



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

EFA-1-2024 (O&M)

Reserved on: 09.08.2024

Pronounced on : 20.08.2024

GURVINDER SINGH

.... APPELLANT

Vs.

RAMLA DEVI AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. Gaurav Tangri, Advocate, for the appellant.

Ms. Mehak Sharma, Advocate, for respondent Nos.1 to 4.

DEEPAK GUPTA, J.

Third party objector in execution case No.563 of 2015 [CNR No: PBLD01-008008-2015] titled '*Ramla Devi Vs. Yashwant Singh Chauhan and others*' is in this appeal against the order dated 17.08.2023 passed by Id. Motor Vehicle Claims Tribunal, Ludhiana, whereby his objections were dismissed. Id. Counsel for the appellant also prays for setting aside the subsequent proceedings in the execution.

2.1 It is contended by Id. counsel that specific issues were framed during the execution petition, as to 'whether the objector had no knowledge about pendency of the present execution at the time of the agreement to sell dated 20.04.2015 and the consequent sale deed dated 18.07.2016 in his favor' but without giving any specific finding on this issue, the objections have been dismissed by way of the impugned order on the basis of conjectures and surmises by mis-appreciating the evidence on record.

2.2 By drawing attention towards the various documents available on the paper-book, it is contended that award in MACT Case No.49 of 1999 was passed by the MACT, Ludhiana way back on 08.11.2004 against JDs Yashwant Singh Chauhan and Sudesh Kapoor i.e. driver and owner of the offending vehicle. The claimants/ decree-holders remained silent for more than 10 years and then filed execution for realizing the award amount on 14.05.2015. Despite the fact that execution had been filed after more than 2 years from the date of the

award, the Executing Court without ensuring the service of JDs, ordered for attachment of the property of the JDs by way of order dated 02.01.2016. Prior thereto, JD-Sudesh Kapoor had already entered into an agreement to sell dated 24.04.2015 to sell her property in favour of the objector-petitioner for consideration of ₹7,50,000/-, regarding which sale deed was duly executed on 18.07.2016.

2.3 Ld. counsel has referred to Section 64 of the Code of Civil Procedure, 1908 besides Order 21 Rule 54 CPC to contend that no order prohibiting the Judgment Debtor from transferring or charging the property in any manner, was passed and therefore, the private transfer of the property made in pursuance of the contract entered into prior to the attachment, cannot affect the rights of the appellant.

2.4 Ld. counsel contends further that neither there was any evidence to show collusion between the appellant and the Judgment-Debtor nor there was any cogent evidence to show the knowledge of the appellant regarding the attachment of the property of the Judgment Debtor, which he purchased on 18.07.2016 on the basis of agreement to sell dated 24.04.2015 for valuable consideration of ₹7,50,000/- and therefore, his objections have been dismissed in the illegal manner.

2.5 Ld. counsel contends further that after dismissal of the objections, the Executing Court/MACT issued certificate under Section 174 of the Motor Vehicles Act, so as to effect the recovery of the award amount from the attached property, which had already been purchased by the appellant and under the compulsion, appellant entered into a compromise with the decree-holder so as to pay the amount of ₹10,50,000/- but as the same was entered under the compulsive circumstances and so, the appellant is not bound by that compromise.

2.6 With these submissions, prayer is made for setting aside the impugned order and the subsequent proceedings carried out by the Executing Court.

3.1 Refuting the aforesaid submissions, Id. counsel for the claimants/decree-holders contend that appellant purchased the property of JD during proceedings of the executing petition, knowing well that order regarding attachment of the property had already been passed and that he was colluding

with the Judgment Debtor-Sudesh Kapoor.

3.2 It is further contended that appellant entered into a compromise so as to pay the decretal amount, but the cheques issued by him towards part payment have been dishonored and that petitioner has turned dishonest and is not paying the cheque amount, which he is liable to pay.

3.3 With these submissions Id. counsel prayed for dismissal of the appeal.

4. I have considered submissions of both the sides and have appraised the record carefully.

5. In order to appreciate the controversy, some relevant dates are necessary to notice, which are given below in the tabular form: -

08.11.2004	Award passed in MACT Case No.49 Of 1999 titled “ <i>Ramla Devi and others Vs. Yashwant Singh Chauhan and another</i> ”
24.04.2015	Agreement to sell in favour of 3 rd party-objector- (<i>appellant herein - Gurvinder Singh</i>) by JD No.2-Sudesh Kapoor.
14.05.2015	Execution filed by claimants - decree-holders Ramla Devi etc.
02.01.2016	Warrant of attachment of the property of JDs directed to be issued.
05.05.2016	Order of attachment
18.07.2016	Sale deed by JD-Sudesh Kapoor in favour of appellant - 3 rd party objector, pursuant to the agreement dated 24.04.2015.
03.01.2017	Objections filed by the 3 rd party objector - appellant.
17.08.2023	Objections dismissed.
24.08.2023	Execution disposed of.

6. As will be evident from the aforesaid dates that though the execution was filed by the claimants-decree-holders on 14.05.2015 i.e. more than 10 years from the date of award dated 08.11.2004, but still warrant of attachment of the property of the JDs was directed to be issued on 02.01.2016,

without service of notice of execution upon the JDs.

7. The contention of counsel for the respondents - claimants to the effect that notices were sent to the JDs, is without any substance, as will become evident from the following zimini orders as passed by the Executing Court right from the stage of filing of the execution on 14.05.2015: -

15.5.2015 Execution received by entrustment. It be checked and registered. It has been filed on the basis of award dated 8.11.2004. Notice of the execution be issued to JDs for 6.7.2015 on filing RC/AD along with PF copies.

4.7.2015 File taken up today as I will be on leave for 06.7.2015 and 5.7.2015 is Sunday. Notice be issued to JDs for 28.09.2015 on filing RC/AD along with PF copies.

25.09.2015 File taken up today as I will be on leave on 28.09.2015 and 26.09.2015 and 27.09.2015 are holidays. File is adjourned to 1.12.2015 for the purpose already fixed.

1.12.2015 Notice to JD no. 1 not received back. Notice of JD no. 2 received back with report that he has left the given address since long. Counsel for DH has filed an application for substituted service, in view of which, notice to both the JDs be issued for 2.1.2016 by munadi and affixation on filing the munadi fees.

2.1.2016 Munadi against JDs not issued as munadi fees not filed. I have gone through the file. This is an execution for recovery of the amount of compensation in MACT case. Therefore, in order to effect the recovery, let warrant of attachment of the property of JDs on filing list of property be issued for 11.3.2016.

11.3.2016 Warrant of attachment not issued as list of property not filed. On filing the same, warrant of attachment be issued for 5.5.2016.

5.5.2016 Warrant of attachment not issued as list of property not filed. On filing the same, warrant of attachment be issued for 12.7.2016. Long date has been given due to summer vacations in the month of June.

12.7.2016 Warrants of attachment not issued as it has been reported by the office that list of property not filed. Record shows that in this case, list of property of JD no.2 Smt. Sudesh Kapoor situated at Village threeke, as per jamabandi for the

year 2007-08 is on record. Warrants of attachment to the extent of decretal amount against this property be issued for 12.8.2016.

12.8.2016 Warrant of attachment not received back. Be awaited for 17.9.2016 .

17.9.2016 Warrant of attachment not received back. Be awaited for 8.11.2016.

08.11.2016 Warrant of attachment not issued by the office. Be issued again for 3.1.2017. Dasti may be obtained on filing an application for getting the service effected at own level.

03.01.2017 Warrant of attachment received back un-executed with report made by the Revenue Department that as per the revenue record, objector Gurvinder Singh was the owner of the property as JD no. 2 Sudesh Kapoor had sold it to the objector. Copy supplied to the counsel for DH. Adjourned to 8.2.2017 for reply and arguments on objections.

8. It is revealed further that based on the objections filed by third party Gurvinder (*appellant herein*), the executing court framed following issues on 4.5.2023:

1. Whether the objector had no knowledge about the pendency of the present execution at the time of execution of agreement to sell dated 20.04.2015 and at the time of execution of sale deed dated 18.07.2016? OPO
2. Whether the objections are not maintainable? PA
3. Whether the JD has connived with Gurvinder Singh and executed sham sale deed dated 18.07.2016 for the purpose to defeat the rights of the DH? OPA
4. Relief.

9. All the aforesaid zimini orders, as noticed above, would reveal that though initially after filing of the execution, notice of the same was directed to be issued to the JDs for 06.07.2015, but the said notice was not served at any point of time to any of the JDs. As per the order dated 01.12.2015, notice to JD No.1 was not received back, whereas notice to JD No.2 was received with the report that he had left the given address. On the same day, on an application moved by the decree holders for substituted service of the JDs, notice by way of munadi and affixation was directed to be issued for 02.01.2016 on filing of the requisite munadi fee etc. The next order dated 02.01.2016 would indicate that munadi against the JDs was not issued since the requisite munadi fee was not filed and then considering that the execution was for recovery of amount of

compensation by MACT, the Court straightaway directed issuance of the warrant of attachment of the property of JDs on filing of the list of the property for 11.03.2016.

10. It is, thus, evident that warrants of attachment of the property of JDs were issued without ensuring service of the notice of the execution upon the JDs. The question is as to whether the said procedure adopted by the Executing Court/MACT, Ludhiana was as per law.

11. In this regard, Order XXI Rule 22 of the CPC is relevant, which reads as under:-

“22. Notice to show cause against execution in certain cases.— (1) Where an application for execution is made—

(a) more than two years after the date of the decree, or

(b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A,

(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent,

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution, if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous application for execution against the same person, the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.”

12. By way of an amendment in Punjab and Haryana in Rule 22, the

word 'two years' has been substituted with the word 'one year' wherever they occur. Besides, the following proviso has been added at the end of the Rule:-

'failure to record such reasons shall be considered an irregularity not amounting to defect in jurisdiction'.

13. The abovesaid Rule would indicate that where an application for execution is made in certain prescribed circumstances, then Court executing the decree is required to issue a notice to the person against whom the execution is applied for requiring him to show cause as to why the decree should not be executed against him. One of such circumstances is when the application for execution is made more than two years after the date of the decree. This period in Punjab and Haryana is one year. No doubt that under Sub Rule (2) of Rule 22, the Court has the power to issue any process in execution of a decree without issuing the notice thereby prescribed, but for doing so, the Court is required to record the reasons to the effect that it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

14. In the present case, as noticed earlier that though the award was passed in the MACT case in favour of the claimants-decree-holders on 08.11.2004, but the execution was filed on 14.05.2015 i.e. more than 10 years after the award. In these circumstances, it was mandatory for the Executing Court to issue notice to the JDs, against whom the award/decreed was sought to be executed. The proceedings as recorded by the Executing Court would indicate that after filing of the execution, although initially the Executing Court decided to issue notice of the execution to the JDs, but later on changed its mind. The notices sent to the JDs were received back unserved for one or the other reasons. The application of the decree-holder for substituted service of the JDs by way of munadi was also allowed and despite the fact that munadi was not issued for want of the process fee on the part of the decree holder, the Executing Court all of a sudden vide its order dated 02.01.2016, decided to issued warrants of attachment of the property by simply noticing that this was an execution for recovery of the amount of the compensation in the MACT case. The said reasoning in itself cannot be considered to be a sufficient compliance of sub Rule (2) of Order XXI Rule 22 CPC.

15. The use of the word 'shall' in Order XXI Rule 22 CPC would make it mandatory for the Executing Court to issue notice of the execution to the JDs, when it is filed after the prescribed period of 'two years' which in Punjab and Haryana is 'one year'. In case the Executing Court wants to divert from the said Rule, it is required to record strong reasons for dispensing with the said service, which has not been done in this case. In these circumstances, the order dated 02.01.2016 and the subsequent order issuing the warrants of attachment of the property of the JDs cannot be sustained.

16. It will be relevant to notice the observations made by Hon'ble Supreme Court in this regard in ***Barkat Ali & Anr vs Badri Narain AIR 2008 SUPREME COURT 1272***. In that case, notice of execution was duly served upon the JDs/legal heirs. They had not put in appearance. Warrants of attachment were issued and later on, they challenged the issuance of the warrants of attachment. It was held as under: -

"7. [Order XXI Rule 22 CPC](#) culminates in end of one stage before attachment of the property can take place in furtherance of execution of decree. The proceedings under Order XXI Rule 23 can only be taken if the executing Court either finds that after issuing notice, under Section XXI Rule 21 the judgment-debtor has not raised any objection or if such objection has been raised, the same has been decided by the executing Court. Sub rule (1) as well as sub rule (2) under Order XXI Rule 22, operates simultaneously on the same field. Sub rule (1) operates when no objection is filed. Then the Court proceeds and clears the way for going to the next stage of the proceedings namely attachment of the property and if the Court finds objections on record then it decides the objections in the first instance and thereafter clears the way for taking up the matter for attachment of the property if the objections have been overruled. Whether the order is made under sub rule (1) or sub rule (2), it has the effect of determining the preliminary stage before the attachment process is set in motion. In this background, the order of the Court to proceed with attachment on finding that no objection has been raised also operates as an order deciding the preliminary stage of the execution proceedings and operates as if the judgment-debtor has no objection to file. If thereafter, the judgment-debtor wants to raise an objection in the same proceedings in the absence of any modification of order passed under Order XXI Rule 22 sub rule (1) or (2), he has to take recourse to get rid of the order by way of appeal. There is no dispute

and it has not been agitated that the order for proceeding by the judgment under Order XXI Rule 22 amounts to a decree under [Section 47](#) of CPC and it is appealable as a decree i.e. to say it is not an appeal against the interim order but an appeal against the decree which is provided against the final order. It means that at the different stages of the execution, orders passed by the executing court have attained finality unless they are set aside by way of appeal before the higher forum. Otherwise, they bind the parties at the subsequent stage of the execution proceedings so that the smooth progress of execution is not jeopardized and the stage which reached the finality by dint of various orders of the Order XXI, operates as res judicata for the subsequent stage of the proceedings. Since the order passed at different stage itself operates as a decree and is appealable as such, the same cannot be challenged in appeal against subsequent orders also, because appeal against an order passed under Order XXI Rule 22 does not amount to appeal against order at initial stage, but amounts to a decree finally determining the question. That is why no appeal against orders made under Order XXI has been provided under Order 43. In this background, where a judgment-debtor has an opportunity to raise an objection which he could have raised but failed to take and allowed the preliminary stage to come to an end for taking up the matter to the next stage for attachment of property and sale of the property under Order XXI Rule 23 which fell within the above principle, the judgment-debtor thereafter cannot raise such objections subsequently and revert back to earlier stage of proceedings unless the order resulting in termination of preliminary stage which amounts to a decree is appealed against and order is set aside or modified.”

17. Thus, as per the legal position explained by Hon’ble Supreme Court, the step of serving notice of the execution upon the JDs is a necessary step, particularly when it is filed after prescribed period and the order passed in compliance of the said step amounts to a decree, which is appealable before the Court. In present case, since the JDs were never served, so there was no occasion for the JDs to file any appeal against the attachment order passed in the execution.

18. Proceeding further, the agreement to sell in favour of the appellant-third party objector Gurvinder Singh was executed by JD No.2-Sudesh Kapoor on 24.04.2015 i.e. prior to the filing of the execution, as it was filed on 14.05.2015, although the sale deed consequent upon the agreement to sell, was

executed on 18.07.2016 i.e. during the pendency of the execution. The question is as to whether the said sale deed executed during pendency of the execution, but consequent upon an agreement to sell executed in favour of the third party prior to the filing of the execution, will be hit by the principle of *lis pendence*.

19. In this regard, first of all it is necessary to take note of Section 64 of the CPC, which reads as under:-

“64. Private alienation of property after attachment to be void. —(1) Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.

Explanation.—For the purpose of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.”

20. Thus, when the attachment regarding property of JD is made, any private transfer for delivery of any property attached or any interest created therein by the Judgment Debtor, shall be void as against all the claims enforceable under the attachment. However, sub Section (2) makes it quite clear that this Section is not applicable, when the private transfer or delivery of the property attached has been made in pursuance of the contract for such transfer or delivery entered into and registered before the attachment.

21. In the present case, the agreement to sell dated 24.04.2015, had already been executed in favour of the third party objector. Meaning thereby, the sale made subsequent thereto on 18.07.2016, may be during the execution of the petition, is clearly saved under Sub Section (2) of Section 64 CPC.

22. Not only above, Order XXI Rule 54 CPC, is also relevant in this case. It reads as under”:

“54. Attachment of immovable property.—

(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in

any way, and all persons from taking any benefit from such transfer of charge.

(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.

(2) Copies of the order shall also be forwarded to the Collector with a request that appropriate entries showing the attachment levied on the property may be caused to be made in the revenue records, city survey records, or village Panchayat records as may be required in the particular case.

(3) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon, a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate 2[and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.]

By way of an amendment by the State of Punjab, after Sub Rule (2) of Rule 54, following sub Rule (3) has been added: -

“3. The order shall take effect, as against persons claiming under a gratuitous transfer from the judgment –debtor, from the date of the order of attachment, and as against others from the time they had knowledge of the passing of the order of attachment or from the date of the proclamation, whichever is earlier.”

23. The bare reading of the aforesaid Rule would indicate that when the immovable property of the JD is attached, the attachment shall be made by an order prohibiting the JD from transferring or charging the property in any way and all persons from taking any benefit from such transfer of charge. Further steps are also mentioned in the said Rule, as per which, the copy of the attachment and prohibition is required to be forwarded to the Collector with a request that appropriate entries showing the attachment levied on the property may be caused to be made in the revenue records, city survey records, or village Panchayat records etc. as the case may be. Not only this, the order of attachment is required to be proclaimed at such place or adjacent to such property by beat of drum or other customary mode, and the copy of the order is

also required to be affixed on the conspicuous part of the property.

24. In the present case, from 02.01.2016 onwards, the warrants of attachment have been repeatedly directed to be issued, but the same were not issued for want of list of the property of the JDs. In none of the orders as passed by the Executing Court, there is any specific prohibition against the JD, so as to not to transfer or create charge upon the property in any way and all other persons taking benefit for such transfer of the property. No evidence whatsoever was produced by the Decree holder after filing of the objections that the order of attachment was ever forwarded to the Collector with a request to make appropriate entries, as required under Sub Rule (2) of Order 21 Rule 54 CPC. In these circumstances, the objector/third party could not have come to know about the attachment of the property, which he had already agreed to purchase prior to the filing of the execution. There is no evidence that the third party objector – appellant had the knowledge of the attachment prior to sale in his favour.

25. The perusal of the impugned order would indicate that the Executing Court was swayed by the fact that although in the agreement to sell the sale consideration was mentioned to be ₹7,50,000/- but in the sale deed executed subsequently, the sale consideration was mentioned to be ₹4,50,000/-.

26. Ld. counsel for the appellant - third party objector clarified that in fact the sale deed was executed on the Collector rate, though the actual sale consideration was ₹7,50,000/-, which was duly paid. Even if, it is considered that in the sale deed, the lesser sale consideration was shown to avoid payment of requisite stamp duty, compared to the sale deed as reflected in the agreement to sell, that cannot be a reason to infer that third party objector was colluding with JDs. At the most, the purchaser/seller can be responsible to the Collector under the provisions of Stamp Act.

27. Since the sale deed in favour of the objector/appellant was executed during the pendency of the Execution proceedings, but in pursuance to the agreement to sell, which had been executed in his favour, prior to the initiation of the execution proceedings, so question is as to whether the principle

of lis pendence contained in Section 52 of the Transfer of Property Act shall be applicable to the facts and circumstances of the present case.

28. The said question was also considered by this Court in **Smt. Madhu Sharma Vs. M.K. Nayyar, 2018(4) RCR (Civil) 881**, though in the different context. In that suit, an agreement to sell had been executed in favour of a third party, prior to the suit for specific performance filed by the plaintiff, against the owner, who had executed a later agreement to sell in favour of the plaintiff. The sale deed in favour of the third party was executed subsequent to the agreement in his favour but during pendency of the suit. The question was as to whether the principle of Section 52 of the Transfer of Property Act will be applicable or not. It was held by this Court as under: -

"14. Question No.1

(i) Whether rule of lis pendence as provided under section 52 of the Transfer of Property Act, 1882 applies to the sale-deeds which are consequent upon prior agreement to sell executed before filing of the suit.

section 52 of the Transfer of Property Act, 1882 ('the Act of 1882) provides that during the pendency of any suit or proceeding which is not collusive, and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with and if it is dealt with the subsequent purchaser would be governed by rule of lis pendence and therefore bound by the result in the litigation. Section 52 of the Act of 1882 is extracted as under:-

"52. Transfer of property pending suit relating thereto-

During the pendency in any court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose."

15. The reason for enacting Section 52 of the Act of 1882 is to secure the interest of the party during the pendency of the suit so that the party is not called upon to indulge in repeated litigations against the transferee who had purchased the property during the pendency of the suit or the proceedings. Section 52 of the Act of 1882 makes all subsequent transactions by the parties to the litigation subservient to the result of the litigation. This is called rule of lis pendence. However, question is whether rule of lis pendence would apply to the aforesaid transfer of property which was in continuation of series of transactions which took place before filing of the suit. Rule of lis pendence is to save an honest litigant from the adverse effects of subsequent transfers by other party to the

litigation. However, rule of lis pendence is not to save an unscrupulous litigant who is misusing the process of court.

16. Rule of lis pendence is known as 'pendente lite nihil innovetur'. Such principle is based on equity and good conscious and is intended to protect the parties to a litigation against alienation made by their opponents during the pendency of the suit. The doctrine of lis pendence does not operate so as to defeat the right existing before the date of filing of the suit.

17. This question can be examined from another angle. While deciding the suit for specific performance of the agreement to sell the court only records finding with regard to genuineness of the agreement to sell and adjudicate upon the rights of the plaintiff to get relief of specific performance of the agreement to sell. In such suit, question of title of the owner is not decided. While decreeing a suit for specific performance of the agreement to sell, the court is declaring that the agreement to sell propounded by the plaintiff is capable of specific performance. However, such specific performance of the agreement to sell would always be subject to the rights of vendor."

29. The legal proposition as above, shall be applicable to the facts of the present case also. As noticed earlier, in this case also, the agreement to sell in favour of the appellant-third party is prior in time comparing to the execution initiated by the decree holder. In such like circumstances, the rule of *lis pendence* cannot be applied in a manner, which would defeat the rights of the third party i.e. prior agreement holder of the agreement to sell only because the sale deed was executed in his favour during the pendency of the execution proceedings.

30. There is another aspect to the case. Order XXI Rule 66 CPC provides about the proclamation of sale by public auction. The Rule reads as under: -

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 drawn 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 or part of 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 herein before 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.”

31. Thus, when the attached property is to be ordered to be sold in public auction in execution of the decree, certain mandatory compliances are required to be made by the court, while drawing up the proclamation of sale.

- i. The proclamation of the intended sale is to be made in the language of such Court
- ii. Such proclamation is to be drawn up after notice to the decree-holder and the judgment-debtor, unless notice already given under Rule 54.
- iii. The proclamation is to state the time and place of sale,
- iv. The proclamation is to specify as fairly and accurately as possible, the following:

(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;

(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:*

32. The clear objective is firstly to make the intending purchaser aware about each and every such detail of the property to be sold in auction, which is material for a purchaser to know. Further, in order to safeguard the interests of the JD, it is required for the Executing Court to mention the probable value of the property to be sold and as to whether the entire property is to be sold or only the part of property would be sufficient to satisfy the decree, as only such part of the property is to be put to auction, which would be sufficient to satisfy the decree.

33. In the present case, the impugned order does not indicate that when the warrant of sale was issued fixing a schedule of the intended sale, any such compliance of Order XXI Rule 66 CPC was made. For this reason also, the sale in favour of the decree-holder/ auction-purchaser cannot be sustained.

34. Considering all the aforesaid facts and circumstances, the impugned order as passed by the Executing Court, dismissing the objections filed by the third party objector-appellant cannot be sustained, as there was no cogent evidence on file that the third party objector/appellant was colluding with the JDs in any manner whatsoever.

35. Further, the perusal of the file would indicate that after dismissal of the objections as filed by the appellant-third party objector on 17.08.2023, warrant of sale was issued by fixing a scheduled by the Executing Court and it was compelled under these circumstances that the appellant had to enter into a compromise with the claimants, which is being relied by the respondents in this case. This Court is of the considered view that no such compromise, which has not been accepted by the Court till date, can be binding upon the appellant, as it was apparently executed in the compelled circumstances, as have been noticed above. As such, the satisfaction of the execution as recorded by the Executing Court on 24.08.2023 is also held to be not sustainable.

36. Consequent to the entire discussion above, the present appeal is allowed. The impugned order dated 7.08.2023 and the subsequent proceedings recorded by the Executing Court are hereby set aside.

37. For the removal of doubts, it is made clear that claim of the claimants-decree-holders stands as it is. They will be at liberty to get the execution revived or file the fresh execution in accordance with law for realization of the decretal/awarded amount from the JDs in accordance with law.

20.08.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

No