

Surinder Kumar Aggarwal vs Moti Gupta Jagdish Kumar Gupta & Anr on 22 October, 2021

Author: Jayant Nath

Bench: Jayant Nath

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ EX.P. 336/2014 & EX. APPL. (OS) 935/2021

SURINDER KUMAR AGGARWAL

..... Decree Holder

Through Mr.Rameezuddin Raja, A

versus

MOTI GUPTA JAGDISH KUMAR GUPTA

& ANR

..... Judgement Debtors

Through Mr.Gaurav Bahl, Proxy

Mr.Attri, Adv. for Jud

Mr.Jawahar Chawla, Adv

objector / Mr.Mridul G

Mr.Rishi Manchana

appointed Auctioneer),

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 22.10.2021 This hearing is conducted through video conferencing.

EX. APPL. (OS) 935/2021

1. This court on 23.09.2021 passed a detailed order keeping in view the conduct of the judgment debtor and directed the Court Auctioneer to be appointed as a Receiver to physically visit the property in question namely 42B-43, Ashoka Park, Main Rohtak Road, Delhi and to seal the property and also to put a lock on the said property. It was further directed that in case somebody is residing in the said property or in part thereof full details to that effect be filed in court.

2. Learned Court Auctioneer is present in person in court and states that in the course of carrying out inspection of the property the property was found to be vacant and he has taken the property in possession and has also sealed the property. He has filed his report.

3. Today, learned counsel for the judgment debtor has again entered appearance. Learned counsel for the objector i.e. Mr.Mridul Gupta has also again entered appearance.

4. Learned counsel for the judgment debtor seeks an adjournment stating that the main counsel is in-disposed. He further states that an appeal is also pending before the Division Bench against some of the orders of this court. Learned counsel for the objector / Mr.Mridul Gupta states that his objections to this petition are pending since long and this court may first adjudicate his objections before passing any order against the said property in question.

5. On a query from the court, he states that it is Mr.Mridul Gupta who is the owner of the suit property in view of the gift deed dated 28.05.2015 executed by his mother Ms.Neeta Gupta (Judgment debtor No.2). Hence, it is again urged that the objections be heard first before any further steps are taken.

6. I have heard learned counsel for the objector.

7. It is clear on a reading of the order sheets that the objections of Mr.Mridul Gupta which are in applications being E.A. (OS) Nos. 313/2019 and 314/2019 were heard and disposed of by earlier orders.

8. This court on 28.05.2019 had noted the submission of the learned counsel for the objector that he has filed his objections but the same were not on record. Despite the said objections, this court directed the Court Auctioneer to take steps to auction the property in question and fixed the reserve price of the property at Rs.1.85 crores and further directed that the sale proceeds be released to the decree holder to the extent of Rs.3 crores and any amount in excess be released to the judgment debtors.

9. On 23.07.2019 this court noted that applications being EX.APPL.(OS) 313/2019 & 314/2019 had been filed by the objector Mr.Mridul Gupta, son of the judgment debtors seeking recall of the attachment order dated 08.10.2018. This court on 23.07.2019 has noted as follows:

"XXX

7. It is clear from the various events that have transpired that the Judgment Debtors, after agreeing before the Court to pay a sum of Rs.3 crores to the Decree Holder have taken several steps to resile from the same and have till date not honoured the said commitment made to the Court. Whenever the Court has taken steps towards auction of the subject property which was in the name of Mrs. Neeta Gupta, and which has been allegedly transferred in the name of her son through a gift deed,, she has repeatedly raised objections. The Court had in fact appointed the Court Auctioneer considering the obstructions being created by the Judgment Debtors. Today, the objection petition filed by Mr. Mridul Gupta is on record. The said objection petition is not filed on behalf of the Judgment Debtors but is filed on behalf of their son. He is not a party to the present execution petition. The Judgment Debtors are clearly not ensuring that the attachment and the auction orders are given effect to.

8. The Court has no option but to proceed under Order XXI Rule 30 CPC under these circumstances. The said provision reads as under:

"30. Decree for payment of money. - Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both."

9. Settlements entered into before the court have to be given enormous sanctity. The court cannot permit violation and non-compliance with settlements by parties who take steps towards either resiling from the settlement or frustrating the settlement. The events that have transpired clearly show that the judgment debtors have demonstrated complete callousness towards the settlement they entered into before this Court. The judgment debtors are directed to be present in Court on the next date. Ld. Counsel for the judgment debtors is appearing today and is directed to communicate today's orders to his clients."

10. On the plea of the learned counsel for Mr. Mridul Gupta that his objections have not been considered by the court, the court noted as follows on 08.11.2019:

"4. The stand taken in EA (OS) 696/2019, is that the objections filed by Mr. Mridul Gupta have not been considered by the Court. However, the objections filed by Mr. Mridul Gupta being E.A.(OS) No. 313/2019 and 314/2019 have already been considered in order dated 23rd July 2019. The fundamental objection being raised is that the foreign judgement/decree which is sought to be executed ought to satisfy the requirements of Sections 13 and 44A CPC. In this litigation, the question of recording satisfaction under the said provisions did not arise as the matter was settled during the course of hearing and subsequently, the Judgement Debtors have merely attempted to unlawfully resile from the settlement. Once the dispute was settled, the legal objections under Sections 13 and 44A CPC were not to be considered by the Court.

5. The only question is whether the settlement was indeed arrived at or not, on which this Court has already held that the Judgement Debtors had settled the disputes with the Decree Holder. The conduct of the Judgement Debtors is completely writ with malafides and they deserve no indulgence. They attempted to make serious allegations against counsels which were proved to be untenable and thereafter they have taken every step possible to ensure that the property is not auctioned.

They did not cooperate with the court appointed valuer and caused obstructions. The applications moved by the Judgement Debtors and the Applicant are not liable to be entertained.

6. None of the previous orders are liable to be recalled or modified. The objections/applications of the Judgement Debtors are dismissed accordingly. Petition

stands disposed of."

11. Clearly, the objections of Mr.Mridul Gupta have been noted and disposed of as is apparent from the aforesaid orders dated 23.07.2019 and 08.11.2019. It has not been contended by learned counsel for the objectors that an appeal has been filed against the said orders. The said orders have attained finality.

12. I may note that thereafter neither the learned counsel for the objector nor the learned counsel for the judgment debtors have been appearing.

13. On 05.11.2020 this court issued bailable warrants against the judgment debtors, returnable for 17.11.2020. The bailable warrants were returned as the same could not be executed as the judgment debtors were not found on the said address.

14. Now after the last order dated 23.09.2021 directing the Receiver to take possession of the property, that suddenly now we see the return of learned counsel for the judgment debtors and learned counsel for the objector.

15. The objections, in my opinion, have already been adjudicated and disposed of. In any case, I have no hesitation in noting that the objections are only an attempt to overreach the process of the court. This is clear from the fact that the decree in this case was passed in favour of the plaintiff on 15.12.2013 by the Commercial Plenary Court in Dubai. The present execution proceedings have been filed in 2014. As is apparent from the order sheet, the judgment debtors continued to evade the service of notice as is apparent in the order dated 21.07.2015 where permission was sought to serve the judgment debtors through dasti. The alleged gift deed allegedly executed by the judgment debtor No.2 in favour of her son Mr.Mridul Gupta after the execution petition has been filed is nothing else but an attempt to overreach the process of the court.

16. The pleas of the learned counsel for the judgement debtor are bereft of merit.

17. The matter has been pending for long.

18. Let the Receiver/ Court Auctioneer take further steps to put the property in question for auction. The reserve price has already been fixed at Rs.1.85 crores by order dated 28.05.2019. The Court Auctioneer will carry out the auction on the terms and conditions on which auctions are carried out by the official liquidator. These terms shall be placed on record by the Court Auctioneer. He will also handover copies of the same to learned counsel for the decree holder and learned counsel for the judgment debtor. The Court Auctioneer may also give a copy of his report dated 07.10.2021 to learned counsel for judgment debtor.

19. The auction will be carried out on the date decided by the Court Auctioneer preferably within six weeks from today. The cost of auction including issue of appropriate public notice in the appropriate newspapers shall be borne by the decree holder. Another sum of Rs.50,000/- shall be paid to the Court Auctioneer as his fees. It is clarified that all costs incurred by the decree holder for the auction

will be recoverable from the proceeds of the sale.

20. At the conclusion of the auction, appropriate directions for the registration of the sale deed will be passed by an appropriate officer of the court.

21. The Receiver / Court Auctioneer may also file for keys of the premises in court within two weeks from today in case keys are required to permit inspection of the property to prospective purchasers. the court auctioneer may file an appropriate application, in case, any clarification is required for carrying out auction in question.

22. List on 17.12.2021.

JAYANT NATH, J.

OCTOBER 22, 2021/st