

(1992) 12 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Company Appeal No. 191 of 1988 in Execution Petition No. 21/L of 1985

State Bank of Patiala

APPELLANT

Vs

M/s. Khosla Engg. Co.

RESPONDENT

Date of Decision : 18-12-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, 151

Citation : AIR 1993 P&H 207

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : J.K. Sibal, Sanjeev Sharma and Ramesh Kumar, for the Appellant;
L.M. Suri Deepak Suri, J.S. Narang and Parminder Pal Singh, for the Respondent

Judgement

1. This order will dispose of Application under O. 21, R. 90 read with S. 151, CPC for setting aside the auction held on 8-11-1988 filed on behalf of the Judgment debtors. Briefly the facts of the case are that in pursuance of the decree obtained, State Bank of Patiala (hereinafter referred to as Decree holder) obtained orders of sale of property of the applicant J.D. which was land, factory building, machinery etc. situated on Jalandhar-Kapurthala Road and which was sold for an amount of Rs. 2,55,000 -. Judgment-debtor pleads in its application that the court auctioneer published an auction notice which appeared in the Sunday Tribune dated .10-10-1988 to the effect that the property which is land measuring 1 f Kanals 4 Marlas along with building and machinery situated in the revenue estate of village Dhwan Kh Jagu. Tehsil Kapurthala shall be auctioned on 8-11- 1988 at 10 a.m. at the Court House. Kapurthala.

In the auction notice, it was also mentioned [hat the old stocks, scrap, machinery, furniture and fixtures etc. were also to be sold. On the date fixed for the auction i.e. 8-11-1988. no auction took place in the court house, Kapurthala from 10 a.m. to 4 p.m. instead thereof, the auction took place at the factory premises located on Kapurthala-Jalandhar road. It is further averred that all the

bidders were present in the court House and could not, therefore, expect that the property would be auctioned clandestinely at the premises of factory situated on the Jalandhar-Kapurthala road. Besides the old stock, scrap, machinery and furniture could not be sold because there was no order of the Senior Sub-Judge, Kapurthala or of this Court to sell the same. On 30-11-1988, an application was made to the Senior Sub-Judge, Kapurthala to the effect that scrap iron which was lying in the premises be separately accounted for and a separate auction of the same be held if the same is to be auctioned but the Senior Subordinate Judge by order dated 2nd November, 1988 dismissed the application on the ground that as the execution proceedings are being taken under the orders of this court, the judgment debtors may seek his remedy from this court only. It is further averred that the property has been auctioned for a paltry sum of Rs.2,85,000/- for the entire building, as well as land, scrap, etc. whereas the actual value of the property at the time of auction was for more and in any case not less than Rs. 4 lacs. With a view to substantiate the plea aforesaid, the applicants have attached with their application an affidavit of one Prem Nath, a prospective purchaser of the property who has stated in the said affidavit that no auction took place in Court House from 10.00 a.m. to 4.00 p.m. on the date fixed where he was present and if a fresh auction was to be ordered, he was prepared to pay an amount of Rs. 4 lacs for the property in dispute. It is also pleaded that the judgment debtors are even themselves prepared to pay Rs. 4 lacs for the entire premises, including scrap, machinery etc. In the light of the facts aforesaid, it is pleaded that there has been material irregularity and fraud in the conduct of the sale and in any case, it is pleaded that the property had been auctioned at a price which was ridiculously low and the judgment debtors were themselves ready to purchase the property at Rs. 4 lacs. A prayer has also been made in the application that sale be not confirmed and the property be re-auctioned. The contents of the application as have been reproduced above have been reiterated on the affidavit by one of the judgment-debtors i.e. Ramesh Khosla. The public auction notice that appeared in the Newspaper has been annexed with the application as Annexure "C".

2. In response to the notice issued in the aforesaid application both the auction purchaser i.e. Mr. Mohit Kapur as also the Decree-holder/Bank have filed their replies. Inasmuch as reply of both is on identical lines, it shall be sufficient if pleadings of the auction purchaser alone are noticed. By way of Preliminary Objections, it has been pleaded that the application under Order 21 Rule 90, CPC. is not maintainable as the auction purchaser had not been impleaded as a party. It has also been pleaded that with a view to get the sale set aside, offer of sale to another person is wholly impermissible. It is also stated that the property in fact was sold for Rs. 3 lacs and not Rs. 2,85,000/- and therefore the application and affidavit filed by the decree-holder is false. It is also pleaded that the Official Liquidator attached to this court for M/s. Khosla Fans India Pvt. Ltd. has not filed any objections to the auction held and the objections filed by the Judgment-debtors were nothing but a clever move to delay confirmation of sale.

The bank has raised a preliminary objection that the application is not maintainable as the property mortgaged and sold in pursuance of the decree granted in favour of the bank and no objection whatsoever have been filed by the Official Liquidator. On merits, it has been pleaded that the court auctioneer held the auction in the court house and he was present in the court premises at 10.00 a.m. on 8-11-1988. Before starting the auction, the bidders requested the auctioneer to point out to them the property for which they are expected to bid and it is for that reason the auctioneer took the bidders to the spot and pointed out the property for which bids were invited. The bidders gave their bid and it was in the court house that the highest bid of Rs. 3 lacs was accepted by the auctioneer at 4.00 p.m. The auction is stated to have been conducted from 10.00 a.m. to 4.00 p.m. as published in the Newspaper.

3. It is further pleaded that the auction of the property was held strictly in accordance with the orders of this Court. The objector knew that the auction is to be held on 8-11-1988 but did not move his little finger at the time of auction and did not participate in the bid. It is also stated that the judgment-debtor knew Shri Prem Nath and it was also within his knowledge that the said person who was present on 8-11-1988 in the Court House to offer his bid, otherwise it was impossible for him to have traced him to get his affidavit. It is also stated that the said bidder has falsely supported the claim of the Judgment-debtor due to his relations with him and, therefore, his affidavit is totally false. It is further pleaded that the Senior Subordinate Judge, Kapurthala declined to interfere in the matter on 22-11-1988 and yet the judgment-debtor approached this Court just before the date fixed for confirmation of sale. The offer of the decree-holder to purchase the property for Rs. 4 lacs is stated to be totally belated and it is also averred that there is no irregularity in the conduct of the auction. It is also stated that the property had been sold at the market price that was prevalent at the relevant time and it was not a case of selling the property at a low price as is the case of the judgment debtor.

4. On the pleadings of the parties, the following issues were framed on 11-1-1991.

1. Whether the auction of the mortgaged property was made on 8-11-1988 in accordance with the provisions of law. If not, its effect? O.P.O.

2. Whether the objector has the locus standi to maintain objections in respect of sale of mortgaged property? O.P. (Decree-holder)

3. Relief.

5. Since both the issues are inter-connected, I will deal with the same together. My discussion is as follows :--

Issues Nos. 1 and 2.

With a view to substantiate its plea, judgment debtor examined Harbans Singh, Sarpanch of village Mansurwal Dona, District Kapurthala (O.W. 1), Shri Surjit Lal

son of Pt. Puran Ram (O.W. 2), Shri K. K. Kapoor, Inspector, Income Tax (O.W. 3) and made his own statement as (O-W. 4). The evidence of objector was closed by order dated 8-3-1991 as no justification was found to grant him any further opportunity in the matter. With a view to rebut the evidence of the judgment-debtor, the respondents examined M. L. Dhody, the Court Auctioneer as R.W. 1, Shri Mohit Kapoor, the auction purchaser was examined as R.W. 2 and Sat Pal Anand, Commission Agent was examined as R.W. 3.

6. Harbans Singh (O.W. I) stated in his evidence that on October 30, 1988, publication regarding auction of land of Khosla Engineering appeared in the newspaper. He went to the Court premises 10.00 a.m. where eight or ten persons were present and Ramesh Khosla was also there. He stayed there till 4.30 p.m. but no auction took place there.

7. Surjit Lal, (O.W. 2) stated in his evidence that about 2 1/2 years prior to the date when he deposed in the Court, Mr. K. K. Kapoor, Tax Recovery Officer, Jalandhar on coming to Kapurthala at 10.00 a.m. had told him that factory building of Khosla Group was being sold by State Bank of Patiala. On getting the aforesaid information, he went to the court, where no auction took place. He was, however, told that the auction was being held in the factory premises and he went to the factory. He actually found that auction was going on there. Mr. K. K. Kapur (O.W. 3) deposed that in October, 1988, Mr. M. L. Uppal, Tax Recovery Officer had deputed him to go to the place where auction was to take place. He went to the Income Tax Office and met Gurcharan Singh, I.T.O. Kapurthala. The Inspector was not there. Head Clerk Mr. Surjit Lal Sharma was deputed to take him to the place of auction and he went to the Courts and found no auction was taking place there. He was, however, told that the auction was taking place at factory premises where he reached by 11-00 a.m. There were only 5 or 6 persons participating in the auction. The auction continued up to 4-30 p.m. but acceptance of bid was not announced there. Ramesh Khosla Who appeared as O.W. 4 obviously supported all that has been stated in the petition. M. L. Dhody, R.W. I Court Auctioneer deposed that he had conducted the auction of the property in dispute and had got notice published in the Newspaper. The Baillif of the Court got the Munadi done in the Newspaper. The warrant of sale was entrusted to him on 3-10-1988 and on the date of auction, before 10.00 a.m. the people gathered in the Court premises. Inasmuch as the prospective bidders insisted that the sale should be conducted on the site-where the property was situated as they were interested in seeing the property before they made up their mind whether to bid or not, he accompanied by the Branch Manager of the Bank and the prospective bidders went to the site in order to conduct the auction. He further deposed that he had left the Court premises in order to reach the site immediately after 10.00 a.m. and had deputed one Baldev Raj to remain present in the Court premises so that he could inform the prospective bidders that he had gone to the site where the property was situated in order to conduct the bid. He informed his clerk Shri Gurnam Singh also. He further states that he prepared the list of persons who were present at the time of the auction and the

bid started with the initial bid of an amount of Rs. 1,25,000/- given by Satya Pal. He prepared the bid sheets of all those persons who gave the bid at the time of auction and signatures of the bidders were obtained on the bid sheets. He carried on the bidding process up to lunch hours at the place of the property. The bid was resumed after lunch hours in the Court premises and the last bid was given by one Mr. Surinder which was for an amount of Rs. 2,75,000/-. However, after he reached the premises at 3-00 p.m. he started the procedure of bid on his arrival in the Bar room which was situated in the Court premises. He closed the bid at about 4.15 p. m. or so and the highest bid was given by one M/s United Traders through Shri Mohit Kapoor. Shri Mohit Kapoor examined as R.W. 2 obviously deposed in tune and line with the statement made by the Court auctioneer. One Sat Pal Anand examined as R.W. 3 stated that he had participated in the auction made for the sale of property of M/s Khosla Engineering Company. He reached the Court premises at 10.15 a.m. and learnt that the auction was now to be conducted at the site. He was so informed by the clerk of the Auctioneer. He reached the factory premises at 10-30 a.m. and about 20/22 persons had collected there and gave the first bid for Rs. 1,25,000/-.

8. Besides the oral evidence as noticed above, the parties have placed reliance upon two documents. Exhibit RW 1/3 is a letter written by Shri M. L. Dhody, Court Auctioneer to the Superintendent of Police, Kapurthala on 7-11-1988. Exhibit RW 1/1 is the report given by Shri M. L. Dhody, Court Auctioneer which is dated 10-11-1988. In so far as Exhibit RW 1 / 3 is concerned, the Court Auctioneer while requesting for deputing police at the spot on 8-11-1988 for conducting the sale and also to avoid any untoward incident, has mentioned that sale of property of Romesh Khosla etc. situated at Jalandhar Road, Kapurthala, has been ordered to be made on 8-11-1988 at the spot for recovery of decretal amount of Rs. 32,84,690/-. The report of Court Auctioneer Exhibit RW 1/1 does refer to letter written to the Superintendent of Police, Kapurthala requesting to provide police guard at the spot but the same also recites a fact that at 3-35 p.m. the bidders and other persons who were present at the spot were requested to reach the Court premises of Senior Sub-Judge, Kapurthala where the auction was to start from the stage it was closed at the factory premises and the sale had been made as per direction of the High Court.

9. Before the oral as well as documentary evidence is commented upon with a view to decide the issues involved in the present case, it requires to be mentioned that vide orders dated 27-10-1989, the objections under Order 21, Rule 90 of the CPC were rejected, and in Letters Patent Appeal No. 1948 of 1989 carried by the judgment-debtor against the orders aforesaid, it was held that such rejection was not correct. That being so, order dated 27-10-1989 was set aside. It was further observed that as the decree holder was willing to pay the entire auction money when the matter was at motion stage and he was also prepared to pay 10% interest on the auction money on which the property was sold, the said amount was got deposited and it is thereafter that notice of motion was issued. Since the auction purchaser was not prepared to withdraw from the

sale on receipt of the amount deposited by the decree holder, it was observed that the Company Judge would take notice of this aspect of the matter while disposing of the objections filed by the decree holder. The amount deposited by the decree holder under the orders of the High Court in the Letters Patent Appeal which was lying with the Registrar (Judicial) was to be deposited with the State Bank of Patiala, High Court Branch, Chandigarh in special Fixed Deposit Receipt which was to be disbursed under the orders to be passed by the Company Judge. It is after the aforesaid order which was passed on 9-8-1990 that the issues in the present case were framed and the parties led their evidence.

10. There has been lot of criticism of the depositions made by the witnesses appearing on behalf of the Judgment-debtor mainly on the ground that their evidence in certain material aspects was discrepant. I do not wish, however, to go at all into detailed discussion of the evidence led on behalf of the applicant-decree holder as I am convinced from the evidence of the decree holder and the Court Auctioneer that there was material irregularity in the conduct of sale which materially prejudiced the case of the judgment-debtor. As has been noticed in the earlier part of the judgment and which fact is not disputed by any of the contesting parties that the auction was to be held on 8-11-1988 at 10-00 a.m. and as per auction notice that appeared in the Sunday Tribune dated 30-10-1988, the same was to be conducted at Court House Kapurthala. Even if one is to go by the documents like letter written by the Court Auctioneer to the Superintendent of Police Kapurthala Exhibit RW 1/3 or the report of the Court Auctioneer Exhibit RW/1, it would be abundantly made out that the auction took place at the site where factory is located and not in the Court House. In no uncertain terms, it is mentioned in Exhibit RW 1 / 3 that the sale of property of Romesh Khosla situated at Jalandhar Road Kapurthala has been ordered to be made on 8-11-1988 at the spot for recovery of decretal amount of Rs. 32,84,690.00P. Further, the request of Court Auctioneer was to depute police at the spot on 8-11-1988 morning for smooth conducting of the sale as also to avoid any untoward happening. Available on records is also a list of persons prepared by the Court Auctioneer depicting the names of prospective buyers who inspected the land with structures and scrap advertised for sale in papers. The aforesaid document is also of 8-11-1988 and it is abundantly clear therefrom that 15 persons inspected the land. On the next page is available a list of persons who actually participated in the bid. That consists of nine persons. A comparison of the two lists reveals that most of the persons who inspected the spot did not offer the bid and most of the persons who offered the bid did not inspect the spot. It requires to be mentioned here that the defence of the decree holder and the Auction Purchaser is that the prospective buyers intended to inspect the property before they were made to give bid and it is on their request alone that the prospective buyers and the Auctioneer had gone to the spot. This in itself shows that Court Auctioneer left the Court house at 10-00 a.m. The matter does not rest there. It shall be further seen from the report of Shri M. L. Dhody, Court Auctioneer that it is only at 3-35 p.m. that the bidders and other

persons present at the spot were requested to reach the Court premises of Senior Sub-Judge, Kapurthala where the auction was to start from the stage it was closed at the factory premises. It is, thus, clearly established on the records of the case, even if one is to go by the evidence of the decree holder and the auction purchaser that the auction took place most of time from 10-00 a.m. up to 3-35 p.m. at the place where factory is located. Once the finding is arrived at that as per auction notice, the property was to be sold at Court House whereas it started at 10-00 a.m. at factory premises for most part of it, as a necessary corollary a finding has to be recorded that conduct of sale was totally irregular and that it precluded number of aspiring bidders to participate in the same. It is nobody's case that auction was to start at 10-00 a.m. and any one who was to come after 10-00 a.m. even late by one minute was to be precluded from the bidding. Further, it is the case of the respondents themselves that the bid process continued up to 3-55 p.m. on the spot and even thereafter in the Court House. In the situation as has been noticed above, many persons who might have come immediately after 10-00 a.m. must have found out that no sale was being conducted in the Court House. Nothing at all has been mentioned in the report of the Court Auctioneer Exhibit R W 1/1 that any one was deputed to be present at the Court house all this while when the sale was being conducted to inform any one who was to come there that actually the sale was being conducted at the spot and the aforesaid pica taken in the reply in opposition to the present application and evidence led on the aforesaid point clearly appears to be afterthought. Assuming it to be correct, it cannot possibly advance the plea of decree holder and the Auction Purchaser that there was no irregularity in the conduct of sale, inasmuch as it is obvious that all those who were to participate in the auction would not know the person who was to inform them nor the person to so inform could possibly know as to who is the prospective buyer.

11. The learned counsel for the parties have relied upon Shri Radhey Shyam Vs. Shyam Behari Singh, ; Gadde Buchaiah Vs. Dasari Kotaiah and Others, ; Maliram Nemichand Jain Vs. Rajasthan Financial Corporation and Another, ; Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, ; Mrs. Margaret A Skinner v. Empire Store Connaught Place, New Delhi (1976) 78 Pun LR 64 ; V.V. Narayan Chetty Vs. Nenla Dhanamma and Another, and "Mohinder Singh v. Harbans Kaur 1985 (2) 88 Pun 570 (571)- Most of the judgments that have been cited have been relied upon by both the parties and, therefore, I need not give the detailed facts of each case. Suffice it to say that the law as established on the point is that if it is proved that there was not only inadequacy of the price but that that inadequacy was caused by reason of the material irregularity or fraud, the same would be set aside as per Order 21 Rule 90 of the Code of Civil Procedure. On the aforesaid settled law, the cases referred to above, were decided one way or the other depending upon the facts of each case. In Radhy Shyam's case (supra), relied upon by both the parties, it was held that in order to set aside an auction sale, mere proof of a material irregularity such as the one under Rule 69 and inadequacy of price, realised in such a sale, in other words

injury is not sufficient. What has to be established is that there was not only inadequacy of the price but that that inadequacy was caused by reason of the material irregularity or fraud. A connection has thus to be established between the inadequacy of the price and the material irregularity.

12. I need only mention facts of Mohinder Singh's case 1985 (2) 88 P&h LR 570 (supra). The facts of the said case are although not absolutely identical yet the same are nearest to the facts involved in the present case. A money decree was passed against one Kartar Singh who died and left behind his widow and children. The decree-holder sought to execute the decree by attachment and sale of land belonging to the widow and children of Kartar Singh. The property was sold in favour of father of decree holder. Objections were raised by the judgment-debtors before the executing Court which were sustained. In appeal, the Additional District Judge further held that the interests of the four minors were not kept in view and no permission for the sale of the share of the land belonging to them was specifically obtained from the Court. It was further held that the judgment-debtors had suffered injury as the land worth Rs. 40,000/- or Rs. 50,000/- had been sold only for a small amount of Rs. 7,000/-. The decree holder then sought permission of the executing Court to purchase the property. Permission was granted. Auction was held and this time the property fetched Rs. 12,500/- through the bid of the decree-holder. Five persons participated in the bid and it was kept open from 10-00 a.m. to 4-00 p.m. on November 6, 1980. There were discrepant statements of the Chowkidar, who said, that the Naib Tehsildar arrived at the spot to auction the land at 12-30 p.m. and that Naib Tehsildar himself who maintained that he had gone to an open space to conduct the sale at 10-00 a.m. and was there till 4-00 p.m. However, the bid chit did not mention the time when the bids were offered by the respective buyers. When the matter came before the executing Court, the aforesaid irregularities in the proclamation and conduct of sale were noticed and it was also held that the same resulted in substantial injury to the judgment-debtors and consequently once again objections were sustained and the sale was set aside. After noticing the aforesaid facts, the matter was proceeded by observing thus :--

"With regard to the conducting of the sale, there is an obvious material irregularity as it is not discernible with the accuracy as to when the auction started, at what point of time the bids were attracted and at what point of time was the auction closed. In view of the discrepant statements of the Chowkidar and the Naib Tehsildar regarding the time of the arrival of the latter, irregularity in the conduct of the sale seems obvious. On this ground alone, the order of the learned Additional District Judge can be sustained."

13. The positive case of the judgment-debtor is that the property subject matter of sale was in no way less than the value of Rs. 4 lacs. I do not wish to go into the documents produced on the records particularly with regard to the assessment of some property dealers who have said that the property if got vacated from the tenant can fetch even Rs. 15 to 20 lacs. The case of judgment-

debtor himself is that the property was in no way less than the value of Rs. 4 lacs. In fact the price of 4 lacs is proved from the narration of facts given above and from the additional fact that the judgment-debtor had himself deposited an amount of Rs. 4 lacs and 10% over and above the amount of sale on which the property was sold. That alone, however, cannot be sufficient to set aside the sale but, as noticed above, inadequate price fetched was caused by the reason of material irregularity. If the sale was to be conducted in a proper manner and at the Court House as per notice of sale, it was but natural that many more persons besides nine who only participated would have been attracted and actually offered their bids. For the reason that the auction took place at the spot instead of Court House, many prospective purchasers must have been precluded from participating in the bid, thus, resulting into inadequate price which is a direct result of irregularity in the conduct of sale.

14. Nothing at all has been argued by the decree holder or the auction purchaser to show that the objector had no locus standi to maintain objections in respect of sale or mortgaged property.

15. In the light of what has been said above, issue No. 1 is decided in favour of judgment debtor and issue No. 2 in favour of the judgment debtor and against the respondents.

Relief.

For the reasons aforesaid, this application is allowed and the sale conducted on 8-11-1988 is set aside. It is directed that the property shall be sold again through the Court Auctioneer in accordance with law for which permission be obtained from the Court by filing a separate application. The amount deposited by the judgment-debtor, reference of which has been given above, shall be disbursed to it. In view of the peculiar facts and circumstances of this case, there shall be no order as to costs.

16. Before I part with this judgment, I would like to mention that Mr. Narang appearing for the decree-holder has vehemently canvassed that lot of money was spent in the conduct of sale and in case the same is ordered again, the Bank would be unjustifiably burdened with costs for publication. I really thought that the Bank should not be burdened with costs for it was none of the faults of the decree holder that the sale was not conducted properly but no provision of law has been shown to me by which I can possibly order that this amount be paid by the judgment-debtor.

17. Application allowed.