

(1982) 01 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 173 of 1976

Mal Singh

APPELLANT

Vs

The Moga Central Co-Operative Bank Ltd. and others

RESPONDENT

Date of Decision : 21-01-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54(2)

Citation : (1982) 01 P&H CK 0010

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : R.S. Bindra with Mr. Rajiv Bhalla, for the Appellant; Sarjit Bindra for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Nath Mittal, J.—This revision-petition has been filed by Mal Singh, auction-purchaser against the judgment of the Additional District Judge, Faridkot dated 13-12-1975, affirming the judgment of the Executing Court by which the objections of the decree-holder for setting aside the sale had been accepted.

2. Briefly, the facts are that Moga Central Cooperative Bank Limited obtained a decree for Rs. 85,500/- against Jagjit Singh. In pursuance of the decree, land of the Judgment-Debtor measuring 28 Kanals 12 Marias situate in village Panj Grain Khurd, Tehsil Moga District Faridkot was auctioned on 11th of December, 1973. It was purchased by Mal Singh, petitioner, for an amount of Rs. 45,000/-. The decree-holder filed objections against the auction inter alia on the ground that the proclamation was not effected at the spot in accordance with Order 21 rule 67 read with Order 21 rule 54 (2) of the CPC (hereinafter called the Code) and that he had been materially prejudiced by the said illegality. The objection petition was contested by the auction purchaser, who controverted his allegations.

3. The learned Executing Court accepted the objections and set aside the sale. The auction-purchaser went up in appeal before the Additional District Judge,

Faridkot who affirmed the judgment of the Executing Court and dismissed the appeal. He has come up in revision against the judgment of the appellate Court, to this Court.

4. It is contended by the Learned Counsel for the petitioner that the objection regarding proclamation could be taken up by the decree-holder prior to the auction. He submits that if no objection was taken by him prior to the auction, he is debarred from taking the same now, in view of the proviso added to rule 9. Order 21.

5. On the other hand, the Learned Counsel for the respondent has urged that the point was not taken up by the auction-purchaser either in reply to the objection petition or before the appellate Court and therefore, he cannot be allowed to take this point for the first time in revision petition. She has further urged that due to lack of publicity regarding the auction of the property, it has been sold for a paltry amount and the decree-holder has suffered immensely.

6. I have considered the arguments of the Learned Counsel. It is not disputed that the Court ordered on 27th October, 1973 that proclamation be made on 8th of November, 1973 and sale be held on 11th December, 1973. If the proclamation was not made properly on 8th of November, 1973, the decree holder could present an application before the Court prior to the sale as there was enough time for that purpose. A proviso has been added by this Court to Order 21 rule 90 which debars a party from raising objections after the date of auction which could be raised before the date of auction. The proviso reads as follows:--

provided further that no such sale shall be set aside on any ground which the applicant could have put forward before the sale was conducted.

7. The purpose of the proviso is to shorten prolonged execution proceedings so that the decree-holder may reap the fruit of the litigation expeditiously. Prior to the amendment, the interested person could raise the objections about irregularity or fraud in publishing or conducting the sale, after the sale of the property. The decision of the objection would take a long time and thus the recovery of the decretal amount was delayed. Now such objections, if raised before the sale, can be removed without difficulty and if raised after the sale, cannot be gone into. Thus the execution cannot be delayed by filing this type of objections.

8. In the present case, as already stated above, the sale had been held after more than a month from the date of proclamation. It was incumbent upon the decree holder-respondent to file objection regarding the proclamation if there was any, before the date of auction. In case, the decree holder did not do so, it is now debarred from doing so in view of the proviso. In the aforesaid view, I am fortified by the observations in *Mrs. Margaret A. Skinner v. M/s. Empire Store Connaught Place New Delhi* (1976) 78 P.L.R. 64. In that case, the judgment-debtor who was the appellant inter alia raised an objection that the proclamation

was neither affixed at the Court house nor at the spot nor at the Court of the Collector. The objection was rejected with the observations that the appellant was well aware of the date and time of the sale and as such she had ample opportunity to raise that objection. She did not raise the same and after the sale, the proviso referred to above, did not permit her to challenge the sale on that ground. Similar view was taken earlier by I.D. Dua, C.J., as he then was, in *Uma Datt Vs. R.K. Sardana and Another*, I am in respectful agreement with the above observations.

9. The objection of the Learned Counsel for the respondent, that as objection was not taken by the petitioner in reply, and therefore, he cannot take it now, is also without any foundation. In the present case, interpretation of proviso to Order 21 Rule 90 is involved. Such a question can always be allowed to be raised in revision petition as it involves question of jurisdiction decision of which depends on the interpretation of a rule. No evidence is required to be recorded for its decision and the proceedings will not be delayed in case the objection is accepted.

10. The counsel for the respondents made reference to *Bhagwan Gold and Silver Store, Rewari Vs. Hissar Iron and Mechanical Works*, . In that case there was an infraction of a rule of order 5 of the Code regarding service of the defendant. The learned Judge refused to interfere in the revision petition on the ground that it was the duty of the defendant to have raised the point before the trial as it might have been found necessary on examination of the objections to have evidence of the parties thereon. It was also held that if the revision petition was accepted, the case would have to be remanded, which would further delay the decision of the suit. Therefore, the learned Judge refused to exercise the jurisdiction. The other case on which reliance was placed by the Learned Counsel for the respondent is *Surat Singh Vs. Nafe Singh and Others*, . There an auction was held by an agent of the Court Auctioneer of the property valued as Rs. 1,000/-. It was against the rule, which provided that the sale of the property whose estimated value exceeded Rs. 500/- would be conducted under the general supervision of the Court Auctioneer. The objections were filed, after the auction had taken place. The Judgment-debtor was not present at the time of the sale and consequently, he could not raise the objection there. He also could not foresee that the Court Auctioneer would not conduct the sale himself. Taking into consideration the aforesaid circumstances, the learned Judge observed that the proviso is not intended to legalise a sale which is conducted in utter violation of mandatory provisions of law. Both the cases are distinguishable and the Learned Counsel cannot derive any benefit from them.

11. After taking into consideration all the facts and circumstances, I am of the opinion that the Courts below acted illegally in exercise of their jurisdiction in setting aside the auction. For the aforesaid reasons, I accept the revision petition and set aside the orders of the Courts below. The parties are directed to appear before the Executing Court for further proceedings on 19.2. 1982. No costs.