

HIGH COURT OF PUNJAB AND HARYANA
CORAM: HON'BLE MR. JUSTICE VIKAS SURI
Date of Decision: 15.03.2024
CR-1678-2024

Satinder Singh ...Petitioner

VERSUS

Sukhwant Kaur and others ...Respondents

Legislation:

Article 277 of the Constitution of India
Order 21 Rule 66, 69 CPC (Civil Procedure Code)

Subject: Revision petition concerning execution of decree for recovery of compensation in a murder case and proposed sale of attached land.

Headnotes:

Civil Procedure – Execution of Decree – Auction of Property – Court dealt with a revision petition challenging the order of the Addl. Civil Judge (Senior Division), Ferozepur, pertaining to the auction sale of land to satisfy a decree for compensation. The land was attached following a partly decreed suit for recovery due to a death caused by the petitioner and others. [Para 1, 2, 4]

Judicial Discretion – Adjournment and Stopping of Sale – The Court referred to Order 21 Rule 69 CPC, emphasizing the judicial discretion in adjourning or stopping a sale, and highlighted the provision allowing a sale to be stopped if the debt and costs are tendered before the auction's conclusion. [Para 8, 10]

Equitable Consideration – Proportionate Liability – The Court noted the petitioner's argument that his liability was not joint or several but proportional as one of the six defendants, and his willingness to deposit the entire decretal amount to stop the auction. [Para 6, 9]

Court Direction – Deposit of Decretal Amount and Costs – The Court disposed of the petition, directing the petitioner to approach the executing court with an

application to deposit the decretal amount and costs for stopping the sale. The auction scheduled for 18.03.2024 was ordered to be kept in abeyance until 4.30 pm of the same day, subject to further orders. The petitioner was also warned of additional costs for non-compliance. [Para 11, 12]

Decision – Provisional Relief Granted – The petition was disposed of with directions to approach the executing court, offering the petitioner a provisional relief to prevent the auction by depositing the required amount. [Para 13]

Referred Cases: Not listed.

Representing Advocates:

Mr. Robin Singh Hooda for the petitioner.

VIKAS SURI, J. (Oral)

1. This revision petition under Article 277 of the Constitution of India has been filed by judgment debtor – Satinder Singh, aggrieved by order dated 06.12.2019 passed by the learned Addl. Civil Judge (Senior Division), Ferozepur, whereby the executing court while disposing of the application filed under Order 21 Rule 66 CPC by the respondent/decreed-holder, for issuance of proclamation of intended sale of attached land measuring 92 Kanals 19 Marlas, has ordered sale of the same, which auction is now scheduled for 18.03.2024.

2. The respondent-plaintiff/judgment holders had filed a suit for decree of recovery of Rs. 30,00,000/- (Rupees Thirty Lakh) as compensation/damages for causing death of Kulwant Singh son of Jagtar Singh, resident of village Khai PHEME Ki, Tehsil and District Ferozepur. The said suit was partly decreed vide judgment and decree dated 30.07.2016 and plaintiffs were held entitled for recovery of Rs.15 lakh from all the defendants in equal share being compensation on account of murder of Kulwant Singh deceased by the defendants. The above detailed land has since been attached and is sought to be sold in auction to satisfy the aforesaid decree dated 30.07.2016.

4. It is submitted that pursuant to the order dated 06.12.2019 the sale did not take place as no bidder came forward at the auction scheduled for 06.01.2020. The counsel for the decree holders suffered a statement with regard to the report that nobody is ready to bid and the execution petition was dismissed as withdrawn vide order dated 23.01.2020 (Annexure P-4). Thereafter, a fresh execution application was filed but the same was adjourned on several occasions on account of administrative instructions passed during the period of covid-19 pandemic. Vide order dated 09.04.2021 (page-50 of the paper-book) fresh proclamation of the sale was issued. The auction was scheduled for 28.05.2021 but the land in question could not be sold for want of bidders at the auction on the said date as well as on several occasions thereafter i.e. 29.10.2021, 14.01.2022, 13.06.2022, 26.10.2022, 25.11.2022, 05.01.2023, 06.04.2023, 15.05.2023, 13.07.2023, 25.08.2023, 10.10.2023, 12.01.2024 and 12.02.2024. Vide order dated 19.02.2024 (Annexure P-6) the auction is now scheduled for 18.03.2024.
5. Learned counsel for the petitioner-JD submits that the aforesaid decree for recovery of Rs.15 lakh has yet not attained finality and challenge to the same is pending consideration before this Court in Regular Second Appeal. However, there is no denial to the fact that no stay of operation of the decree in question has been passed by the appellate Court or of the sale by way of auction by any Court.
6. Learned counsel for the petitioner submits that the petitioner/ judgment debtor, as per the decree in question is liable only to the extent of his share, being one amongst the six defendants. As per the decree, the respondent-plaintiffs were held entitled for recovery of Rs.15 lakhs from all the defendants in equal share being compensation on account of murder of Kulwant Singh-deceased by the defendants. It is further submitted that the liability for the said recovery was not joint or several. One of the defendant-judgment debtors viz., Gurdev Singh has since died. Nonetheless, in order to save the land in question from going under the hammer and being sold in distress, at a price much lower than the actual market value, the petitioner without prejudice to his rights in the pending appeal (RSA) is ready and willing to deposit the entire decretal amount along with costs of the sale before the executing Court for stoppage of sale.
7. I have heard learned counsel for the petitioner and have perused the material on record with his able assistance.

8. Learned counsel for the petitioner has drawn notice to the provisions under Order 21 Rule 69 CPC, which read as thus:

69. Adjournment or stoppage of sale.—(1) The

Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days a fresh proclamation under Rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

9. Admittedly, the decree in question is for recovery of an amount of Rs.15 lakh passed against six defendants/judgment debtors; recoverable from all of them in equal shares. It is contended in the reply filed to the application under Order 21 Rule 66 CPC that the market value of the land in the area of village Kamaldeen Niazia is about 16/17 lakh per acre, whereas the entire land measuring 92 kanals 19 marlas has been projected by the decree holders to be Rs.25 lakhs. Despite having made attempts on numerous occasions earlier to sell the attached land by way of auction, it has not yielded any fruitful result. The petitioner has now come forward to satisfy the decree by making deposit of the decretal amount along with costs of sale, which may be assessed by the executing Court, though for stoppage of the sale. He claims that the land in question is jointly held and he is only a co-sharer in the same.

10. A perusal of the afore-noticed provisions would show that the same are intended to grant an opportunity the judgment debtor, to deposit the debt and costs, before the fall of the hammer at the auction, as a last minute effort for stoppage of the sale. It is evident that the said provision speaks in favour to avoid sale by way of auction, if the decretal amount including costs of the sale are deposited with the Court that had ordered the sale.

11. In the light of the above, I deem it appropriate to dispose of this revision petition relegating the petitioner to approach the learned executing Court by way of an appropriate application under the above noticed provisions and for depositing the entire decretal amount along with the costs of the sale, as may be assessed by the said Court, on or before 18.03.2024. On doing his so, it is expected that the learned executing Court would take up the said application for consideration without delay and pass appropriate orders thereupon, in accordance with law.
12. Keeping in view that the auction is scheduled for 18.03.2024, the land to be auctioned would be at some distance from the concerned Court and no specific time thereof has been specified in the proclamation of sale, it may not be pragmatic to furnish proof of making the deposit as aforesaid to the officer conducting the sale before the lot is knocked down, accordingly, the auction scheduled for 18.03.2024 be kept in abeyance till 4.30 pm on that day and would be subject to further orders as may be passed by the executing Court in that regard. However, if the petitioner fails to avail of this order by making the aforesaid deposit with the executing Court on or before 18.03.2024, he shall be further liable to payment of costs in the sum of Rs.50,000/-, to be paid to the respondent/decreed holders.
13. The revision petition is disposed of in the terms aforesaid.

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