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**(2011) 11 P&H CK 0122**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 16101 of 2011**

Govind Singh

APPELLANT

Vs

Central Bank of India and others

RESPONDENT

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**Date of Decision :** 17-11-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2011) 11 P&H CK 0122

**Hon'ble Judges :** Hemant Gupta, J;G.S. Sandhawalia, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

G.S. Sandhawalia, J.—The present writ petition has been filed with a prayer for quashing order dated 30.3.2002 (Annexure P/1) whereby programme of warrant of sale was issued by the Addl. Civil Judge (Senior Division), Rewari. The said sale is alleged to be against the policy of the Reserve Bank of India. There are further prayers in the nature of Mandamus directing the respondent to pay compensation of Rs. One Crore to the petitioner and issuance of a direction to respondents No.1 to 3 to register a criminal case against respondent no.4. Since the petitioner is appearing in person and there was reference in the petition that two Civil Revision Petitions i.e. Civil Revision Nos.2579 of 2004 and 4888 of 2003 alongwith ESA No.5 and 6 of 2010 have been filed which were decided by this Court on 3.11.2006, therefore, the files of the said cases were called for so that matter could be adjudicated upon in the proper perspective.

2. From the record of the aforesaid cases, it transpires that the petitioner had taken a loan from the Central Bank of India amounting to Rs. 24,300/-and mortgaged agricultural land measuring 40 kanals 14 marlas, however, due to non payment, the Bank filed a Civil Suit and a money decree for recovery of Rs.24,300/-alongwith interest at the rate of 17% per annum was passed on 23.7.1988 in favour of the respondent Bank and against the petitioner and his father Sher Singh, who was the guarantor. Due to the non payment of the said

amount, an Execution Application was preferred by the Bank and the mortgaged land was ordered to be attached alongwith additional 16 kanals land and put to auction on 4.5.2002 in favour of respondent no.4 Shri Mange Lal Rustagi Advocate, who was also representing the respondent-Bank. During the pendency of the execution, the petitioner being the judgment debtor tried all ways and means to delay the same by filing various applications and also approached the Bank to settle the amount. An application was also filed before the Executing Court for deposit of the decretal amount which was dismissed on 5.4.2003, and which was challenged by filing Civil Revision No.4888 of 2003 before this Court. The Civil Judge (Senior Division), Rewari vide order dated 29.11.2003 passed in Execution Application No.38/RT/18/81 also confirmed the sale of 27 kanals of land and the remaining land measuring 29 kanals was ordered to be released as the petitioner-decree holder had deposited a sum of Rs.62,000/-during the execution proceedings and the sale proceeds of 27 kanals of land to the tune of Rs.68,000/-were held sufficient to satisfy the decree. The said order dated 29.11.2003 was upheld in Civil Revision No.2579 of 2004 on 3.11.2006 by this Court on the ground that sale had already confirmed and the auction purchaser was not a party in the revision petition. The relevant portion of the said order is reproduced hereunder:

The only argument raised by learned counsel for the petitioner before me today is that he is now willing to pay the amount and settle the matter. I am of the opinion that there is no merit in this contention. The petitioner had raised this argument so many times before the trial Court and never settled the amount and by now the sale has already been confirmed. Even the auction purchaser is not a party in this revision petition. The argument is therefore rejected.

For the reasons aforementioned I find no error in the order passed by the Executing Court and the present revision petition is therefore dismissed.

3. The connected Civil Revision No.4888 of 2003 against order dated 5.4.2003 was also disposed of since the same pertained to settling of the case under Reserve Bank of India guidelines and nothing survived for adjudication in view of the dismissal of Civil Revision No.2579 of 2004.

4. The petitioner and his wife had, however, also filed appeals before the Addl. District Judge, Rewari against the order dated 29.11.2003 on the ground that the sale dated 4.5.2002 in favour of respondent no.4-Sh. M.L.Rustagi, Advocate-auction purchaser was illegal since he had deposited some amount in the execution and, therefore, the confirmation of sale was not justified. The said appeal was allowed vide order dated 21.2.2009 and the order dated 29.11.2003, the auction-sale and also its confirmation were set aside with a direction to the respondent-Bank to refund the amount of Rs.68,000/-to the auction purchaser Sh. M.L.Rustagi alongwith upto date interest at the rate of 9% per annum. The said order was challenged in appeal by respondent no.4 and said appeal has been dismissed by this Court vide order dated 4.8.2010 passed in ESA Nos.5 & 6 of 2010 and this Court came to the conclusion that Sh. M.L.Rustagi, Advocate

participated in the auction proceedings in individual capacity and land worth Rs.28 lacs was put to illegal auction and there was collusion and manipulation apparent on the face of the record. Thus, the sale has been validly set aside by the Lower Appellate Court. The finding recorded by the learned Single Judge while dismissing the appeal are reproduced hereunder:-

8. As is evident from the record that the plaintiff bank (decree holder) filed the execution petition against the defendant-JDs for recovery of the decretal amount by way of auction/sale of the mortgaged property. The appellant is neither plaintiff-decree holder nor the defendant-JD, but he is the auction purchaser. The first appellate Court has acknowledged that since appellant Mangi Ram Rustagi, Advocate was representing the plaintiff bank in the suit as well as in the execution proceedings, so, the possibility of his collusion with the bank in depriving the defendant-JDs from their valuable property, cannot possibly be ruled out. The Ist appellate Court has also noticed that the entire land of Sher Singh, father of Govind Singh measuring 56 kanals 14 marlas was attached only for recovery of Rs.24,300/-. The proclamation was signed by the executing Court on 11.4.2002. The auction was conducted on 4.5.2002 and the attached property was auction for a paltry sum of Rs.1,50,000/-only in favour of auction purchaser M.L.Rustagi, Advocate. On 4.5.2002, when the auction was held, M.L.Rustagi participated in the auction proceedings in his individual capacity and not on behalf of decree holder-bank. He pressurized the Tehsildar, who conducted the auction, to accept 25% of the auction amount under protest despite the fact that the Tehsildar, Rewari, in his report, has clearly observed that the auction amount is very less and the market price of the land was verified to be Rs.28 lacs approximately. In this context, Tehsildar reported the matter to the executing Court that the sale be not confirmed, but the executing Court still illegally confirmed it. The executing Court has just ignored these vital facts that the land of the judgment-debtors worth Rs.28 lacs was put to illegal auction without following the prescribed procedure only for recovery of Rs.24,300/-and that too in favour of appellant Mangi Lal Rustagi Advocate, who is none else but counsel for plaintiff-decree-holder. Therefore, collusion and manipulation are apparent on the face of the record. That means, the Ist appellate Court has recorded very valid reasons for setting aside the confirmation of sale. As no illegality has been pointed out by the learned counsel for the appellant-auction purchaser in this regard in the impugned order, therefore, the same is hereby maintained in the obtaining circumstances of the case.

9. There is another aspect of the matter, which can be viewed from a different angle. It is not a matter of dispute that the plaintiff bank has already compromised the matter and received the entire decretal amount alongwith interest. In this respect, the Ist appellate Court has observed as under:

Besides letters Ex.PX and Ex.PY decree holder bank had been admitting the factum of the compromise with the JD. As stated earlier, the appellant Smt.Geeta Devi filed an application for setting aside the sale on 1.6.2002 and in para no.8

of her aforesaid application she clearly mentioned that a sum of Rs.60,000/-was agreed to be paid as lump sum amount in full and final settlement of the decretal amount upto 31.12.2001 before the Lok Adalat held on 20.10.2001. Decree holder bank in its reply dated 27.3.2002 clearly admitted the said fact as correct. Similar fact regarding the entering of the compromise with appellant Govind Singh was also admitted by the decree holder bank in its reply dated 20.5.2002 filed in response to the application of appellant Govind Singh dated 9.5.2002 for setting aside the sale. Now when a settlement had been arrived between the decree holder and judgment debtor that a lump sum amount of Rs.60,000/- would be paid by the decree holder against the amount due and the decree holder bank accepted a sum of Rs.25,000/-upto 28.2.2002 and later on balance amount of Rs.35,000/-plus interest of Rs.2000/-i.e. Rs.37,000/-in total on 6.5.2002 in recognition of that settlement, then the learned executing court was not justified in confirming the sale in favour of auction purchaser Mr.M.L.Rustagi Advocate vide its impugned order inasmuch as the decree in question has become fully satisfied.

10. Meaning thereby, the matter stands compromised between the plaintiff bank (decree holder) and the defendant-JDs. Since the decretal amount has already been deposited by the JDs and accepted by the decree holder bank, so, the decree stood fully satisfied.

11. Above being the position, it cannot possibly be said that the appellant is left with any interest whatsoever in the land in dispute and he has no claim in this context. Therefore, the contrary arguments of learned counsel for appellant-auction purchaser "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

5. From the above narration of facts, it would be clear that first prayer of the petitioner for quashing the order dated 30.3.2002 (Annexure P/1) wherein the programme of the warrant of sale was issued by the Executing Court at Rewari has become infructuous as subsequent sale in favour of respondent no.4 has already been set aside by the Addl. District Judge, Rewari vide order dated 21.2.2009 in appeals filed by the petitioner and his wife and which has been upheld in ESA No.5 & 6 of 2010 decided on 4.8.2010., by this Court.

6. Regarding the second prayer of seeking compensation the same is not maintainable in Writ Petition and the petitioner is at liberty to seek his remedy before the Court of competent jurisdiction as disputed questions of fact are involved as to what was the degree of collusion of respondent no.4 with the officials of the Bank in participating in the auction and the amount of compensation payable for the illegal action of the respondent no.4. Similarly the petitioner has alternative remedies to avail regarding registration of a criminal case against respondent no.4 and the discretionary relief under Article 226 and 227 of the Constitution of India cannot be exercised in view of the fact that the petitioner has various alternative remedies and it would be debatable question as to whether a cognizable offence is made out or not.

7. Accordingly, the writ petition is dismissed in limine with liberty to the petitioner to avail his alternative remedies in the Court of competent jurisdiction.