

CR-4433-2000 &
CR-5028-2000

2025.PHHC:138089



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4433-2000, & CR-5028-2000

**Reserved on 25.09.2025
Date of decision: 01.10.2025**

**I. CR-4433-2000
Baldev Singh**

...Petitioner

Versus

Smt. Balbir Kaur and others

...Respondents

**II. CR-5028-2000
Hardwari Lal**

...Petitioner

Versus

Ludhiana Improvement Trust and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by: Mr. G.S. Bhandal, Advocate
for the petitioner in CR-4433-2000.

Mr. Ashwani Kumar Chopra, Sr. Advocate with
Mr. Brahmjot Singh Nahar, Advocate
for the petitioner in CR-5028-2000.

Mr. Sandeep Khunger, Advocate
for Ludhiana Improvement Trust, i.e.
respondent No.5 in CR-4433-2000 and
for respondent No.1 in CR-5028-2000.

DEEPAK GUPTA, J.

This order shall dispose of two Civil Revisions titled above, filed by the auction purchasers, as the facts and legal issues involved are common.



2. For convenience, facts are being noted from CR-5028-2000 titled '*Hardwari Lal v. Ludhiana Improvement Trust and another*'.

3. Under challenge is the order dated 19.08.2000 passed by Ld. Additional District Judge, Ludhiana, allowing the appeal of the Judgment-debtor by setting aside the Executing Court's order dated 03.10.1997 (whereby two objection petitions – one filed prior to sale under Section 47 CPC; and other filed after sale under Order XXI Rules 89 & 90 CPC were dismissed), and the matter was remanded for fresh consideration.

4.1 **Factual Background:** The Ludhiana Improvement Trust (In short '*Trust*') framed a scheme under Section 36 of the Town Improvement Act. After completion of requisite formalities, Award No. 2 of 1974 dated 19.10.1974 was passed by the Land Acquisition Collector, granting compensation to the landowners. Dissatisfied with the award, certain landowners sought enhancement. The Tribunal enhanced compensation on 28.05.1986, which was later modified on 29.10.1986.

4.2 Since the Trust failed to disburse compensation, two of the landowners / decree holders, Pritam Singh and Bal Singh, filed execution proceedings for recovery of ₹11,99,235.85. During execution, a plot measuring 400 sq. yards belonging to the judgment-debtor / Trust was attached on 04.11.1995. The decree holders moved an application under Order 21 Rule 66 CPC on 05.01.1996 for proclamation of sale. Despite repeated adjournments, the Trust did not file objections or even pay adjournment costs. On 16.03.1996, the Executing Court issued warrants of sale, scheduling the auction for 15.05.1996.

4.3 Before the scheduled sale, the Trust filed objections under Section 47 CPC on 10.05.1996, disputing the amount as calculated by the Decree-Holder. The matter was adjourned for reply, but the sale was nevertheless conducted on 15.05.1996. The attached plot was sold to Hardwari



Lal (*auction purchaser/petitioner herein*) for ₹12,50,000/-. He deposited 25% of the bid amount on the spot and later paid the balance on 23.09.1996.

4.4 Meanwhile, the JD Trust also moved an application under Order 21 Rules 89 and 90 CPC.

4.5 Both sets of objections—under Section 47 and under Order 21 Rules 89/90 were dismissed by the Executing Court vide composite order dated 03.10.1997, and the sale was confirmed. The decree holders withdrew the auction amount on 20.10.1997, and a sale certificate was issued in favour of the auction purchaser on 28.11.1997.

4.6 The Trust appealed against the order dated 3.10.1997 of the Executing Court. By order dated 19.08.2000, the Additional District Judge allowed the appeal, set aside the Executing Court's order dated 03.10.1997, and remanded the matter for fresh consideration of the objections filed under Section 47 CPC after hearing both the sides. Directions were also issued for refund of the auction money to the purchaser in terms of Order 21 Rule 90 CPC, with or without interest, as the case may be.

5. The present revision has been filed by the auction purchaser challenging the aforesaid order.

6.1 **Contentions by Petitioner:** Learned senior counsel for the petitioner contends that the Additional District Judge erred in holding that objections under Section 47 CPC must be decided before confirmation of sale. Section 47 CPC, particularly Explanation 2, treats the auction purchaser as a party to the suit, thereby permitting consideration of objections even after sale. It is further submitted that the decree holders were rightly granted interest in terms of the modified award dated 29.10.1986, and hence the objections alleging fraud were misconceived.



6.2 It is also urged that applications under Order 21 Rule 89 and Rule 90 CPC could not have been pursued together in view of Sub-rule (2) of Rule 89, which mandates withdrawal of an application under Rule 90 before prosecuting the one under Rule 89. Further, reliance is placed on Rule 59 (b) of Order 21 CPC, permitting sale of immovable property even pending adjudication of objections. To buttress these submissions, reliance has been placed upon ***Sundar Ram v. Union of India (2001) 7 SCC 211***, ***Smt. Prakash Kaur v. Smt. Sandhuran (1978 PLR 781)***, and ***Ram Karan Gupta v. J.S. Exim Ltd. (2012) 3 SCC 568***.

7. ***Per contra***, learned counsel for the Judgment Debtor argues that objections under Section 47 CPC, filed on 10.05.1996 i.e., prior to the sale on 15.05.1996, were required to be decided before the auction. Reliance is placed upon ***Seth Banarasi Dass v. District Magistrate (1996 AIR SC 2311)***, to contend that the order of the Additional District Judge is well-reasoned and calls for no interference.

8. This Court has carefully considered rival submissions and perused the record.

9. ***Analysis by this court:*** At the outset, it may be clarified that in this revision petition, this Court is not required to examine the merits of the objections filed by the Judgment Debtor (JD) either under Section 47 CPC, or under Order 21 Rules 89 and 90 CPC. The only question is whether the Executing Court followed the correct procedure in dealing with those objections.

10. Undisputed Facts, which emerge are as under:

- An immovable property belonging to the JD was attached on 4th November 1995.



- The Decree Holder filed an application under Order 21 Rule 66 CPC for public auction proclamation on 5 January 1996.
 - The JD was granted multiple opportunities to reply/ file objections and to pay costs. He repeatedly failed to do so. Notices/adjournments were given until 16 March 1996.
 - A schedule was fixed for proclamation and sale – i.e., Court notice, proclamation on the spot and then sale by public auction on 15 May 1996.
 - Before the sale date, the JD filed an application under Section 47 CPC on 10 May 1996 objecting to the sale. The reply by the Decree Holder was filed on 18 May 1996 i.e., after the scheduled sale date.
 - Yet the sale was conducted on 15 May 1996 before the Section 47 objection could be adjudicated.
11. In the aforesaid factual situation, the question to be determined is that as to whether the sale was rightly held despite objections under Section 47 CPC of the JD were pending before the Court.
12. As per legal framework provided under Order XXI CPC, when a property is required to be put up for auction sale to satisfy a decree of recovery, it is mandatory for the Court executing the decree to comply with various stages before a property is sold in execution. All these stages are duly provided in Order 21 of the Code of Civil Procedure. Attachment of immovable property is provided under Rule 54 of Order 21 CPC. Before a proclamation for sale is drawn under Order 21 Rule 66 CPC, any claim may be preferred or an objection may be made to the attachment of the property attached in the execution, which are required to be adjudicated upon by the Executing Court in accordance with the provisions provided under Order 21 Rule 58 CPC.



13. In the present case, no such claim was preferred or objections made under Order 21 Rule 58 CPC by judgment debtor or any other person.

14. There may be a situation that after the attachment has already been effected but prior to the sale, an application is made for staying the sale by the judgment debtor on any ground. That situation is dealt with by Order 21 Rule 59 CPC, which reads as under:-

“Stay of Sale. - Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may-

(a) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(b) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed, and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.”

15. In the present case, the judgment debtor moved an application under Section 47 CPC read with Section 151 CPC on 10.05.1996, seeking stay of the auction of his property fixed for 15.05.1996. In that application, the JD disputed the exact amount payable to the decree holder. The question here is not whether those objections were frivolous or had merit, but how the Executing Court was required to deal with them. Learned counsel for the JD argued, relying on ***Sethi Banarasi Dass (supra)***, argued that such objections must be decided before the sale.

16. In ***Sethi Banarasi Dass***, the Hon’ble Supreme Court held that objections filed under Section 47 CPC, which go to the root of liability and saleability of the attached property, must be adjudicated prior to the auction. Failure to do so vitiates the sale. The Court emphasized that an auc-



tion held without disposing of pending objections is materially irregular, as the debtor loses his valuable right of adjudication under Section 47 CPC.

17. However, the facts of *Banarasi Dass* related to movable property (equity shares) and the objections had been raised much prior to the sale. In contrast, the present case concerns immovable property, and the JD, despite being given opportunities after filing of the proclamation under Order 21 Rule 66 CPC, did not raise objections until 10.05.1996 i.e., just five days before the scheduled sale. Nonetheless, since objections were filed before the sale, the Executing Court was required to address them.

18. Order 21 Rule 59 CPC provides that objections filed prior to the sale must be considered, regardless of whether they were filed long before or immediately before the sale. In cases of movable property, the Court is required to postpone the sale pending adjudication. The Supreme Court in *Banarasi Dass* read this discretion as mandatory. However, that principle applies specifically to a movable property

19. Where the attached property is immovable, sub-rule (b) of Order 21 Rule 59 applies. The Executing Court must make an order either: (i) staying the sale pending adjudication, or (ii) permitting the sale but withholding confirmation until objections are decided. In either case, an order must be passed with appropriate terms and conditions.

20. In the present case, although objections under Section 47 CPC were filed on 10.05.1996, the Executing Court adjourned the matter to 14.05.1996 and then to 18.05.1996, without passing any order on the objections. By that time, the sale had already been conducted on 15.05.1996. Thus, no order was passed either staying the sale or directing that it could be held subject to confirmation after adjudication. Consequently, the auction held on 15.05.1996 stood vitiated.



21. The stage to consider applications under Order 21 Rule 89 or Rule 90 CPC arises only after a validly conducted sale. Since the sale itself was irregular, the Executing Court erred in deciding the objections under Section 47 CPC and those under Order 21 Rules 89/90 together. As rightly held by the Appellate Court, the application under Section 47 CPC should have been decided first, and only if the sale was lawfully permitted, the question of considering the objections under Rule 89/90 could arise.

22. The contention of the petitioner - auction purchaser, based on Explanation 2 to Section 47 CPC, that he should be treated as a party to the proceedings once the sale was held, is without merit. The requirement of law is clear. When objections are filed regarding the sale of immovable property, the Executing Court must make an order under Order 21 Rule 59 before the auction takes place.

23. Accordingly, the First Appellate Court committed no error in setting aside the Executing Court's order dated 03.10.1997, which wrongly decided the two sets of objections together. The Appellate Court rightly remanded the matter for adjudication of the JD's objections under Section 47 CPC first, and therefore, its decision calls for no interference.

24. It is reiterated that this Court makes no comment on the merits of any objection under Section 47 CPC, nor on the substantive claims or defenses under Order 21 Rules 89 or 90. Those are to be evaluated by the Executing Court on their merits.

25. Both the petitions are dismissed accordingly.

01.10.2025

Yogesh

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No