



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

123

ESA-39-2022 (O&M)
Date of decision: 17.03.2025

DELMOS INFRA UNIT OF DELMOS AVIATECH (AVIATION) PVT LTD

..Appellant

Versus

KIRAN PAL AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Yoginder Handoo, Advocate
Mr. Ashwani Talwar, Advocate
Mr. Deepak Goyat, Advocate
for the appellant.

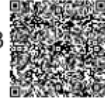
Mr. Sudhir Aggarwal, Advocate
for respondent No.1 and 2.

Mr. Adarsh Jain, Advocate
Ms. Amandeep Kaur, Advocate
for respondent No.6.

ANIL KSHETARPAL, J(Oral)

1. On 25.02.2025, the following order was passed:-

“This execution second appeal has been filed by purchaser of the immovable property by virtue of sale deed dated 10.07.2013. In a simplicitor suit for recovery filed by Smt. Ram Ratti on 22.10.2010, decree for recovery of Rs.8,31,500/- was passed on 15.07.2014. The decree holder filed execution petition in September, 2014, in which warrants of attachment were issued on 26.10.2016. The objection petition filed by the appellant was dismissed for non-prosecution on 17.03.2018. Subsequently, an application filed for restoration of the objection petition was also dismissed on 04.03.2022. The property purchased by the appellant was sold in execution of a decree on 22.11.2021. There is no finding of the Courts below that the property was transferred by the judgment debtor, who was defendant in the suit in order to avoid decree. In other words, the sale of property in favour of the appellant is not found to be fraudulent transfer in terms of Section 53 of the Transfer of Property Act, 1882.



Learned counsel for the parties also do not dispute that the property purchased by the appellant was not subject matter of the suit and a charge was not created on the property purchased by the appellant.

Learned counsel for the parties are requested to examine the aforesaid aspect before further assisting the Court.

List on 07.03.2025, in the urgent list.

Learned counsel for respondent No.6 submits that an application for recall of warrants of attachment was also filed on 05.11.2016, which was dismissed on 06.12.2016.”

2. Learned counsel for the parties have filed their respective synopsis containing the gist of their arguments.
3. Once again, learned counsel for the parties have been heard.
4. The correctness of facts as noticed on 25.02.2025, are not disputed.
5. It is evident that the Executing Court proceeded to order auction of the property without determining whether the property, which is sought to be sold in Court auction belongs to the judgment debtor or not. Learned counsel for the parties do not dispute that there is no finding of the Court that the sale of the property was fraudulent in terms of Section 53 of the Transfer of Property Act, 1882 (in short ‘1882 Act’).
6. Learned counsel for respondent No.6-auction purchaser submits that once a suit was filed under Order XXXVIII of the Code of Civil Procedure, 1908, and an application for attachment before the judgment was filed and dismissed, the property of the judgment debtor will become the suit property and as a result, Section 52 of the ‘1882 Act’, which lays down the doctrine of *lis pendens* shall be applicable. However, on a Court question, he admits that this aspect has also not been examined by both the Courts below.



7. Before proceeding to auction the property in execution of a money decree, the Executing Court is required to first determine whether the property belongs to judgment debtor or the sale of the property by judgment debtor is liable to be ignored in terms of Section 53 of the '1882 Act'. Hence, the Court is required to return a positive finding that the property was sold in order to defraud the creditor.

8. Keeping in view the aforesaid facts, the impugned orders passed by both the Courts below are set aside while remitting the matter back to the Executing Court for fresh decision. The Executing Court will proceed to decide the matter after determining whether the property belongs to judgment debtor or the sale of the property was in order to defeat the rights of the creditors.

9. The submissions put forth by the learned counsel for respondent No.6 shall also be decided by the Court.

10. Disposed of accordingly.

11. The parties through their learned counsel are directed to appear before the Executing Court on 09.04.2025.

All the pending miscellaneous applications, if any, are also disposed of.

March 17th, 2025

Ayub

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*