judgment Debtor came to be attached by the Executing Court on 01.05.2019. Respondent No.1-Judgment Debtor entered into some settlement with the decree-holder yet having failed to satisfy the decree, warrant of sale *qua* the aforementioned property was issued by the Executing Court. The relevant order dated 19.02.2020 passed by the Executing Court in this regard is extracted hereunder:-

*“ Present: Sh. F.S. Tanwar, Advocate for the DH.
JD exparte VOD 28.03.2019.*

*Warrant of sale received back unexecuted.
Now, fresh warrant of sale be issued in the following
manner:-*

<i>Notice</i>	<i>:</i>	<i>27.02.2020</i>
<i>Spot notice</i>	<i>:</i>	<i>04.03.2020</i>
<i>Sale</i>	<i>:</i>	<i>12.03.2020</i>
<i>Report</i>	<i>:</i>	<i>19.03.2020</i>

*Rajesh Kumar Yadav
CJ(SD)/Palwal/19.02.2020
(UID No. HR0243) ”*

[3] In pursuance thereof, the auction proceedings *qua* the aforementioned property were held on 17.03.2020, the petitioner being the

highest bidder, offered Rs. 31,24,800/-. A sum of Rs. 7,81,200/- (25% of the bid amount) was deposited by the petitioner-Auction Purchaser on the same day with the Court Auctioner and the sale was confirmed in his favour by the Executing Court on 05.10.2020. Later, the balance sale consideration of Rs.23,43,600/- was handed over to respondent No. 1-Judgment Debtor before the Executing Court on 15.10.2020, while consideration upon an application for seeking extension / permission of deposit *qua* the balance auction amount, moved at the instance of petitioner-Auction Purchaser. Subsequently, a sale certificate was issued on 18.02.2021 followed by handing over the possession of the auctioned property and the execution application filed by respondent No. 1 was withdrawn.

[4] In the meanwhile, on 04.08.2021, respondent No. 1-Judgment Debtor assailed the auction proceedings before the Executing Court having filed objections thereto while invoking Order 21 Rule 90 of the Code of Civil Procedure, 1908. Those were, however, declined vide order dated 05.10.2020 passed by the Executing Court, while confirming the sale in favour of the petitioner-Auction Purchaser.

[5] Aggrieved thereof, respondent No. 1-Judgment Debtor filed first appeal, which came to be accepted vide order dated 24.04.2024 while setting aside the auction / sale dated 17.03.2020. Hence, the present revision petition.

[6] Impugning the aforesaid order dated 24.04.2024 passed by the First Appellate Court, learned counsel for the petitioner submits that the objections filed at the instance of respondent No. 1-Judgment Debtor before the Executing Court questioning the auction held on 17.03.2020 could not

have been entertained, he having already alienated the property under attachment vide sale deed dated 12.02.2020 in favour of one Smt. Gayatri having left with no right, title or interest therein and thus, not falling under any of the categories as enumerated under Order 21 Rule 90 of the Code Civil Procedure, which gives right to file application to the Decree Holders or the purchaser or any other person entitled to share in a rateable distribution of assets or whose interest is affected by the sale; for setting it aside on the ground of irregularity or fraud. He **further submits** that the objections filed at the instance of respondent No. 1-Judgment Debtor were not even maintainable in the absence of statutory pre-deposit made by him in terms of Order 21, Rule 89 (1) (a) of the Code of Civil Procedure and thus, the same were out-rightly liable to be rejected.

No other argument has been raised on behalf of the petitioner.

[7] On the other hand, learned counsel for the caveator-respondent No. 1 / Judgment Debtor submits that as per the schedule fixed by the Executing Court vide its order dated 19.02.2020, the auction was to take place on 12.03.2020, whereas the same been held on 17.03.2020 without obtaining any prior approval from the Executing Court or in the absence of due publicity for the said date, was *per se non est*. He **further submits** that the deposit of balance auction amount though permitted by the Executing Court vide its order dated 15.10.2020 was liable to be ignored being in violation of Order 21 Rule 85 of the Code of Civil Procedure. He **also submits** that the auction proceedings being *non est* as no notice regarding proclamation of sale by public auction to be held on 17.03.2020 was ever issued or served upon respondent No. 1-Judgement Debtor, thereby making

it violative of Order 21 Rule 66 (2) of the Code of Civil Procedure were liable to be ignored.

No other point has been raised on behalf of the caveator-respondent No. 1.

[8] After hearing learned counsel for parties and having gone through the paper-book, I am unable to find substance in the submissions made on behalf of the petitioner. Before delving upon the issue in hand, it may be relevant to take note of Order 21, Rules 66, 85 and 90 of the Code of Civil Procedure, 1908, which are re-produced hereunder for reference:-

“ 66. Proclamation of sales by public auction. –

- (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.*
- (2) Such proclamation shall be draw up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible-*
 - (a) the property to be sold [or, where a part of the property would be sufficient to satisfy the decree, such part];*
 - (b) the revenue assessed upon the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;*
 - (c) any incumbrance to which the property is liable;*
 - (d) the amount for the recovery of which the sale is ordered; and*
 - (e) every other thing which the Court considers material for a purchaser to*

know in order to judge of the nature and value of the property:

[Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate if any, given, by either or both of the parties.]

- (3) *Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.*
- (4) *For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.*

85. Time for payment in full of purchase-money. –

The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on

the fifteenth day from the sale of the property:

Provided, that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

90. Application to set aside sale on ground of irregularity or fraud-

- (1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conduction it.*
- (2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.*
- (3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.*

Explanation.-There mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.] ”

[9] As regards the plea set up by the petitioner-Auction Purchaser that the objections filed at the instance of respondent No. 1-Judgment Debtor to the auction held on 17.03.2020 were not maintainable as he had already alienated the property in question in favour of one Smt. Gayatri vide registered sale deed dated 12.02.2020 lacks merits, in the humble opinion of this Court. Once, the alienation of attached property by respondent No. 1-Judgment Debtor was made on 12.02.2020, the same was always subject to

lis pendens, the same being made during the pendency of execution proceedings and thus, always created right, title or interest in the purchaser, i.e Smt. Gayatri, subject to outcome of the execution proceedings, unless an act of collusion between the Judgment Debtor or the Decree Holder was proved, which apparently was neither pleaded nor established on record at the hands of petitioner-Auction Purchaser. In such circumstances, respondent No. 1-Judgment Debtor cannot be made to suffer on both ends i.e. non-suiting it *qua* the maintainability of objections in terms of alienation made by it on 12.02.2020 in favour of Smt. Gayatri and on the other hand making it simultaneously liable towards her rights against the said purchase. Accordingly, in the given facts and circumstances, respondent No. 1-Judgment Debtor was definitely left with semblance of right in the attached property, which was admittedly owned by it though alienated during pendency of execution and thus, it was well within rights to assail the auction held on 17.03.2020.

[10] As regards the submission made on behalf of the petitioner-Auction Purchaser that the objections raised by respondent No. 1-Judgment Debtor without making deposit in terms of Order 21 Rule 89 (a) of the Code of Civil Procedure, 1908, is not to be entertained being devoid of merit. In the present case, in accordance with the schedule fixed by the Executing Court vide its order dated 19.02.2020, the sale was to take place on 12.03.2020, preceded by the spot notice dated 04.03.2020 whereas admittedly the auction / sale was held on 17.03.2020 with spot notice dated 12.03.2020, and that too without obtaining any prior approval from the Executing Court or even putting respondent No. 1-Judgment Debtor to

notice and thus, the same amounted to be a patent nullity. Further, the record reflects that the entire auction proceedings were completed within a difference of Rs. 600/- as the bid started at Rs. 31,24,220/- and the auction was concluded at Rs.31,24,800/- and thus, was clearly an established fraud with the Court, the Judgment Debtor as well as the Decree Holders.

[11] In the given facts and circumstances when the auction was held on a different date as compared to the schedule fixed by the Executing Court, in the humble opinion of this Court, no objections at all were even called for to be presented before the Executing Court by any of the effected parties. Furthermore, nothing was brought on record to show as to whether any notice regarding proclamation of sale by public auction to be held on 17.03.2020 was ever served upon respondent No. 1-Judgment Debtor or even the Decree Holder as regards the time and place of sale, in terms of Order 21 Rule 66 (2) of the Code of Civil Procedure. In such circumstances, the auction held on 17.03.2020 was void ab initio. Reference in this regard can be made to the decision in case of ***“M/s. Mahakal Automobiles and another Versus Kishan Swaroop Sharma”, reported as 2008 (13) Supreme Court Cases 113.*** Relevant para-7 thereof is re-produced hereunder:-

“7. Each stage of the sale is governed by the provisions of the Code. For the purposes of the present case, the relevant provisions are Order 21 Rule 54 and Order 21 Rule 66. At each stage of the execution of the decree, when a property is sold, it is mandatory that notice shall be served upon the person whose property is being sold in execution of the decree, and any property which is sold, without notice to the person whose property is being sold is a nullity, and all actions pursuant thereto are liable to be struck down/ quashed.”

[12] Moreover, the confirmation of sale made in favour of the petitioner-Auction Purchaser on 05.10.2020, while dismissing the objections filed at the instance of respondent No. 1-Judgment Debtor, even prior to the deposit of balance auction amount by him was *per se* illegal and could not have been upheld by any stretch of imagination as the balance amount was undisputedly deposited by the petitioner-Auction Purchaser subsequently on 15.10.2020. Even the approval accorded by the Executing Court towards the subsequent deposit of the balance auction amount by the petitioner would not make the confirmation of sale made on 05.10.2020 as valid, the same been in violation of the mandate of Order 21 Rule 85 of the Code of Civil Procedure, the balance auction amount not been deposited within fifteen days from the date of auction. In the present case, the auction was held on 17.03.2020, whereas balance 75% of auction amount was deposited much later on 15.10.2020 and thus, again the auction / sale was rendered void. Reference in this regard can be made to a decision passed in case of “***M/s. Shilpa Shares and Securities Versus The National Cooperative Bank Ltd., 2007 (12) Supreme Court Cases, 165.*** Relevant para-6 thereof is reproduced hereunder:-

“ 6. In *Balram v. Ilam Singh and others* 1996(5) SCC 705, it has been held that the obligation of the purchaser to deposit the full purchase money within time is a mandatory requirement and noncompliance of the rule renders the sale a nullity and not a mere irregularity. ”

[13] In such exceptional facts and circumstances, wherein the auction proceedings were held in violation of schedule fixed by the Executing Court, besides the mandatory procedure laid down under Order 21

Rule 66(2) as well as Rule 85 of the Code of Civil Procedure, not been adhered to the objections furnished by respondent No. 1-Judgment Debtor to the Executing Court about the material irregularities committed in the process of auction causing substantial prejudice, were rightly entertained and accepted by the First Appellate Court in exercise of powers under Order 21 Rule 90 of the Code of Civil Procedure, which nowhere contemplates any pre-deposit in terms of Order 21 Rule 89 of the Code of Civil Procedure, and thus, the same calls for no interference there being no jurisdictional error made therein. Moreover, it would be highly inequitable to confer rights upon the petitioner-auction purchaser, who happens to be the beneficiary under the void auction / sale.

[14] In view of the discussion made hereinabove, finding no merit in the present revision petition, the same is hereby **dismissed**.

[15] At this stage, respondent No. 1-Judgment Debtor offers to deposit the decretal amount alongwith interest before the Executing Court. Let the same be deposited before the Executing Court within a period of ten days from the receipt of certified copy of this order. However, it is made clear that the said deposit would not absolve the Judgment Debtor of the consequence of execution proceedings and the effect of the deposit shall be considered and adjudicated upon by the Executing Court, as per law.

[16] Pending miscellaneous application(s), if any, shall also stand disposed off.

July 25, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No