

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

**ESA No.52 of 2013 (O&M)  
Date of Order:22.03.2024**

**Dharam Pal and another****.Appellants****Versus****Puran Singh and another****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present: Mr. Parvinder Singh, Advocate  
for the appellants.**

**Mr. Avnish Mittal, Advocate  
for respondent no.2.**

**ANIL KSHETARPAL, J**

1. The judgment debtor has filed this execution second appeal to challenge the correctness of the Executing Court's order dated 19.11.2011, which has been upheld by the First Appellate Court on 30.08.2013.

2. An interesting issue with respect to interpretation of Order XXI Rule 92 (2) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') has come up for adjudication before this court.

3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

4. Sh. Puran Chand's suit for recovery of Rs.20,000/- was decreed against defendant nos.1 and 2 on 12.04.2001. The court ordered the payment of the amount along with interest @ 6% per annum from the date of filing of the suit. In order to implement the decree, the decree holder filed the execution petition on 17.08.2001. The judgment debtor's plot measuring 12½ marlas located in village Kansal, Tehsil Kharar was auctioned on 12.10.2002, against a highest bid of Rs.75,000/-. The judgment debtor filed

an application on 31.10.2002, i.e. within a period of 30 days for setting aside the sale deed upon deposit of the decretal amount i.e Rs.20,000/- along with amount of interest of Rs.8500/- and also deposit of 5% of the total purchase money. However, inadvertently due to bonafide clerical and arithmetical mistake, the calculation of 5% amount was calculated on the decretal amount and not on the purchase money. Thus, the judgment debtor deposited Rs.29,925/-.

5. Notice of the application filed by the judgment debtor was issued to the decree holder. The decree holder filed a reply and he did not make an objection with respect to amount deposited as per Order XXI Rule 89 CPC. Ultimately, the judgment debtor entered into a settlement. The judgment debtor gave a statement that he has no objection if the decree holder is allowed to withdraw the decretal amount, however, the amount of Rs.1425/- be given to the auction purchaser. The Executing Court passed the order in terms of the settlement but also proceeded to confirm the sale and directed issuance of sale certificate in favour of the auction purchaser. The judgment debtor filed an appeal which was allowed and the order passed by the Executing Court directing issuance of sale certificate to the auction purchaser was set aside while remanding the case back to the Executing Court to pass a fresh order. During this entire period neither the judgment debtor nor the auction purchaser ever pointed out that there is an error in calculation, and the amount deposited qua 5% purchase money is deficient. However, on 19.11.2011, the Executing Court dismissed the application under Order XXI Rule 89 CPC on the ground that 5% of the purchase money was required to be deposited, whereas 5% of the decretal amount has been deposited. An appeal against the aforesaid order has been

dismissed by the First Appellate Court.

6. This bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. The learned counsel representing the appellant while drawing the attention of the court to sub-rule (2) of Order XXI Rule 92 CPC submits that the legislature in order to remove the difficulty faced by the judgment debtor has made a provision for extending the period if the deficiency is due to clerical or arithmetical mistake on the part of the depositor. He submits that by 1976 amendment carried out in CPC, the Legislature has widened the scope of the provision and permitted deposit of the amount and in this case the deficient amount was deposited immediately once it was pointed out on 19.11.2011.

8. On the other hand, the learned counsel representing the respondent submits that as per sub-rule (2) of Order XXI Rule 92 CPC, the deposit is required to be made within a period of 60 days from the date of sale and such period is not extendable under any circumstances.

9. This court has considered the submissions of the learned counsel representing the parties.

10. At this stage, it shall be appropriate to extract Order XXI Rule 89 and 92 CPC for better comprehension:-

***89. Application to set aside sale on deposit.- (1) Where immovable property has been sold in execution of a decree, any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person,] may apply to have the sale set aside on his***

*depositing in court,—*

*(a) for payment to the purchaser, a sum equal to five per cent of the purchase money, and*

*(b) for payment to the decree holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree holder.*

*(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.*

*(3) Nothing in this rule shall relieve the judgment debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.*

**92. Sale when to become absolute or be set aside.-** *(1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the court shall make an Order confirming the sale, and thereupon the sale shall become absolute:*

*Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the court shall not confirm such sale until the final disposal of such claim or objection.*

*(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within 1 [sixty days] from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the court, the court shall make an Order setting aside the sale:*

*Provided that no Order shall be made unless notice of the application has been given to all persons affected thereby:*

*Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.*

*(3) No suit to set aside an Order made under this rule*

*shall be brought by any person against whom such Order is made.*

*(4) Where a third party challenges the judgment debtor title by filing a suit against the auction purchaser, the decree holder and the judgment debtor shall be necessary parties to the suit.*

*(5) If the suit referred to in sub-rule (4) is decreed, the court shall direct the decree holder to refund the money to the auction purchaser, and where such an Order is passed the execution proceeding in which the sale had been held shall, unless the court otherwise directs, be revived at the stage at which the sale was ordered.”*

11. It is evident that under Order XXI Rule 89 CPC, any person having interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person, is entitled to apply to have the sale set aside, the court auction on his depositing in court, a sum equivalent to 5% of the purchase money for payment to the purchaser and the amount specified in the proclamation of sale for payment to the decree holder, whereas, Order XXI Rule 92 CPC provides the situations when the sale shall become absolute or be set aside.

12. Sub-rule (2) of Order XXI Rule 92 CPC is divided in two parts. The first part provides that when application under Order XXI Rule 89 has been made and is allowed, the deposit shall be made within a period of 60 days from the date of sale. The second part provides that where the amount deposited under Rule 89 is found to be deficient owing to clerical or arithmetical mistake on the part of the depositor, the same can be made good within such time as may be fixed by the court and the court shall make an order setting aside the sale.

13. In this case, admittedly, the judgment debtor deposited Rs.29,925/- within a period of 60 days from the date of sale. As already noticed, thereafter the matter remained pending in the court. Neither the

decree holder nor the auction purchaser ever pointed out the mistake in the calculation. It was for the first time, the arithmetical error was pointed out before the Executing Court on 19.11.2011. Before the First Appellate Court the judgment debtor filed an application for permission to make good the deficiency on 23.12.2011, which has not been decided yet.

14. The object of incorporating amendment in sub-rule (2) of Order XXI rule 92 is to obviate the difficulty which may be faced by the depositor if there is a clerical or arithmetical mistake in calculating the amount. The provision is categorical. There is no ambiguity. The period of 60 days is provided for depositing the amount as calculated by the depositor. The aforesaid limitation is not provided for making good the deficiency owing to clerical or arithmetical mistake i.e. it does not create a bar of 60 days in cases where the deficiency is due to clerical or arithmetical mistake. The court has been given enabling power to extend the time. The second part of sub-rule (2) does not provide that the outer limit for deposit is 60 days.

15. Keeping in view the aforesaid facts and discussion, the appellant is directed to deposit the amount within one month, from the date of this order. Once the aforesaid amount is deposited, the auction sale of the judgment debtor's properties shall stand set aside. Since, a significant amount of time has elapsed and the decree holder is not at fault, therefore, the judgment debtor is directed to compensate the auction purchaser. Hence, the judgment debtor is directed not only to make good the deficiency but also pay interest @ 9% per annum from the date the auction purchaser deposited the amount of Rs.75,000/- in the Court.

16. With these observations, the appeal is allowed.

17. All the pending miscellaneous applications, if any, are also disposed of.

March 22, 2024  
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(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO