
(2015) 09 P&H CK 0105

High Court Of Punjab And Haryana At Chandigarh

Case No: ESA No. 25 of 2011 (O and M)

Gurmit Singh

APPELLANT

Vs

Pawan Kumar Darshan
Kumar and Others

RESPONDENT

Date of Decision: Sept. 11, 2015

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 54(2), Order 21 Rule 66, Order 21 Rule 66(e)

Hon'ble Judges: Raj Mohan Singh, J

Bench: Single Bench

Advocate: Ashok Kumar Khungar, for the Appellant

Final Decision: Dismissed

Judgement

Raj Mohan Singh, J

The appellant has assailed the order dated 27.8.2010 passed by Additional District Judge, Shri Muktsar Sahib, vide which order dated 5.9.2008 passed by Civil Judge (Sr.Divn.) Sri Muktsar Sahib has been upheld.

2. Execution has been filed by decree holder on the basis of decree of recovery of Rs. 2,42,444/- passed by Additional Civil Judge (Sr.Divn.) Sri Muktsar Sahib on 3.11.1999 against the Judgment debtor/appellant. In the execution, Court had already issued warrants of attachment and in pursuance thereto attached the property and put the same to auction. After conducting auction, sale was confirmed with regard to land in issue. Order was passed to get the sale executed in favour of auction purchaser.

3. Judgment debtor, feeling aggrieved against the order of confirmation of sale, filed appeal on the ground that no opportunity has been given to him to defend his case. He further stated that when the case was fixed for filing objection, he fell ill and was not in a position to attend the Court. Resultantly, he could not file any objection. Thereafter, on

16.9.2008, on being advised, he filed the appeal against confirmation of sale. Confirmation, ordered by the Court below, has been assailed on the ground that the land in question is two acres and sale of the same for an amount of Rs. 2,36,084/- is nothing but a fraud. The appellant/Judgment debtor also tried to point out illegalities and irregularities in the auction proceedings. The lower Appellate Court dismissed the appeal on the ground that no relief can be granted to the appellant in view of the fact that the appellant/Judgment debtor has himself made a statement in the Court on 17.9.2003 that he will make payment of entire decretal amount up to 5.12.2003 and in case of default, he will have no objection for recovery of the decretal amount by means of auction of his property. No evidence has been brought on record, alleging the auction amount to be a meager amount than the market value of the property in question. The auction has been conducted as per prevalent rate. No evidence has been brought on record to suggest the price of the land by the judgment debtor and in view of that, plea of the appellant has been found to be without any basis. After due consideration of the facts and circumstances of the case, lower Appellate Court dismissed the appeal vide order dated 27.8.2010.

4. I have heard learned counsel for both the parties and have also perused the record.

5. Learned counsel for the appellant has submitted that the decree holder should have taken leave of the Court before participating in the auction proceedings. Since the leave has not been obtained, therefore, the auction proceedings in view of participation of the decree holder stand vitiated.

6. On the other hand, learned counsel for the respondent/decreed holder has pointed out towards order dated 10.6.2000 on record to show that the permission was duly obtained by the decree holder before participating in the auction proceedings. In view of this, the assertion made by learned counsel for the appellant does not stand to test.

7. Learned counsel for the appellant further submitted that no reserve price has been fixed by the Court and, therefore, auction based on no reserve price is nothing but a farce. He further asserted that two acres of valuable land has been subjected for a paltry amount of Rs. 2,36,084/- and that too has been purchased by the decree holder. No publicity has been done nor any munadi by beat of drum has been effected.

8. On the other hand, learned counsel for the respondent submitted that the judgment debtor himself has flouted the promise made by him to the Court that he will make the payment of decretal amount. The first auction did not attract any bidder. Inadequacy of sale consideration is no ground to hold that the order suffers from any illegality or irregularity of the type which may render proceedings as not sustainable. The judgment debtor had all the opportunity to satisfy the decretal amount. The judgment debtor has not filed any objection to the execution of decree, rather preferred to file appeal against the order of confirmation. Inadequacy of sale consideration is no ground to assail order of confirmation at this stage particularly when sufficient opportunity was granted to the

judgment debtor as well as keeping in view the fact that on first auction no bidder came and second auction was undertaken after complying with all procedural formalities. Even "Collector" rate at the relevant time is shown to be Rs. 1,35,000/- per acre. Therefore, the alleged insufficiency of consideration cannot be taken to be a ground to reject the auction proceedings keeping in view the effort made by the authority to auction it on second occasion. The auction already stood confirmed and possession has already been delivered.

9. Learned counsel, while controverting the plea of the appellant that no reserve price had been fixed, relied upon proviso in terms of Order 21 Rule 66(e) CPC, wherein, it has been provided that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale on its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given by either or both the parties. Apparently, it was the obligation on the judgment debtor to pin point the minimum reserve price for which the property could have been subjected to sale in auction. In support of aforesaid contention, learned counsel relied upon [M.L. Mubarak Basha and others Vs. Muni Naidu](#), AIR 1997 SC 938 : (1997) 1 Crimes 258 : (1997) 1 JT 468 : (1997) 1 SCALE 307 : (1997) 4 SCC 153 : (1997) 1 SCR 7 : (1997) AIRSCW 839 : (1997) 2 Supreme 13 and submitted that the property could have been auctioned at the minimum rate, which was to be pointed out by the judgment debtor. Since no rate was projected by the judgment debtor this plea does not lie to the judgment debtor to allege that the property was subjected for meager amount.

10. Para 5 of the above judgment is relevant to be quoted in the present context:-

"A reading of the above provision would in unequivocal terms indicate that it is the function of the Court, while proclamation is drawn up, to fix the amount of the recovery for which the sale is ordered and also to specify such other particulars as are necessary in that behalf to be material for the purpose of conducting the sale. The value of the property given by the decree-holder - judgment-debtor and the upset price is to be fixed under the residue clause relating to writ rules made by the High Court. The learned Single Judge himself observed in his order that the Commissioner who has been examined as RW-3 had stated that he had fixed the sale of the property and the upset price at Rs. 70,000/- as was ordered by the Court and the sixth respondent was the highest bidder in the said bid, viz., for Rs. 95,200/-. He had deposited the entire amount on the said date. It is seen that the executing Court appears to have given direction to the Commissioner not only to conduct the sale but also to fix the upset price at Rs. 70,000/-. In that view, there is no infraction of the mandatory language contained in Order XXI, Rule 66, CPC as the Commissioner had fixed the upset price not on his own but on the direction of the Court itself."

In view of aforesaid, the contention raised by the appellant that the minimum price with which the auction should have been started, cannot be entertained at this juncture.

11. Taking into consideration the entire facts on record, it cannot be found that the impugned order suffers from any illegality for invoking jurisdiction of this Court in second execution appeal.

12. Since the judgment debtor has already been provided sufficient opportunity to deposit the decretal amount before confirmation of the sale, no deposit was made by the judgment debtor to save his property. Any alleged infraction in procedure or proclamation of sale by beat of drum only is not a mandatory condition as long as the sale notice is proclaimed at or adjacent to the property and otherwise publication was made. In [Saheb Khan Vs. Mohd. Yusufuddin and Others](#), AIR 2006 SC 1871 : (2006) 3 CTC 198 : (2006) 5 JT 1 : (2006) 4 SCALE 352 : (2006) 4 SCC 476 : (2006) AIRSCW 2210 : (2006) 3 Supreme 474 , the Apex Court while ruling under Order 21 Rule 54(2) CPC held that the proclamation of sale by beat of drum is not mandatory so long as the sale notice is proclaimed at or adjacent to the property in lawful manner. Mere pleading irregularity or fraud is not sufficient unless and until judgment debtor spelt out material irregularities with reference to material particulars. If the discretion has not been exercised by the judgment debtor to deposit the decretal amount, the law does not come to his rescue.

13. Looking to the aforesaid facts, this Court, does not find any illegality or irregularity in the impugned order. Resultantly, this appeal is dismissed being bereft of merits.