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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.7343 of 2018 (O&M)

Date of decision : 20.01.2025

Manjit Singh and another

....Petitioners

Versus

Harvinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate for the petitioners.

Mr. Nitesh Singla, Advocate
for respondent No.1.

Mr. Sanjiv Kumar Aggarwal, Advocate with
Mr. Nissim Aggarwal, Advocate and
Mr. Tejas Bansal, Advocate for respondent No.2.

PANKAJ JAIN, J. (ORAL)

Petitioners are judgment debtors aggrieved of the orders passed by the Courts below whereby their objections to the sale of immoveable property, in execution of decree, have been rejected.

2. Decree-holder/plaintiff filed suit for possession by way of specific performance of agreement to sell dated 17.01.1998 w.r.t. land measuring 15 Bighas 12 Biswas. Plaintiff claimed that the defendants



agreed to sell land measuring 15 Bighas 12 Biswas in his favour @ Rs. 35,000/- per Bigha and received earnest money of Rs. 4,03,000/-. Suit filed by the plaintiff was decreed on 21.05.2003 by the Court of Additional Civil Judge (Senior Division), Malerkotla for alternate relief. Plaintiff was held entitled for recovery of an amount of Rs.4,03,000/- along with interest @ 1% per month from the date of agreement i.e. 17.01.1998 till the realization of whole amount.

3. Defendants filed appeal bearing Civil Appeal No.133 of 2003 on 07.10.2003. In the interregnum on 11.08.2003, decree-holder filed execution of decree dated 21.05.2003. Land measuring 17 Bighas 12 Biswas owned by the JDs was sold in auction for an amount of Rs.8,00,000/- in favour of respondent No.2. On 04.04.2005, civil appeal preferred by the defendants against decree dated 21.05.2003 was partly accepted. Maintaining findings recorded by Trial Court, Appellate Court modified decree. Interest granted @ 12% per annum by the Trial Court was reduced to 6% per month.

4. On 19.05.2004, JDs filed objections to the sale. The same were dismissed by Executing Court vide order dated 20.04.2005. Sale certificate was issued in favour of the auction purchaser on 05.05.2005. Possession was delivered to auction purchaser on 08.06.2005. Judgment Debtors preferred appeal i.e. CMA No.15 of 16.05.2005



impugning order dated 03.09.2005 passed by Executing Court without impleading auction purchaser as party. The appeal was accepted. Sale deed was set aside by the District Judge, Sangrur vide order dated 29.11.2007. The matter travelled to this Court in CR No.1957 of 2008. This Court vide order dated 01.02.2018 allowed the revision petition setting aside order dated 29.11.2007 and directed Appellate Court to decide CMA No.15 of 16.05.2005 afresh after hearing auction purchaser. District Judge, Sangrur vide impugned order dated 11.05.2018 dismissed CMA No.15 of 16.05.2005 preferred by JDs and upheld the sale of immovable property of JDs in favour of respondent No.2. The dismissal of objections by Executing Court was maintained.

5. By way of instant revision petition, JDs have impugned the orders passed by the Courts below rejecting the objections and upholding the auction.

6. Ld. Senior Counsel appearing for the petitioners/JDs submits that the sale of the property belonging to JDs is in violation of mandatory provisions as contained under Order XXI Rule 64, Order XXI Rule 66 and Order XXI Rule 54 CPC. Mr. Jain submits that there was no attachment order passed by the Executing Court. Proclamation of sale by public auction issued without there being any order of attachment of the property, is illegal and cannot be sustained. He



further submits that no notice was served upon Judgment Debtors prior to sale of immoveable property. Under Order XXI Rule 64 CPC, Executing Court is under statutory obligation to ascertain the portion of the property necessary to satisfy the decree. There is no satisfaction recorded by the Executing Court to meet the requirements of Order XXI Rule 64 CPC. Whole of the property of the JDs has been sold without ascertaining as to whether sale of part thereof would be sufficient to satisfy the decree or not. There is no valuation of the property carried prior to putting the same for sale by public auction. Mr. Jain further claims that the decree *qua* execution of which the property was put to sale, stands modified by the Appellate Court. Thus, sale has been effected for execution of decree which is not even in existence. He relies upon ratio of law laid down by Supreme Court in the case of **M/s Mahakal Automobiles and another vs. Kishan Swaroop Sharma, (2008) 13 SCC 113** wherein it has been held that service of notice upon the person whose property is being sold in execution of decree is mandatory. Sale of property without notice to owner of the property is in nullity and cannot be sustained. He further relies upon judgment passed by this Court in '**Mehar Singh and others vs. Firm Pakhar Singh Amar Singh and others**' 2004 (3) PLR 272 to support his contention that where application under Order XXI Rule 66



CPC has not been served upon the judgment debtor and the valuation of the property has not been given by the decree-holder, sale of the property suffers from material illegality and is thus liable to be set aside. He further refers to *zimini* orders passed by the Executing Court dated 11.08.2003 to submit that notice under Order XXI Rule 66 CPC was issued without there being any order of attachment. He further draws attention of this Court to order dated 15.11.2003 to submit that without recording any satisfaction w.r.t. non-service of JDs, substituted service by way of *munadi* was ordered which is against law. He thus submits that whole of the process of sale of land of the petitioner/JDs having been effected in the manner which militates against the mandate of Order XXI CPC, is thus illegal and cannot be sustained.

7. Per contra, Counsel for respondent No.2/auction purchaser submits that the JDs were in the knowledge of the auction proceedings. They were watching all the proceedings. Notices are issued to JDs. They refused to accept the same. Statement of process server was recorded. It was only thereafter that the service of the JDs was ordered to be effected through beat of drums. At the time they evaded service of notice issued by Executing Court, they were appearing before the Appellate Court. Their address mentioned in memorandum of appeal filed by them is the same as mentioned in the execution petition. Mr.



Aggarwal refers to order sheet dated 10.01.2004 to demonstrate that rather Sh. S.S. Rahi, Advocate appeared for JD No.6. This shows that they were evading process of law despite being in knowledge of all the proceedings. They opted not to file any objection prior to the date of auction i.e. 27.03.2004. No objection was maintainable thereafter. He relies upon ratio of law laid down in the case of **Ghanshyamdas vs. Om Parkash, 1994 AIR (Supreme Court) 1292, Devinder Singh vs. Hardev Singh and another, 2004 (3) RCR (Civil) 157 and Darshan Singh vs. Bank of Baroda, 2003 (3) RCR (Civil) 583.** He further submits that no objection can be raised regarding lack of order of attachment. The Executing Court after having found that there was already an entry in the Revenue Record *qua* restraint on alienation, opted to proceed with the sale. He submits that objective of order of attachment was already being served by order of injunction on alienation. Thus there was no requirement to pass order of attachment. Reliance is being placed upon ratio of law laid down in the case of **M/s Electro Strips Industries (P) Ltd. vs. Haryana Financial Corporation, 1981 CLJ (Civil) 536.** He further submits that auction purchaser is in possession of the land for almost 20 years. Entire auction money stands deposited in April, 2004. Thus, the interest of auction purchaser needs to be protected.



8. I have heard counsel for the parties at length and have carefully gone through records of the case.

9. Some of the facts discernible from the records of the case, need to be refreshed before addressing the legal proposition canvassed by counsel for the parties in order to demonstrate the conduct of the petitioners/JDs.

After suit was decreed against the petitioner on 21.05.2003, Civil Appeal No.133 of 2003 was filed under Section 96 of the Code of Civil Procedure, 1908 impugning decree, on 07.10.2003. The JDs made no attempt to get the judgment and decree stayed in appeal preferred by them. Before that Decree holder had already preferred execution on 11.08.2003. Since the execution was preferred within three months of passing of the decree, no notice was issued to the JDs. Warrant of attachment of the property was ordered to be issued for 15.11.2003. On 15.11.2003 *Jamabandi* for the year 1999-2000 *qua* the land of JDs was supplied. The same had a mention about report bearing No.60 dated 01.10.1999 *qua* stay on alienation of the property. Executing Court ordered issuance of notice to JDs under Order XXI Rule 66 CPC for 15.11.2003. It was reported



that respondent No.6 refused to accept notice. There is a report w.r.t. refusal recorded by process server which is also supported by his affidavit. Report recorded by the process server is witnessed by one Gurjeet Singh. Report further claims that the notice stands affixed on the house of the JDs. Finding that respondents No.1 to 5 were evading service. Executing Court ordered substituted service. JDs were ordered to be served by way of beat of drums. There is a report dated 09.01.2004 showing that proclamation by beat of drums was effected. The same has been witnessed by chowkidar of the village and is supported by affidavit of process server. Attempt to effect service on JDs was made on the same address which was given by them in the memorandum of appeal preferred by them.

10. The facts speak for themselves. In the considered opinion of this Court, the stand of JDs being not in knowledge of the execution can't be believed. For the reasons best known to them, they did not seek stay of decree dated 21.05.2003 before the Appellate Court. Instant objections were also filed only after property was auctioned.

11. In the backdrop of the aforesaid facts and the submissions made, following issues arise for consideration of this Court:



(i) Whether the objections preferred by JDs against auction sale in execution, are maintainable post the sale of property?

(ii) Whether the Executing Court erred in treating the order of injunction as order of attachment under Order 21 Rule 58 CPC?

(iii) Whether sale can be set aside for want of order of attachment? and

(iv) Whether the sale can be set aside being in teeth of provisions contained in Order XXI Rule 66 CPC?

12. In order to answer the aforesaid legal proposition, it will be apt to peruse provisions as contained under Order XXI Rule 58, Order XXI Rule 64, Order XXI Rule 66, Order XXI Rule 90 CPC and the provision contained under Volume I Chapter 12 of the Punjab and Haryana High Court Rules & Orders that deals with sale of property and delivery to purchase it. The same read as under :

“58. Adjudication of claims to or objections to attachment of, property.—(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:



Provided that no such, claim or objection shall be entertained—

- (a) where, before the claim is preferred or objection is made, the property attached has already been sold; or
- (b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

- (a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or
- (b) disallow the claim or objection; or
- (c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or
- (d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (I), refuses to entertain it,



the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

64. Power to order property attached to be sold and proceeds to be paid to person entitled.—Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may see necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

66. Proclamation of sales by public auction.—(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold 1 [or, where a part of the property would be sufficient to satisfy the decree, such part];
- (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;
- (c) any encumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and



- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property:

1[Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the Parties.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

[90. Application to set aside sale on ground of irregularity or fraud.]—(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected



by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.—The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.]

Rules and Orders of Punjab and Haryana High Court, Volume I, Chapter 12

PART H

2. Mode of attachment of immovable property. - The mode of attaching immovable property is by issuing a prohibitory order to the judgment-debtor and to the public generally (Order XXI Rule 54 when the property is land paying revenue to Government, three copies of the prohibitory order shall be prepared. In the case of other immovable property, only two copies are necessary. The details given in the schedule annexed to the order shall be identical with those given in the schedule of the property given in the warrant. Strict compliance with the provisions of law is necessary to make the attachment valid.



3. Mode of attachment of immovable property. - The warrant, together with the requisite copies of the prohibitory order, shall be delivered to the Nazir, who will himself, or through his subordinates, fix up the copies and proclaim the order, in accordance with the directions given in the warrant. The Nazir will personally make upon the warrant the endorsement required by law, and return it duly endorsed within the specified time to the Court. Any person deputed by the Nazir, who performs any of the acts constituting the attachment, shall submit a separate return stating the manner in which, and the day and hour at which, he did such act. This return will be attached by the Nazir to the warrant.

PART J

1. Summary Procedure. - Objections to attachment of property under Order XXI, rule 58, are frequently responsible for great delay in the disposal of execution cases. Such objections are at times collusive and should be scrutinised with care and disposed of promptly. Investigation of such objections is of a summary character, and should be confined to the points indicated in Rules 59 to 61 of Order XXI. The decision, though not appealable, is subject to the result of a regular suit (if any) brought by the aggrieved party within a year.

2. Power to dismiss objection out trial. - It should be noted that if an objection appears to have been "designedly or unnecessarily delayed", the Court has power to refuse to investigate the claim and dismiss the petition and leave the petitioner to institute a suit for the purpose.

The amendment of Rule 58 of Order XXI, Civil Procedure Code by the Punjab High Court further Provides that unless an objection is made within a reasonable time of the first attachment a further right to object to the attachment



and sale of the same property can be allowed only if a title acquired subsequent to the date of the first attachment, is established.

3. Objections by parties. - Order XXI, Rule 58, deals with claims by third persons. Objections by parties to execution proceedings as such or their representatives fall within the scope of Section 47 of the Code. Such objections must be decided in the execution proceedings, as a regular suit for the purpose is barred by the provisions of Section 47.

PART L

2. Settlement of proclamation of sale.- Whenever a Court makes an order for the sale of any attached property under Order XXI, Rules 64, it shall, if the property be land assessed to land revenue, revenuepaying or revenue -free land, or any interest in such land, act as directed in the rules hereinafter prescribed. If the property be of any other description the Court shall fix a convenient day, not being distant more than fifteen days, for ascertaining the particulars specified in Order XXI, Rule 66 (2), and settling the proclamation of sale. Notice of the day so fixed shall be given to the parties or their pleaders.”

13. Dealing with the issue of stage at which objections can be entertained, Supreme Court in the case of *Ghanshyamdas vs. Om Parkash* (supra) held as under :

“11. It is correct to hold, as the High Court has done, that the proceedings taken by Jamnadas under Order 21, Rule 58 and Rule 63 of the Code would not constitute res judicata.



But, where no objection was raised to the auction sale when such objections ought to have been raised, would disentitle the appellants to raise the same. Thus, on questions of law, as determined by the Court of appeal and confirmed by the High Court, we see no reason to interfere.”

14. Same is the view of this Court in *Devinder Singh's* case (supra) holding as under:

“3. Having heard the learned counsel and perusing the order passed by the executing Court, I am of the considered view that there is no material irregularity or fraud in publishing or conducting the sale as contemplated under Order 16 Rule 90 of the Code. The JD-respondent 2 did not raise any objection on 31.7.1991 when the order of attachment was issued either with regard to identity of the property or with regard to his ownership. However, he only stated that he had sold the property to the extent of his share to the objector-petitioner. It is well settled that no application to set aside a sale under Order 21 Rule 90(3) of the Code could be entertained on any ground which the objector-petitioner could have taken on or before the date on which the sale was to be held. The auction proceedings were initiated in accordance with law. The objector-petitioner has purchased the property on 9.9.1992 after attachment order dated 31.7.1991 at his own risk and responsibility. The identification of the property was not disputed by the JD-respondent 2. Therefore, I do not find any merit in the instant petition and the same is liable to be dismissed.”

(emphasis supplied)



15. The issue regarding objections to the attachment of the sold property was dealt by this Court in *Darshan Singh's* case (supra) observing as under :

“6. It is apparent from the reading of Order 21 Rule 58(1) (a) of Civil Procedure Code that objections are maintainable only if the property has attached and not sold because the proviso says that no claim or objection shall be entertained where, before the claim is preferred or objection is made, the property attached has already been sold.

7. In the present case, it is an admitted position that the attached property was sold on 5.11.2000 and objections under Order 21 Rule 58 of Civil Procedure Code were filed on 12.1.2001.”

In view of afore-stated proposition of law, JDs are entitled to raise objections prior to auction of the property and cannot be allowed to raise objections after the property stands sold.

16. Faced with the situation, Mr. Jain has raised issue w.r.t. defective service of the JDs and absence of order of attachment. He submits that for want of service, they were not in position to raise the objections prior to sale by auction. It has already been held hereinabove that Executing Court validly exercised its power to serve JDs by way of substituted service after recording their conduct in avoiding



service and refusal of JD No.6 which is based upon cogent material.

Thus, the plea regarding non service of notice cannot be accepted.

17. Having held so, this Court is of the opinion even on merits the petitioners have no case. From the aforesaid bare provisions of law, it is thus evident that Order XXI CPC is a complete Code in itself. Mode of attachment of immoveable property is by issuing a prohibitory order to JD and to the public. In terms of Order XXI Rule 90(3) CPC read with explanation, mere absence or defect in attachment of property sought shall not itself be a ground for setting aside sale. Order XXI Rule 64 CPC deals with power of Executing Court to order property attached to be sold. Ld. Senior Counsel appearing for the petitioners submits that prior to putting property for auction, Executing Court was under statutory obligation to ascertain, as to whether whole of property was required to be sold or sale of portion thereof would suffice to satisfy the decree. Supreme Court in the case of **Takkaseela Pedda Subba Reddi vs. Pujari Padmavathamma and other, (1977)** 3 SCC 337 while interpreting provision, observed as under :

“It is manifest that where the amount specified in the proclamation of sale for the recovery of which the sale was ordered is realised by sale of certain items, the sale of further items should be stopped. This, in our opinion, is the logical corollary which flows from Order 21, Rule 64 of the Code which may be extracted thus :



"Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same".

Under this provision the Executing Court derives jurisdiction to sell properties attached only to the point at which the decree is fully satisfied. The words "necessary to satisfy the decree" clearly indicate that no sale can be allowed beyond the decretal amount mentioned in the sale proclamation. In other words where the sale fetches a price equal to or higher than the amount mentioned in the sale proclamation and is sufficient to satisfy the decree, no further sale should be held and the Court should stop at that stage. In the instant case, we have already indicated that the sale of lands in village Devanoor alone fetched a sum of Rs. 16,880/- which was more than sufficient to satisfy the amount of Rs. 16,715-8-0 mentioned in the sale proclamation. It is true that the decree-holder had obtained another decree in O.S. No. 19 of 1953, but there is nothing to show that the decree-holder had approached the Court for including the second decretal amount in the proclamation of sale. In these circumstances, therefore, we are clearly of the opinion that the Executing Court was not justified, in the facts and circumstances of the present case, in selling the properties situated in village Gudipadu. The fact that the judgment-debtor did not raise an objection on this ground before the Executing Court is not sufficient to put him out of Court because this was a matter which went to the very root of the jurisdiction of the Executing Court to sell the properties and the non-compliance with the provisions of Order 21, Rule 64 of the Code was sufficient to vitiate the same so far as the properties situated in village Gudipadu were concerned. For these reasons, the



contentions raised by counsel for the appellant must be overruled.”

18. Supreme Court in the case of **Kayjay Industries (P) Ltd. vs. Aanow Drums (P) Ltd., (1974) 2 SCC 2013** while explaining the scope of the irregularities alleged by the objector, observed as under:

“Be it by a receiver, commissioner, liquidator or Court this principle must govern. This proposition has been propounded in many rulings cited before us and summed up by the High Courts. The expressions 'material irregularity in the conduct of the sale' must be benignantly construed to cover the climax act of the Court accepting the highest bid. Indeed, under the Civil Procedure Code, it is the Court which conducts the sale its duty to apply its mind to the material actors bearing its mind to the material factors bearing on the reasonableness of the price offered is part of the process of obtaining a proper price in the course of the sale. Therefore, failure to apply its mind to this aspect of the conduct of the sale may amount to material irregularity Mere, substantial injury without material irregularity is not enough even as material irregularity not linked directly to inadequacy of the price is insufficient. And where a Court mechanically conducts the sale or routinely signs assent to the sale papers, not bothering to see if the offer is too low and a better price could have been obtained, and in fact the price is substantially inadequate, there is the presence of both the elements of irregularity and injury. But it is not as if the Court should go on adjourning the sale till a good price is got, it being a notorious fact that Court sales and market prices are distant neighbours. Otherwise, decree-holders can never get the



property of the debtor sold. Nor is it right to judge the unfairness of the price by hindsight wisdom. May be, subsequent events, not within the ken of the executing Court when holding the sale, may prove that had the sale been adjourned a better price could have been had. What is expected of the Judge is not to be a prophet but a pragmatist and merely to make a realistic appraisal of the factors, and, if satisfied that, in the given circumstances, the bid is acceptable, conclude the sale. The Court may consider the fair value of the property, the general economic trends, the large sum required to be produced by the bidder, the formation of a syndicate, the futility of postponements and the possibility of litigation, and several other factors dependent on the facts of each case. Once that is done, the matter ends there. No speaking order is called for and no meticulous post mortem is proper. If the Court has fairly, even if silently, applied its mind to the relevant considerations before it while accepting the final bid, no probe in retrospect is permissible. Otherwise, a new threat to certainty of Court sales will be introduced.”

(emphasis supplied)

19. The same sentiment was echoed by Apex Court in the case of **Chilamkurti Bala Subrahmanyam vs. Samanthapudi Vijaya Lakshmi, (2017) 6 SCC 770**, holding as under :

“19. We also find on facts that firstly, the proper publicity was given for auction sale in papers so also by beat of drums pursuant to which as many as seven bidders including the appellant herein participated in the auction sale. Had there been no publicity, it would not have been possible for seven persons to participate in the auction proceedings. .



20. Secondly, the details of the valuation of the property were duly mentioned, namely, decree holder's valuation at L 2,75,000/- likewise, Amin's valuation at L 4 lacs whereas the property was sold in auction for L 7,50,000/-. In this view of the matter, it could not be said that the bidders did not know the valuation or/and that it was not mentioned in the auction papers.

21. Thirdly, judgment debtor did not adduce any evidence nor brought any bidder to purchase the property for a higher price than the purchase bid (Rs.7,50,000/-) except to say in the application that value of the property was between L 12 lakhs to L 14 lakhs. In our view, this objection has no substance for want of any evidence.

22. Fourthly, there was adequate publicity given with the aid of beat of drums in the locality. It was proved with the record of the executing Court as was rightly held by the executing Court and lastly, in our view, a clear 15 days' notice was given for auction sale fixed for 17.11.1999 when counted from 05.10.1999. In other words, 15 days have to be counted from 05.10.1999 because it is on this date the order was issued as contemplated under Order 21, Rule 64 for proclamation of sale fixing the date of sale as 17.11.1999.

23. The executing Court, therefore, substantially and in letter and spirit followed the procedure prescribed under Order 21 Rule 64 and 66 of the Code while conducting the sale of the property in question.

24. The law on the question involved herein is clear. It is not the material irregularity that alone is sufficient for setting aside of the sale. The judgment debtor has to go further and establish to the satisfaction of the Court that the material irregularity or fraud, as the case may be, has resulted in causing substantial injury to the judgment-debtor in conducting the sale. It is only then the sale so conducted



could be set aside under Order 21, Rule 90 (2) of the Code.

Such is not the case here.

25. In the light of aforesaid discussion, we are of the considered view that none of the objections raised by respondent No.1 had any merit and nor any of the objections constituted any kind of material irregularities so as to enable the Court to set aside the sale under Order 21, Rule 90 (2) of the Code. So far as the plea of fraud was concerned, admittedly, it was not raised and, therefore, it did not fall for consideration.

26. Learned Counsel for the respondent has placed reliance on the decisions in *Gajadhar Prasad & Ors. v. Babu Bhakta Ratan & Ors.*, (1973) 2 SCC 629, *Ambati Narasayya v. M. Subba Rao & Anr.*, 1990(1) R.R.R. 163 : 1989 Supl(2) SCC 693, *Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh*, 1993(3) R.R.R. 600 : (1994) 1 SCC 131 and *Saheb Khan v. Mohd. Yousufuddin & Ors.*, (2006) 4 SCC 476. We have gone through these cases and find that all are distinguishable on facts. When we have held on facts that there are no material irregularities noticed in the case and that there was compliance of the provisions of Order 21 Rules 64 to 68 then, in our view, the law laid down in these decisions are of no help to the respondent-judgment debtor.”

(emphasis supplied)

20. Ratio of law laid down in *Takkaseela Pedd Subaa Reddi's* case (supra) when read with ratio of law laid down in the case of *Kayjay Industries (P) Ltd. vs. Aanow Drums (P) Ltd.* (supra) and that in *Chilamkurti Bala Subrahmanyam vs. Samanthapudi Vijaya*



Lakshmi (supra), it is evident that mere irregularity is not enough to set aside sale of property in execution by auction. Objector needs to show personal injury caused by material irregularity claimed.

Under Order XXI Rule 64 CPC, Executing Court has to be governed by Real Economics. The action of the Executing Court has to be tested on the touchstone of economic prudence.

21. As per the facts of the present case, in terms of agreement dated 17.01.1998, plaintiff agreed to sell land admeasuring 15 Bighas 12 Biswas for an amount of Rs.5,48,625/- @ Rs.35,000/- per Bigha. While issuing proclamation, Executing Court ordered sale of 17 Bighas 12 Biswas to recover an amount of Rs.6,93,377.55/-.

22. In view of the aforesaid facts, it cannot be said that Executing Court committed any illegality by not ascertaining portion of property to be sold to satisfy decree as provided under Order XXI Rule 64 CPC. Once 15 Bighas 12 Biswas of land was agreed to be sold at an amount of Rs.35,000/- per Bigha, decision of the Executing Court to sell 17 Bighas 12 Biswas of land to recover an amount of Rs.6,93,377.55/- cannot be said to be imprudent to claim that there is a violation of Order XXI Rule 64.

23. Here is a case, wherein the petitioner/JDs fence-sitters knowing well of the execution pending against them, opted neither to



obtain stay of a money decree, nor opted to file any objections prior to sale. Notice under Order XXI Rule 66 CPC was served on them through beat of drums. The petitioners opted not to appear. Proclamation of sale was widely publicized yet they opted not to object. The present objections after sale cannot be held to have any effect on sale in the absence of there being any evidence to suggest that any irregularity claimed by the objector, led to any injury to the decree-holders.

24. In view of above, finding no merit in the present revision petition, the same is ordered to be dismissed.

25. Pending application, if any, shall also stand disposed off.

January 20, 2025

Dpr

**(Pankaj Jain)
Judge**

Whether speaking/reasoned : Yes

Whether reportable : Yes