
(1997) 12 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 3293 of 1996

Rocky Tyres and Others

APPELLANT

Vs

Ajit Jain and Another

RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 94, 11 , 47
Constitution of India, 1950 — Article 142

Citation : AIR 1998 P&H 202 : (1998) 3 CivCC 313 : (1998) 120 PLR 53 :
(1998) 2 RCR(Civil) 17

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Ashu M. Punchhi, for the Appellant; Arun Jain and A.C. Jain for SBI,
for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—This revision petition was taken up for hearing out of turn when the order of Hon"ble Supreme Court of India dated 21-11-1997 was brought to the notice of the Court by the registry on 2-12-1997. The matter was listed on 3-12-1997 when this Court passed the following order:--

"This petition has come up for hearing today in furtherance to the order of Hon"ble Supreme Court of India dated 21-11-1997 where their , Lordships have desired that this revision petition should be decided as early as possible and preferably within a period of three weeks.

Learned counsel appearing for the parties prays for time to argue the matter. List this matter on 8-12-1997."

2. It will be necessary to refer to the facts giving rise to the present revision as it arises from a protracted litigation between the parties since 1976. State Bank of India had filed a suit for recovery of Rs. 5,22,585.37 paise with costs and interest against Rocky Tyres and others. A decree was passed in favour of the

Bank and against the defendants in the suit on 7-4-1976. Having failed to recover its dues the decree holder-Bank filed an execution application on 12-8-1976 and after following the due process the property was put to auction on 15-6-1979. The property was auctioned for a sum of Rs. 1,90,000/-. Objections to this were filed by the decree-holder as well as by the judgment-debtors which were dismissed by the executing Court. The objector-judgment debtor had preferred an appeal before the High Court in which the order of the executing Court was set aside and the matter was remanded for trying the objections after framing issues and affording opportunities to the parties to lead evidence. In furtherance to the orders of the High Court, issues were framed by the executing Court and the same were dismissed. Sale certificate was issued in favour of the auction purchaser qua the property in dispute.

3. Again the matter was taken up by the decree-holder-Bank before the Supreme Court. The SLP preferred by the Bank was disposed of vide order of the Hon''ble Apex Court on 1-12-1994. This order of the Hon''ble Supreme Court has been reported as State Bank of India Vs. Ajit Jain and Others, titled''as State Bank of India v. Ajit Jain. It may be appropriate to refer to the operative part of the judgment which reads as follows (at page AIR 5155 SCW) :--

"Shri Ajit Jain shall pay a sum of Rupees Fifteen Lakhs to the Bank even though if the dues are taken as on today they are more than Rupees Fifteen Lakhs. This payment would be in full and final settlement of the dues outstanding against the judgment-debtor and it would result in discharging him of all the claims of the appellant-bank against him. Shri Ajit Jain shall further pay a sum of Rs. 5,00,000/- to the judgment-debtor. The amount of Rs. Three lacs withdrawn by the judgment-debtor from the rent deposited shall not be adjusted towards this payment. Remaining amount in deposit shall be paid to the judgment-debtor. Shri Jain shall deposit balance amount, that is, Rupees Five Lakhs minus the amount which is lying in deposit towards rent and Rupees Fifteen Lakhs minus Rupees One Lakh Ninety Thousand, the auction amount as we are informed that this amount is lying in deposit with the Court. All these amounts shall be deposited within three months from today. The bank and the judgment debtor shall be entitled to withdraw the same."

After this order was passed, on 12-10-1995 the auction purchaser filed application for extension of time to deposit some disputed amount to the extent of Rs. 1,00,500/-, which was not granted by the executing Court and even appeal against the same was dismissed.

4. However, vide order dated 24-11-1995 the Hon''ble Supreme Court of India granted extension of time to the auction-purchaser to make up the deficiency and the order reads as under :--

"As prayed for, time is extended for deposit of Rs. 1,00,500/- within a period of one month from today in the Executing Court. No further time will be granted.

Mr. Mehta, learned counsel for respondent No. 1 undertakes to withdraw the

appeal filed in the District Court. It is accordingly dismissed as withdrawn."

5. After the extension was granted the executing Court vide its order dated 29-1-1996 had permitted the auction-purchaser to deposit the amount and thereafter had directed the issuance of a sale-certificate in accordance with law. This order was assailed in Civil Revision No. 406 of 1996 by the judgment-debtor/objector. This civil revision was dismissed vide order dated 26-3-1996 and the relevant part of the order dismissing the civil revision reads as under :--

Thus, as the auction-purchaser complied with all the directions of the Apex Court given in both the orders dated December 1, 1994, and November 24, 1995, the auction-purchaser is now entitled to get the sale certificate issued in his favour and also to get the possession of the said property.

Consequently, in my considered view, there is no merit in this revision, which is hereby dismissed with costs, which are quantified at Rs. 2,000/- to be paid to the auction-purchaser."''

6. Against this order the objector-judgment debtor had preferred a SLP before the Hon''ble Supreme Court of India, which was dismissed vide order dated 17-4-1997, which reads as under:--

"The SLP is dismissed."

7. After the dismissal of the SLP the objector-judgment debtor filed objections u/s 47 of the CPC before the learned executing Court. These objections were dismissed vide order dated 31-7-1996 which has been impugned in the present revision petition.

8. Notice of this revision was issued by Hon''ble Mrs. Justice Dr. Sarojnei Saksena on 19-8-1996. For the reasons stated in that order and on another application being C.M. No. 9112-C-II of 1996 vide order dated 23-8-1996 the Hon''ble Judge was pleased to grant stay of execution of warrant of possession against the judgment debtor/objector. This order dated 23-8-1996 was challenged before the Hon''ble Supreme Court of India in SLP No. 4922 of 1997 in which the order dated 21-11-1997 came to be passed.

9. In addition to the above facts the learned counsel appearing for the respondent-auction purchaser has laid emphasis on the fact which has come on record that the premises in question were in possession of the tenant. An application for ejectment was filed by the judgment debtor-objector against the said tenant M/s Jaison Industries, which is the concern of the father of the auction-purchaser. The said eviction petition was dismissed against which revision was preferred even before the Hon''ble High Court, which was also dismissed. As such possession of the tenant had not been disturbed legally at any point of time. It is also emphasized by the learned counsel for the respondent that review petition was filed by the judgment-debtor praying for the review of "the order dated 1-12-1994, but the same was dismissed by the Hon''ble Apex Court.

10. In view of the above, the counsel appearing for the petitioner and objector raised the following three submissions :--

(i) The learned Executing Court was obliged to grant opportunity to the petitioner to lead evidence and without affording such an opportunity, rejection of the objections of the objector amounts to an error apparent on the face of the record. Thus, the impugned order is liable to be set aside.

(ii) In view of the order of the Apex Court dated 1-12-1994 passed under Article 142 of the Constitution of India, gives colour to the sale in question as a private sale. Thus, the sale has lost the character of sale by public auction as contemplated under Order 21 of the Code of Civil Procedure. The impugned order, therefore, is without jurisdiction.

(iii) As provisions of Order 21, Rules 92 to 94 of the Code are not attracted in the present case. Thus, the sale-certificate issued by the learned executing Court vide the impugned order does not satisfy the basic ingredients necessary for such purpose. Consequently, sale certificate is defective in law.

11. On the other hand, the learned counsel Mr. Arun Jain appearing for the auction-purchaser while repelling these arguments on merits supported the impugned order passed by the learned trial Court. In addition, an argument by way of preliminary objections has been raised with regard to the maintainability of the present revision petition and the objections filed before the executing Court that they are barred by the principles of res judicata and/or constructive res judicata. Raising vehement submissions the learned counsel Mr. A.M. Punchhi argued that in every case the executing Court is expected to grant permission to the objector to lead evidence specially when the plea of fraud, forgery, collusion and material controversy with regard to other facts has been raised in the objection petition like the present one. It is also argued that an application dated 25-5-1996 was filed by the objector praying before the learned executing Court that the objector be permitted to lead evidence. That application is stated to be pending as of today though the main objection petition has been disposed of. Emphasis was also placed upon the observations made by Shri R.S. Mongia, J. in a civil revision, preferred by the auction -purchaser, No. 1643 of 1996 titled Ajit Jain v. Rocky Tyres. The order being a very short one, it may be more appropriate to reproduce the entire order:--

"After hearing the learned counsel for the parties, I dispose of this petition by directing the executing Court to consider and decide the objections filed by the respondent herein, against the issuance of the sale certificate to the petitioner, in accordance with law, expeditiously."

It is contended that the cumulative effect of all the above matters is that the learned trial Court has committed an error of jurisdiction in not permitting the objector to lead evidence and as such the impugned order was liable to be set aside.

12. However, it is contended by learned counsel for the respondent that all these pleas had been raised earlier in different proceedings before the executing Court as well as before the High Court and Hon''ble Supreme Court of India, but they having been dismissed, the petitioner-objector is debarred from raising such pleas all over again. The auction-purchaser is stated to have complied with the orders passed by the executing Court and the conditions as incorporated in the order of Apex Court dated 1-12-1994 within the time condoned and extended by the Hon''ble Supreme Court vide its order dated 24-11 -1995. Therefore, it is contended that there could possibly be no issue for determination before the executing Court which would call for recording of evidence. The objections are mala fide and are intended to delay the completion of the execution proceedings.

13. One fact which cannot be disputed on the basis of, the record is that the auction of the property in question was held on 15-6-1979 in furtherance to the decree passed by the Court of competent jurisdiction for recovery of money dated 7-4-1976. These dues which were payable to the plaintiff-Decree holder-Bank and the inadequacy of the auction price came to be finally settled by the order of the Hon''ble Apex Court on 1-12-1994. The order of 1-12-1994 being an order passed by the highest Court of the land had finally determined the rights of the parties i.e. decree-holder, judgment debtor/objector and the auction purchaser. Review against the said order was declined by the Hon''ble Supreme Court of India. Thus, the order attained complete finality and it was only the execution of the said order, subject to the limitations imposed therein, that was required to be concluded between the partiesby the executing Court.

14. A necessary corollary to this view is whether the order of the Hon''ble Supreme Court of India dated 1-12-1994 had been complied with or not. In this regard reference has to be made to the order dated 24-11-1995 wherein in spite of other proceedings being pending before the executing Court and even the High Court, the Hon'' ble Supreme Court in presence of parties had granted extension of time to the auction purchaser to deposit the remaining amount of Rs. 1,00,500/-within a period of one month from the date of the order, in the executing Court. There is also no dispute to the fact that this amount was deposited within the extended period. Vide order dated 1-12-1994 the Hon''ble Supreme Court had directed the auction-purchaser to pay a sum of Rs. fifteen lakhs to the Bank in full and final settlement of the liability of the Bank and pay a further sum of rupees five lakhs to the judgment-debtor and a sum of rupees three lakhs which had been withdrawn by the judgment-debtor from the rent deposited in the Court was not to be adjusted towards this amount. This order dated 1-12-1994 was passed by the Hon''ble Apex Court in Civil Appeal while exercising its powers under Article 142 of the Constitution of India to do complete and substantial justice between the parties. This order, as already noticed had attained finality in all respects and a petition for review of the same was declined. The amount of Rs. fifteen lakhs was paid to the decree-holder/Bank and was accepted by the Bank. This amount was paid within time. There was some dispute between the parties with regard to the payment of Rupees five

lakhs, over and above the sum of rupees three lakhs which had been withdrawn by the objector from the rent deposited in Court with regard to the premises in question. According to the respondent herein the objector had withdrawn a sum of more than Rs. four lakhs from the rent deposited in Court and as such they were not liable to pay a sum of Rs. five lakhs, but their liability was to be restricted only to a sum of Rs. three lakhs and odd. As this controversy dragged on for sometime that there was delay in deposit of the directed amount which stood condoned and further time allowed by the order of the Hon"ble Apex Court dated 24-11-1995. Thereafter the disputed amount of Rs. 1,00,500/- was also deposited.

15. At this stage it may be relevant to make a reference to the order passed by Dr. (Mrs.) Justice Sarojnei Saksena dated 26-3-1996, of which the following extracts would be relevant for proper appreciation of the present controversy :--

"Even then, as the auction-purchaser thought that he is required to deposit Rs. 1,00,500/- more by filing Misc. Applications Nos. 1789-90 of 1988 (which is admitted by the decree-holder as well as by the judgment-debtor) on October 30, 1995, that further time was granted to the auction-purchaser to pay Rs. 1,00,500.- more and thus sought clarification of the order of the Apex Court. In this petition he has clarified all the amounts which are lying in deposit i.e. how much he is required to pay and how much he has paid. By the order dated November 24, 1995, the Apex Court granted this petition and extended the time for one month. It is not in dispute that in compliance of this order the auction-purchaser has deposited Rs. 1,00,500/- to be paid to the judgment-debtor."

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"He also filed Annexure "G" a copy of the application which the auction-purchaser filed on March 8, 1995, under which he wanted to deposit additional sum of Rs. 72,000/-. In this petition it is specifically mentioned :--

"The finding of the executing Court that there is collusion between the auction purchaser and the treasury officials is merely conjectural and based on no evidence."

Thus, the executing Court's order dated October 12, 1995, was specifically assailed before the Apex Court and in this context it is also relevant to mention that the auction-purchaser gave an undertaking before the Apex Court that he will withdraw his appeal which is pending in the District Court against the executing Court's order dated October 12, 1995, and accordingly the Apex Court itself dismissed that appeal as withdrawn. Had this fact of the deposit of Rs. 72,000/- on Feb. 28, 1995, not been taken into consideration by the Apex Court, there was no question of asking the auction-purchaser to withdraw his appeal, where in the executing Court's order Annexure P-1 dated October 12, 1995, was assailed."

After making the above findings the learned Judge concluded, as already noticed

supra, that auction purchaser had complied with the terms of the orders of the Supreme Court and was entitled to issuance of the sale-certificate. The above judgment with its entire findings was upheld by the Hon'ble Supreme Court of India, thus setting at rest all controversies with regard to the confirmation of sale and issuance of sale-certificate. In these circumstances it is quite difficult to find an error with the impugned order.

16. The learned counsel appearing for the objector argued that the learned Executing Court was obliged to frame issues and grant leave to the objector to lead evidence. Thus, I must examine even this contention from the point of view as to what evidence could be led by the objector, rejection of which has caused any prejudice to the objector. According to the learned counsel he would have tendered on record orders of various Courts in these proceedings including the order of the executing Court dated 12-10-1995, dismissal of the writ petition preferred by the auction purchaser and would have shown to the Court the cumulative effect of these orders that there was no compliance of the order dated 1-12-1994 passed by the Hon'ble Supreme Court of India and all orders beneficial to the auction-purchaser had been set at naught. This contention appears to be totally misconceived. All the orders mentioned by the learned counsel were before the learned executing Court because they were passed in the same proceedings or in continuation of the same proceedings before the High Court. No Court can attempt to approach the case from a different point of view than what has been expressly held by the highest Court of the land. The orders dated 1-12-1994, 24-11-1995 and 17-4-1996 passed by the Hon'ble Supreme Court of India and the rejection of the review application preferred by the objector against the order dated 1-12-1994 by the same Court necessarily implies complete determination of all disputes between the parties leaving nothing more for adjudication by the learned executing Court which would justify leading of fresh evidence, documentary or otherwise.

17. The other contention in this regard is that the objector would have led evidence to show that there was collusion between the treasury officials and the auction-purchaser. This collusion has even resulted in manipulation of documents and has caused serious prejudice to the rights of the objector-judgment debtor. As already noticed, this contention was specifically raised before the executing court, this Court and in the SLP preferred by the objector-judgment debtor, before the Hon'ble Supreme Court. Copy of the Special Leave Petition, which was dismissed vide order dated 17-4-1996 has been placed on this file as Annexure R/6. All the pleas which are sought to be raised now were raised before the Hon'ble Apex Court and even earlier in various proceedings before the executing Court and this Court. There is no justification for this submission that the learned executing Court ought to have permitted the objector to lead evidence on this score.

18. It is settled principle of law that it is not incumbent upon the executing Court that it must put to trial every objections which are filed in any execution

proceedings, even if prima facie they appear to be frivolous, vexatious and are only intended to delay the execution and frustrate the procedure of law or where it amounts to an abuse of the process of the Court. In this regard reference can be made to a judgment of this Court in Execution Second Appeal No. 2333 of 1996, Bhagwan Singh v. Parkash Chand, decided on 7-11-1996. The Court after detailed discussion and following the principles enunciated by the Hon'ble Supreme Court of India in the cases of Babulal Vs. Raj Kumar and Others, Munshi Ram and Others Vs. Delhi Administration, B. Gangadhar Vs. B.G. Rajalingam, and noticing judgments of various High Courts, held as under :--

"Now for a considerable period it is not only the judicial trend which has declined to interfere to protect unlawful possession or possession of ranked trespasser etc. but, on the other hand, judicial anxiety has been to give effective relief to the successful parties by expeditious execution of decrees in favour of the parties. Unnecessary prolongation of litigation sometimes results even in frustrating the decree itself. Such attempt on the part of the objector to frustrate a decree is a mischief which has to be prevented by due process of law and expeditious decision of such ill-founded and frivolous objections would also be in the interest of justice and within the permissible field of jurisdiction of the execution."

"If frivolous objections of the present kind are permitted to unreasonably and unnecessarily prolong the delivery of possession to a decree-holder in accordance with law, it would certainly amount to putting a premium on abuse of process of law."

19. Thus the cardinal principle of law that follows is that the purpose of granting an opportunity to prove his case to an objector while entertaining objections u/s 47 read with Order 21, Rules 97 to 108 of the CPC does not amount to permission for abusing the process of law or court. The discretion must be exercised by the Court in such cases. Of course discretion is governed by settled judicial principles and must be exercised within four corners of law, but such a discretion cannot be termed as a mere routine exercise of judicial discretion. Either way it should be for well founded and settled principles governing the subject.

20. Shortly I would proceed to discuss the plea of res judicata raised on behalf of the objector, which would further support the order passed by the learned executing Court.

21. Learned counsel for the objector argued that the order passed by the Hon'ble Supreme Court on 1-12-1994 while exercising its powers under Article 142 of the Constitution of India does not amount to an order under the provisions of the Order 21, Rules 92 to 94 of the Code and is a mere private sale which cannot attract the relevant provisions of the Code. This contention needs to be rejected at the out-set. Firstly, the order of attachment, sale, confirmation of sale and, issuance of sale-certificate, all have been passed by the learned executing Court while exercising its powers under various Rules of Order 21 of

the Code. Further more, Article 142 of the Constitution of India vests in the Hon'ble Supreme Court widest powers to do complete justice between the parties and all other powers under various procedures can no way affect Or curtails the powers of the Supreme Court. This contention need not detain me any further as all Courts including this Court are bound by the orders passed by the Supreme Court and its interpretation would not be open to this Court, specially in the facts and circumstances of the present case. There was a conclusive sale in favour of the auction-purchaser in terms of the order dated 1-12-1994, which stands fully complied with as per the findings of all the Courts and duly up-held by the Hon'ble Supreme Court.

22. In this regard reference can be made to the judgments of the Hon'ble Supreme Court of India in the case of Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., and Ram Chand v. Union of India JT 1993(5) SC 465 : AIR 1993 SC 3479. In these cases the Hon'ble Apex Court has held that the power of the Supreme Court is very wide and can be exercised to meet the ends of justice. Any order passed in exercise of powers under this Article cannot be placed at a lower pedestal than that of an order passed by any Court of competent jurisdiction in the country.

23. What further needs to be noticed here is that vide order dated 1-12-1994 the Supreme Court while upholding the confirmation of sale and the order of the High Court in that regard had only enhanced the amount of consideration to balance the equities between the parties. No way the order of the Supreme Court dated 1-12-1994 can be constituted to alter the nature of the transaction from a sale in accordance with Order 21 of the CPC to a private sale such an order would obviously remain intact in its substance and spirit and would be an order/decree executable on all force within the ambit and scope of Order 21 of the Code. The reference by the learned counsel for the petitioner to the case of Gulab Singh v. Chandrapal Singh AIR 1987 Bom 90 is of no help. In that case the Court had held that sale by calling for offers through advertisement cannot be construed to be a public auction within the provisions of Order 21, Rules 65 and 90 of the Code. In the present case not only that the sale has been confirmed by the competent Court of jurisdiction and the Hon'ble Supreme Court, but the order of the executing Court directing issuance of sale certificate in favour of the auction-purchaser has been upheld by the High Court and SLP against the same stands dismissed.

24. At this stage it may be appropriate to make reference to the judgment of Division Bench of this Court in the case of Messrs Sehgal Brothers and Others Vs. Bharat Bank Ltd., , where the Court commenting upon the scope of the execution proceedings in which the parties had entered into an compromise in execution proceedings itself, held as under (at page 441 of AIR):--

"I, therefore, find myself in entire agreement with Mahajan. J., that the compromise was never intended to entirely supersede or satisfy the existing decrees but that its terms merely provide a mode of executing the two decrees."

"For the reasons I have mentioned, I find that the compromise in these cases concerned the mode of executing the two decrees and was intended to be enforced by the executing Courts and it is in law capable of being so enforced."

25. This brings the Court to discuss the preliminary objection in regard to the petition being barred by the principles of res judicata raised by the respondent herein. The learned counsel for the respondent relied upon the cases of Mahboob Sahab v. Syed Ismail. 1995 (2) RRR 274 : Sulochana Amma Vs. Narayanan Nair, , State of U.P. Vs. Nawab Hussain, and Nand Ballabh Pant Vs. State (Union Territory of Delhi), to argue that all the pleas now sought to be raised were actually raised or would be deemed to have been raised and having been rejected in the previous proceedings, the present petition is barred by the principle of res judicata and constructive res judicata as well. On the other hand, learned counsel for the petitioner has relied upon the cases of Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., ; Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another, , Babulal Vs. Raj Kumar and Others, and Bhanwar Lal Vs. Satyanarain and another, to argue that the present petition is not barred by res judicata as the executing Court had no jurisdiction and the points now sought to be urged on behalf of the petitioners were never substantially in controversy in the previous proceedings.

26. The record before this Court clearly shows that the submissions raised in the present proceedings were actually raised for the consideration of the concerned Courts at different times for determination. In regard to the factum of possession it is to be noticed that in the order of the Supreme Court dated 1-12-1994 it is mentioned that the auction-purchaser is in possession of the entire property. Secondly, an application was filed by the judgment-debtor himself u/s 151, C.P.C. before the executing Court that the possession of the property be directed to be handed over by Ajit Jain to them as there was violation of the order of the Supreme Court dated 1-12-1994. This contention was rejected in the previous revision petitions and nothing more survives. In the previous two rounds of litigation where the parties went up-to Supreme Court, all these contentions could have been raised and even if were not actually raised, would be deemed to have been raised and rejected. What ought to be pleaded and argued by a party while challenging an order, is the discretion of the party, but all points available would be deemed to have been considered by the Court while disposing of such matters. The order of Dr. (Mrs.) Sarojnei Saksena, J. dated 26-3-1996 had dealt with these matters in great detail.

27. As already noticed the copy of the SLP preferred against the order dated 28-3-1996 had been placed on the record of this Court in this petition as Annexure R/6. In paragraph No. 2 (A) and (C) of the very questions framed before the Supreme. Court, the present issues were raised specifically. In paragraphs No. 23 and 27 and Ground (E) the plea with regard to collusion between the treasury officers and the auction-purchaser was pleaded and it was also stated that the order dated 1-12-1994 passed by the Apex Court had not

been adhered to by the auction-purchaser. All these contentions were not accepted by the Hon"ble Supreme Court of India and the SLP was dismissed.

28. The plea raised on behalf of the petitioner that pendency of the application for framing of issues and leading evidence renders the order liable to attack, is equally ill-founded. As already discussed, nothing substantial and material has been brought before the Court which could be termed as a fact bonafideiy pleaded which ought to be proved by leading evidence. The doubt cast on the validity of the treasury challans and allegation of interpolation thereto were rightly rejected by the executing Court. The learned Executing Court in its order dated 29-1-1996 has specifically noticed that official from the treasury was summoned and all records were produced before the Court. After examining this point in some elucidation the plea was rejected by the Court. In these circumstances the pendency of the application has caused no prejudice to the judgment-debtor.

29. The dismissal of the writ petition and withdrawal of the appeal by the auction-purchaser before the High Court prior to the order dated 26-3-1996 again is of no consequence. All orders passed by all Courts merged into the orders of the Hon"ble Supreme Court from time to time and finally on 17-4-1996. The orders passed by the highest Court of the land would control and govern the complete rights and obligations of the parties in precedence to and preference of any orders of any other Court. The appeal in the High Court was obviously withdrawn in furtherance to the statement made by the auction-purchaser before the Supreme Court, as such no adverse inference can be drawn against the auction-purchaser even on this account. In any case all these questions, as already noticed, were raised and decided by the Courts of competent jurisdiction in earlier proceedings.

30. At this stage it may be relevant to refer to the judgment of the Hon"ble Supreme Court in the case of Y.B. Patil AIR 1977 SC 392 (supra), wherein it was held as under:--

"Principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding."

31. In the above cases the Hon"ble Supreme Court has clearly laid down that principle of res judicata is again a broader rule of evidence which prohibits re-assertion of a cause of auction. Once the disputes are determined and adjudicated upon, it must result in termination of the disputes specifically and in their general aspect. Re-agitation of all this under the garb of new plea would not be permissible. Prevention of multiplicity of unnecessary litigation is the basic concept of rule of law. The plea raised for consideration even before the Court of limited or restricted jurisdiction in earlier proceedings like (sic) before the Tribunal has been held to be covered under this principle and would operate as

res judicata even in the subsequent regular proceedings.

32. In the case of *The Workmen of Cochin Port Trust* (supra) relied upon by the learned counsel for the petitioner it was held by the Supreme Court that principles of res judicata also come into play where by the judgment/order a decision of particular issue is implicit in it i.e. it must be deemed to have been necessarily decided by implication, then also the principle of res judicata on that issue is directly applicable. Here, it may be appropriate to make a reference to the judgment of the Supreme Court in the case of *Mohan Lal Vs. Kartar Singh and Others*, where the Court held as under at page 4585 (of AIR SC W) :--

"In view of the bar contained in Section 47(1) the Civil Court had no jurisdiction to consider the same. It is, therefore, not necessary to consider the alternate contention that the decision of the Collector operated as res judicata in view of Explanation VIII to Section 11 and to refer to the decision of this Court in *Sulochana Amma Vs. Narayanan Nair*, wherein it is held that an order or an issue which had arisen directly or substantially between the parties or their privies and decided finally by a competent court or tribunal, though of limited or special jurisdiction, will operate as res judicata in a subsequent suit or proceeding, notwithstanding the fact that such court of limited or special jurisdiction was not a competent court to try the subsequent suit."

33. Explanation VII to Section 11 of the CPC by CPC Amendment Act, 1976 leaves no doubt that legislature intended to apply the principles of res judicata and of constructive res judicata specifically to the execution proceedings. The purpose certainly was to curtail unnecessary delay in a decree-holder receiving the benefits under a decree that was passed by the Court of competent jurisdiction in his favour. Extending these principles, as already noticed, the Hon'ble Apex Court even applied the principles of res judicata between the proceedings arising before the Court or Tribunal of limited jurisdiction and regular proceedings before the Court.

34. Applying these settled principles to the present case, there is no escape from holding that all controversies which are being raised in the present petition were actually raised, argued and pleaded in the previous proceedings which have already achieved finality by the pronouncement of the orders of the Supreme Court dated 1-12-1994, 24-11-1995 and 17-4-1996. There can be no dispute in fact and in law that all these disputes have become final and binding upon the parties. These orders leave no scope for further controversies. Raising a plea of jurisdictional error in the order dated 1-12-1994 and its implementation is not only unsustainable, but at the face of it is the plea which merits nothing but outright rejection. Whatever ancilliary pleas are intended to be raised by stretching the arguments and disputes determined in the earlier orders, would be deemed to have been raised and rejected by the Courts in earlier decisions. Consequently, I hold that the objection petition and all consequent proceedings including the present petition are hit by the principle of res judicata and is not maintainable.

35. Documents have been placed on record to show that premises were under lease with the concern owned by the father of the auction-purchaser. Copy of the lease-deed read with the application preferred by the judgment-debtor himself establishes this fact beyond doubt. Furthermore, the Hon''ble Supreme Court in its order dated 1-12-1994 had clearly accepted the possession of the auction-purchaser. In these circumstances the dispute with regard to possession appears to be a mala fide plea, which is unfounded on record. Of course, thereafter there had been some dispute in this regard and F.I.R. No. 30 of 1996 was lodged by Jaswant Rai Jain with regard to house-break, trespass and theft etc. against the judgment-debtor Sat Pal Gandhi and others. The factum of the premises being on lease was not disputed before me nor could have been disputed. Whatever rights or title along with possession that the judgment-debtor had, were transferred to the auction-purchaser. All rights of the judgment-debtor in its various capacities in regard to the property in question stood finally merged and conveyed vide order dated 1-12-1994 to the auction-purchaser, as all Courts have held that order dated 1-12-1994 had been complied with in entirety. This finding of the Courts below stood affirmed by the judgment of the Supreme Court itself. Consequently, and while making a reference to the judgment of the Supreme Court in the case of Jangli and Others Vs. Bhagwati (Smt) and Others, , even this contention of the objector is liable to be rejected.

36. The manner in which the auction was held and any objection with regard to its valuation and alleged violation also stood finally settled vide order dated 1-12-1994. The entire property was put to auction and the sale certificate in this regard must be construed properly while giving it a meaningful meaning with the intent to convey the property under the document, rather than to frustrate the sale certificate on some kind of frivolous picas. Nothing substantial was brought to the notice of the Court which could show any apparent or jurisdictional defect in the issuance of the sale certificate issued by the Court concerned. The Court while dismissing the earlier revision Of the judgment-debtor held that auction-purchaser was entitled to get the sale certificate. This completely and finally concludes the matter.

37. The interpretation and meaning given to the sale certificate should be one which would lend support to the validity of the sale certificate. The sale certificate is for the entire property upon payment of the consideration as determined vide order dated 1-12-1994. Thus, it conveys a proper title. In this regard reference can be made to the recent judgment of the Supreme Court in the case of P. Udayani Devi Vs. V.V. Rajeshwara Prasad Rao and Another, .

38. An auction-purchaser who had given a bid for the property in the year 1979 was not able to get possession of the property or its title conveyed in spite of a prolong litigation. The hope of the auction-purchaser attained some certainty when the matter was finally determined by the Hon''ble Supreme Court while exercising its widest powers under Article 142 of the Constitution of India in passing order dated 1-12-1994. Vide this order the auction-purchaser had paid

the entire consideration and an amount in excess by nearly nineteen lakhs than his bid. He sought condonation of delay in depositing balance sum of Rupees 1,00,500/- from the Hon'ble Supreme Court which was granted. Even thereafter years have gone but this intricate litigation has not shown any signs of finality.

39. No procedural law could achieve its basic need of expeditious disposal which has always been the legislative intent and more particularly the need of the day, if, such procedure is abused by the litigant. Due process of law can help in achieving ends of justice with the exception of it being abused by all concerned. On the other hand, abuse of process of law, is bound to result in frustration of giving a fruitful end to a litigation. The law cannot control the unpredictable human behaviour specially when such behaviour is backed by attitude of persistent litigant mind. Compromises arrived at bring no results. In spite of finality in judicial pronouncements in the present case it has give rise to another round of litigation involving involuntariable disputes rather than execution of determined disputes, to provide fruitful results of decree towards successful party. Having lost two rounds of litigation after the property was put to auction, till the highest Court of the land, the present objections preferred by the same judgment-debtor are acts of malice, mala fide and are devoid of any merit. Such actions must be averted right at the threshold and would demand no indulgence from the Court in equity or in law. Such cases would be squarely hit by the maxim *Malitiis Hominum Non Est Indulgendum*. In my opinion the objector-petitioner is not entitled to any relief either in equity or in law.

40. The executing Court has passed a well reasoned order upon consideration of various judgments and I see no reason to interfere with the said order. There is no jurisdictional or any other error apparent on the face of the record which would call for any interference by this Court in exercise of its revisional jurisdiction, which is of a limited scope. In the facts and circumstances of this case there can be no reason whatsoever, to hold that the impugned order is *Coram Non Judice*. The order is in consonance with the settled principles of law and squarely falls within the jurisdiction exercised by the executing Court. Consequently, this revision fails and is dismissed with costs which are assessed at Rs. 2,000/-.