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

**ESA-3-2021 (O&M)
Reserved on: 04.04.2025
Pronounced on: 28.04.2025**

Gurinder Singh

...Appellant

Vs.

**M/s R.B. Industrial Fabricators Pvt. Ltd
and others**

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Sharma, Advocate
Mr. Pankaj Bains, Advocate
for the appellant(s).

Mr. Kunal Dawar, Advocate
for respondent No.1.

Mr. Mayank Aggarwal, Advocate
for respondents No. 3 and 4.

ANIL KSHETARPAL, J.

1. The appellant before this Court is Court auction purchaser. He assails the correctness of the First Appellate Court's order while setting aside Court auction in his favour and reversing the order passed by Executing Court.

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

3. M/s R.B. Industrial Fabricators Private Limited purchased plot No.9-NIT, Sector 56, Faridabad measuring 4089 sq. yard. There is another company, namely, M/s A.B. Excavators Private Limited. On 06.07.2016,



M/s Nakora Enterprises Private Limited filed a suit for recovery of Rs. 68,402/- against M/s A.B. Excavators Private Limited and its Director Mr. Aditya Kumar. *Ex parte* judgment and decree was passed on 07.02.2008 for recovery of Rs. 68,402/- alongwith interest @ 12% per annum from the date of filing suit till its realization. Decree-holder, namely, M/s Nakora Enterprises Private Limited filed an execution petition on 05.05.2018. Decree-holder filed list of properties of Judgment debtor on 24.05.2019 reflecting that Plot No.9-NIT, Sector 56, Faridabad belongs to the Judgment Debtor. After local proclamation, warrants of sale of Plot No.9-NIT, Sector 56, Faridabad was issued on 26.07.2019 and Court auction was conducted on 16.11.2019. The appellant offered Rs. 1.5 lacs as highest bid. An application for confirmation of sale was filed on 30.11.2019, which was confirmed on 07.12.2019. Thereafter, the appellant filed an application for delivery of possession on 14.01.2020, in which, warrants of possession were issued on 17.04.2020. At that stage, the following three sets of objections were filed:-

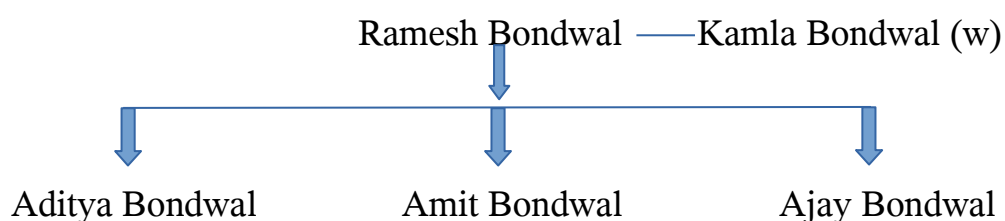
1. M/s ABEL Machines Private Limited (tenant) under Order 21 Rule 96, 97 and 101 read with Section 151 of the Code of Civil Procedure.
- 2 M/s R.B. Industrial Fabricators Private Limited claiming to the owner in possession of the suit property, which was let out to M/s ABEL Machines Private Limited.
3. M/s A.B. Excavators Private Limited under Order 21 Rule 90 and 92 of the Code of Civil Procedure.



4. Vide common order passed on 05.08.2020, the Executing Court dismissed the objection petitions. Two appeals were filed, one by M/s ABEL Machines Private Limited and second by M/s R.B. Industrial Fabricators Private Limited. The appeal filed by M/s R.B. Industrial Fabricators Private Limited has been allowed by the Court on 28.10.2020, which is impugned in the present appeal.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

6. It is not disputed that the property which was auctioned did not belong to the judgment debtor, namely, M/s A.B. Excavators Private limited or Mr. Aditya Kumar. However, learned counsel representing the appellant has submitted that the Court is required to lift the corporate veil in order to implement the decree. While referring to the following family tree, he submits that the Executing Court correctly dismissed the objection petition, whereas, the Appellate Court has refused to lift the corporate veil. The Family Tree for understanding is reproduced herein below:-



7. Moreover, as per Article 127 of the Limitation Act, 1963, the period of 60 days is provided for filing objections, whereas, in this case, the objections were filed in July or August 2020, whereas, the auction took place on 16.11.2019.



8. *Per contra*, learned counsel representing the respondents has submitted that the Executing Court had sold the property of M/s R.B. Industrial Fabricators Private Limited, who was not the Judgment Debtor. He submits that therefore, the auction of the property was totally without jurisdiction. He further submitted that no notice was issued to M/s R.B. Industrial Fabricators Private Limited and hence, the limitation will not begin to run from the date of auction. He submits that cause of action to file objections arose when warrants of possession were issued, which were sought to be executed. He further submitted that now the entire decretal amount has been paid and the property worth more than Rs. 5 crores on the date of auction has been sold for Rs.1.5 lacs. The property was mortgaged with Dena Bank against a loan of Rs. 3.5 crores and even an OTS was proposed by the Bank vide letter dated 31.07.2018 for Rs. 4.5 crores. He further highlighted various illegalities in the auction proceedings and its confirmation.

9. This Court has considered the submissions made by the learned counsel representing the parties.

10. This Court formed a *prima facie* opinion that the matter is required to be remitted back to the First Appellate Court, hence, the parties were given liberty to file note of their written submissions.

11. It would be noted here that *ex parte* decree for recovery of Rs. 62,406/- was passed on 07.02.2018. The application under Order 9 Rule 13 of the CPC is still pending. The property in question i.e. Plot No.9-NIT, Sector 56, Faridabad was purchased by M/s R.B. Industrial Fabricators Private



Limited. Judgment Debtor in the present case is M/s A.B. Excavators Private limited. It is evident that the Executing Court sold the property belonging to M/s R.B. Industrial Fabricators Private Limited while assuming that it belongs to the Judgment Debtor, M/s A.B. Excavators Private limited. Hence, the Court auction of the property was *per se* illegal and without jurisdiction. The property of third party could not be sold. While auctioning the property, the Executing Court was not even made aware of the fact that the property belongs to M/s R.B. Industrial Fabricators Private Limited. In fact, the decree-holder filed incorrect list of properties of the judgment debtor, which led to auction. The Executing Court did not verify the ownership of the property before ordering its auction. Thus, the auction proceedings were fundamentally flawed. Admittedly, M/s R.B. Industrial Fabricators Private Limited is a separate legal entity being incorporated Company. According to the auction purchaser, it has three directors, namely, Aditya, Amit and Ajay Bondwals. Aditya Bondwal is Judgment Debtor No. 2, however, the property of M/s R.B. Industrial Fabricators Private Limited could not be sold in execution of a decree passed against Aditya Bondwal.

12. The objections filed by M/s R.B. Industrial Fabricators Private Limited is within limitation because it was never issued any notice. When M/s R.B. Industrial Fabricators Private Limited was sought to be dispossessed in execution of warrants of possession, objections were filed by them. Hence, their objections are within limitation. In this case, lifting of corporate veil is not considered appropriate only because the Directors of two companies are



members of the same family. Moreover, *prime facie*, it appears that the property has been sold for ridiculously low price, particularly, when there was loan of Rs. 3.5 crore while mortgaging the aforesaid property.

13. Additionally, Judgment Debtor has already deposited the auction amount of Rs.1,50,000/- i.e. the auction amount plus 5%, which has been directed to be paid to the auction purchaser.

14. Keeping in view the aforesaid discussion, no ground to interfere is made out.

15. Hence, the appeal is dismissed.

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

(ANIL KSHETARPAL)
JUDGE

28.04.2025

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