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**Judgment Sheet.**  
**IN THE LAHORE HIGH COURT**  
**MULTAN BENCH, MULTAN**  
**JUDICIAL DEPARTMENT.**

**Case No. Civil Revision No.375/2015**

**Kashif Imran**

**Versus**

**Altaf Hussain etc**

**JUDGMENT**

Dates of hearing	02.5.2017,03.5.2017,08.5.2017 and 10.5.2017
Petitioner by	Mr. Muhammad Suleman Bhatti, Advocate.
Respondents by	Mian Majeed ur Rehman Ansari, Advocate. Mr. M. Asghar Hayat Harja, Advocate.

**Abid Aziz Sheikh, J.-** Through this civil revision, the petitioner has challenged the orders dated 30.01.2015 and 24.03.2015 whereby objection petition filed by the petitioners was dismissed and their appeal was also declined.

2. Brief facts are that respondent No.1, filed suit for recovery under Order XXXVII of Code of Civil Procedure, 1908 (CPC). The said suit was decreed on 24.05.2014 against which the appeal was dismissed by the appellate Court on 09.03.2015. The appeal against said judgment and decree is now pending before august Supreme Court in CPSLA No.2095-L-2015. In execution of

decree, on 15.11.2014, the property i.e. House No.1220/2.W.H.3 Mohallah Shahidana Shaheed Street Kumangran Wali Inside Dehli Gate Multan City (here-in-after referred as property), was put to auction and purchased by respondent No.2, being the highest bidder. The petitioner filed objection petition on 20.12.2014 which was dismissed on 30.01.2015 and appeal against said order was also declined on 24.03.2015, hence this revision petition.

3. Learned counsel for the petitioner argued that in the proclamation of sale, no reserve price was fixed for the property in question which is mandatory requirement under Order XXI Rule 66 CPC. Submits that no description and details of the property have been mentioned in the proclamation of sale as required under the aforesaid provisions of law. He argued that no proclamation was published in the newspaper before the auction of property. Submits that under Order XXI Rule 67 CPC, attachment of property is mandatory requirement but out of total property measuring 3 marla 12 yards and 3 sqft, only 1 marla 29 yards and 26 sqft. was attached in violation of mandatory requirement of Order XXI Rule 67 CPC. Further submit that mandatory requirement of Order XXI Rule 84 and 85 CPC are violated because auction took place on 15.11.2014 and 25% of the auction proceed, which was to be deposited at the spot, was deposited on 17.11.2014 and the remaining amount was deposited after two and half month on 22.12.2014 which was

required to be deposited within 15 days. Submits that vide order dated 23.06.2014, the auction date was fixed for 28.07.2014 but subsequently vide order dated 23.09.2014, the auction date was fixed on 31.10.2014. He submit that auction could not take place on said date, however, the learned executing Court instead of issuing further fresh auction schedule vide order dated 11.11.2014, fixed the auction date for 15.11.2014. Submits that petitioner being aggrieved filed revision in which the impugned order dated 11.11.2014 was suspended vide order dated 14.11.2014. Contends that notwithstanding the suspension of the impugned order, the auction took place on 15.11.2014. He submits that though finally the revision petition was disposed of and matter was remitted to the learned executing Court, however, the auction took place during the stay granted by the revisional Court, was not sustainable and could not be confirmed. Further submits that ironically on one hand the auction took place during the stay granted by the revisional Court dated 14.11.2014, however, when the question of deposit of bid amount within 15 days came up the respondent No.2 relied upon the same stay order and avoided to deposit the said amount. To support above contentions, reliance is placed upon Mst. Nadia Malik vs. Messrs Makki Chemical Industries Pvt. Ltd through Chief Executive and others (2011 SCMR 1675), Haji Zahid Saeed and another vs. Messrs Asif Brothers and 3 others (2015 CLC 183), Messrs Ali

Match Industries Ltd through Managing Director and 3 others vs. Industrial Development Bank of Pakistan through Manager and another (1999 MLD 2127), Sheikh Niamat Ali vs. Sheikh Muhammad Imran and 3 others (PLJ 2003 Lahore 841), Afzal Maqsood Butt vs. Banking Court No.2, Lahore and 8 others (2005 CLD 967), Muhammad Afzal Khan etc vs. National Bank of Pakistan, etc (KLR 2015 Civil Cases 27), Khursheed Begum and others vs. Inam-ur-Rehman Khan and others (PLD 2009 Lahore 552), Brig. (Retd.) Mazhar-ul-Haq and another vs. M/s. Muslim Commercial Bank Limited, Islamabad and another (PLD 1993 Lahore 706).

4. Learned counsel for auction purchaser (respondent No.2) submits that it is admitted position that on 15.11.2014, the auction took place and property was sold. He submits that said sale can only be challenged through application under Order XXI Rule 89 and 90 CPC. He submits that perusal of objection filed by the petitioner shows that the sale was not challenged in the said application rather only auction proceedings were challenged. Submits that challenge to auction proceedings, does not amount to challenge to sale of property. He further submits that if at all, it was an application under Order XXI Rule 89 or Rule 90 CPC, the petitioner was liable to deposit 5% or 20% of the amount respectively alongwith said application which deposit was also not

made by the petitioner. He next submits that in any case application was barred by time as application under Order XXI Rule 90 CPC could only be filed within 30 days from the date of sale on 15.11.2014, whereas the petitioner filed application on 20.12.2014 against auction proceedings dated 15.11.2014. He submit that requirement to deposit 20% of decretal amount was mandatory requirement for application under Order XXI Rule 90 CPC and Court had only discretion regarding alternate security. He further submits that requirement of fixation of reserve price and publication in newspaper is also not mandatory and no objection has been raised by petitioner to this effect in his objection petition. He submits that in any case at the time of auction, bid started from reserve price of Rs.12 lac and bid amount was deposited within time. Adds that neither fraud has been committed nor petitioner has sustained any substantial injury. Learned counsel for the auction purchaser at the end of his arguments categorically offered that he has no objection if the bid amount be returned to him by the petitioner/judgment debtor or the decree holder and the auction in his favour may be set aside. This offer was confronted to the petitioner counsel who in response submit that petitioner/objector is neither ready to pay the bid amount to auction purchaser nor he is in position to return this amount. The learned counsel for the decree holder (respondent No.1) in response to this offer submit that auction amount received by him has already

been spent, on decree holder medical treatment, who is suffering from paralysis, hence he cannot pay to auction purchaser.

5. Learned counsel for decree holder (respondent No.1) submits that property was duly attached as is evident from orders dated 06.06.2014, 20.06.2014 and 23.06.2014. Further submits that though no reserve price was fixed by the Court, however, decree holder through application dated 29.10.2014 provided the current price of the property and on the basis of said price the auction commenced from reserve price of Rs.12 lac. He submits that amount of Rs.25% of bid amount was deposited on the same day i.e. 15.11.2014 with court auctioneer. However, said amount was deposited by the Court Auctioneer with Nazir of Court on 17.11.2014. He further submits that remaining 75% of the amount could not be deposited due to interim order granted by the appellate Court, however, on vacation of stay, the remaining amount was deposited by the auction purchaser with permission of the Court.

6. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

7. This is admitted position on all hands that sale of property through auction took place on 15.11.2014. The said sale of property could be challenged under Order XXI Rule 89 or 90 CPC. Admittedly, no application under Order XXI Rule 89 was filed and

petitioner claiming that his objection petition was under Order XXI Rule 90 CPC. To examine whether requirement of Order XXI Rule 90 CPC are fulfilled for setting aside of sale of property, it is expedient to reproduce Order XXI Rule 90 CPC as under:-.

*“Application to set aside on ground of irregularity of fraud.---Where any immovable property has been sold in execution of a decree, the decree-holder, or any 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:*

*Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud:*

*[Provided further that no such application shall be entertained unless the applicant deposits such amount not exceeding twenty percent. of the sum realized at the sale, or furnishes such security, as the Court may direct].*

8. Plain reading of Order XXI Rule 90 CPC shows that mere allegations of irregularity are not sufficient to set aside the sale but the objector must satisfy the Court that he has suffered substantial injury by reason of such irregularity or fraud. Though petitioner/objector in his objection petition raised certain irregularities in the auction proceedings but it has not been specified that what substantial injury has been sustained by the applicant/objector due to said irregularities. The petitioner has not

proved that property was sold on throw away price. **The auction purchaser during course of arguments made categorical offer to set aside the sale in his favour, if petitioner/objector will return his bid amount. The petitioner/objector in response to said offer by auction purchaser, is not ready to pay the bid amount, whereas decree holder claimed that said amount paid by auction purchaser, has already been spent by him on his treatment, hence cannot be returned.** The above stance taken by petitioner/objector also prove that no substantial injury has been sustained by the petitioner for reason of irregularity or alleged fraud.

9. The petitioner has neither specified in his objection petition any substantial injury nor proved before any Court such substantial injury to make out a case of setting aside the sale under Order XXI Rule 90 CPC. Hon'ble Supreme Court in Zakaria Ghani and 4 others vs. Muhammad Ikhtlaq Memon and 8 others (PLD 2016 Supreme Court 229) held that for setting aside of sale under Order XXI Rule 90 CPC, mere irregularity is not sufficient but there must be material irregularity or fraud in the process and in addition, there must be substantial injury to the judgment debtor. The relevant observation of apex Court is reproduced hereunder:-

*“A mere allegation is not sufficient. It has to be established that not merely an irregularity but a material irregularity has taken place, or, in the*

*alternative, that fraud has been perpetrated in the process of carrying out the sale. Then is super added the requirement that even if these conditions are complied with the judgment debtor must satisfy the Court that he has sustained a substantial injury by reason thereof. Finally, in order to discourage frivolous applications intended to delay the execution of the decree it is mandatory on the judgment debtor to deposit 20% of the sale amount or furnish such security as the Court may direct. It is also material to note that once again a time frame of 30 days has been specified under Article 166 of the Limitation Act in this behalf. Failing compliance with the provisions of Order XXI Rule 90 once again the inevitable consequence is that the judgment debtor is precluded from making any such allegation in order to challenge the validity of the sale at a subsequent stage”.*

10. In view of law laid down by august Supreme Court and express provision of Order XXI Rule 90 CPC, aggrieved person may apply to Court to set aside “sale” on the ground of material irregularity or fraud in publication or conducting it, however no sale be set aside unless upon the facts proved, Court is satisfied that applicant has sustained substantial inquiry due to such irregularity or fraud. In this context, it is admitted position on record that in objection petition dated 20.12.2014, the petitioner never sought setting aside of the sale of property on ground of material irregularity or fraud. Further, in said application, petitioner has not shown that what substantial injury has been caused to the petitioner, if at all, there was irregularity or fraud perpetrated.

11. The perusal of objection petition also shows that petitioner has only challenged the auction proceedings but not challenged the sale dated 15.11.2014. Prayer clause of objection petition is reproduced hereunder:-

"اندریں حالات استدعا ہے کہ درخواست عذاری منظور فرماتے ہوئے کاروائی نیلامی مورخہ 15-11-2014 منسوخ فرمایا جاوے"

عرضے

کاشف عمران وغیرہ ----- (سا نیلان )

The sale of property being not challenged, the objection petition dated 20.12.2014 cannot be treated as an application under Order XXI Rule 90 CPC. There is no dispute that in execution, property was sold through open auction on 15.11.2014 to respondent No.2. The petitioner had remedy to get said sale set aside through application under Order XXI Rule 89 or under Order XXI Rule 90 CPC. Admittedly, no application under Order XXI Rule 89 CPC was filed and instant objection petition was moved on 20.12.2014 without mentioning the provision under which, said application was filed. The claim of the petitioner that said application is under Order XXI Rule 90 CPC is not supported by the contents of the application, where only cancellation of auction proceedings challenged and no setting aside of sale in favour of respondent No.2 was sought as required under Order XXI Rule 90 CPC.

12. Further, if at all, it was application under XXI Rule 90 CPC, then under second proviso to Order XXI Rule 90 CPC, application could not be entertained unless the petitioner deposited amount not exceeded 20% of the sum relasize at the sale or furnished security as Court may direct. Neither petitioner made any such deposit or furnish security nor Court directed the petitioner to deposit such security, because the application on fact of it was not for set aside the sale under Order XXI Rule 90 CPC but only to cancel the auction proceedings. Even otherwise, if at all, it was application under Order XXI Rule 90 CPC, the same was time barred. Application under Order XXI rule 90 CPC could be filed within 30 days under Article 166 of the first schedule of Limitation Act, 1908 (Act), whereas instant application was filed on 20.12.2014 against auction took place on 15.11.2014.

13. Notwithstanding the above legal position, close analysis of grounds raised in objection petition also shows that they may constitute irregularities but they do not amount to material irregularity or fraud which resulted into substantial injury to the petitioner. In this context, the first ground raised in objection petition is that on 15.11.2014, auction took place in presence of stay order granted by revisioanl Court on 14.11.2014. Perusal of interim order dated 14.11.2014 shows that subject to deposit of process fee,

registered A.D and courier service, interim relief was granted to the petitioner. However, auction proceedings dated 15.11.2014 shows that said order was not produced before learned Executing Court or Court Auctioneer who conducted the auction and concluded the same by 1.45 p.m. The petitioner never filed any contempt petition before the revisional Court for violating of its stay order rather on 15.12.2014, the revision petition was disposed of and it was observed by revisional Court that if auction is conducted, the petitioner may apply under Rule 89 and 90 of Order XXI CPC to redress his grievance. The aforesaid finding of revisional Court rectified the irregularity if any in the auction proceedings. Perusal of final order passed by revisioanl Court, dated 15.12.2014 also shows that neither petitioner raised any objection before revisioanl Court nor said Court made any observation that auction was in violation of interim order passed by revisional Court. The interim order dated 14.11.2014 merged into final order dated 15.12.2014 whereby the petitioner was given option to file objection under Rule 89 or 90 of Order XXI CPC. The petitioner admittedly never challenged the said order before higher forum, hence this order of revisional Court has attained finality

14. The second objection raised by petitioner in objection petition was that auction was in violation of Order XXI Rule 69

CPC because once sale was adjourned more than seven days, hence fresh proclamation should have been made. The proviso of Order XXI Rule 69 CPC was amended through High Court Amendment and period of 07 days was substituted by 30 days. The record shows that auction was not postponed for more than 30 days, therefore, requirement of fresh proclamation under Rule 69 of Order XXI CPC was not applicable.

15. The third objection raised in objection petition was that auction purchaser had not deposited 25% at spot and 75% within 15 days as required under Order XXI Rule 84 and 85 CPC. The claim of respondent/auction purchaser is that on 15.11.2014, he deposited 25% at spot with auction purchaser and on 17.11.2014, auction purchaser filed application with the Court to deposit the said amount. There is nothing placed on record by petitioner to refute the stance of the said respondent and to show that said amount was not deposited with the Court Auctioneer on 15.11.2014. Regarding remaining amount of 75%, admittedly, on 29.11.2014, the respondent auction purchaser filed application before Executing Court to pass appropriate orders for deposit of remaining amount due to stay granted by revisional Court on 14.11.2014. The order passed by learned Executing Court dated 20.12.2014 shows that application of auction purchaser to deposit remaining 75% amount

was kept pending and after order passed by revisional Court on 15.12.2014, auction purchaser was allowed to deposit remaining 75% amount which was accordingly deposited. Therefore, it cannot be said that respondent No.2 violated the provision of Order XXI Rule 84 and 85 CPC.

16. The next objection of the petitioner was that proclamation under Order XXI Rule 66 CPC was not issued, was not supported by record. According to record, the proclamation was duly issued for the auction of property in which detail of property and terms and conditions of auction was also mentioned.

17. Learned counsel for the petitioner argued that property was auction without attachment. This contention is also not supported by record, according to which, property was duly attached and this fact was also recorded by learned Executing Court in its order dated 20.6.2014. In any case, this objection was never raised by the petitioner in his objection petition. Learned counsel for the petitioner also contended that no reserve price of the property was fixed by Court. This ground was also not raised in objection petition, therefore, cannot be raised for the first time in this revision petition. In any case, auction proceedings shows that auction commenced from reserve price of property at Rs.12 lac., and property was auctioned at Rs.2325000/-. The petitioner has not established that

property was sold less than the market value or non fixation of reserve price had caused substantial injury to petitioner.

18. This Court in Muslim Commercial Bank through Branch Manager/General Attorney vs. Fashion Pride (Private) Ltd through Chief Executive and 5 others (2016 CLD 124) held that Order XXI CPC is bifurcated into two stages and once the property is sold, the sale can only be set aside on the basis of Rule 89,90 and 91 CPC whereas right given in Rule 69 Order XXI CPC relates to the stage when property was not sold in execution of decree. On this ground also, aforesaid irregularities pointed out in auction proceedings are not sufficient to set aside the sale unless case under Order XXI Rule 90 CPC is made out as discussed above. The relevant observation of this Court in judgment referred supra is reproduced hereunder:-

*“Order XXI is a code into itself. A close analysis of Order XXI reads to an ineluctable conclusion that the matter relating to auction can be bifurcated into two stages. At the conclusion of the first stage, the property shall be deemed to have been “sold in execution of a decree” (see Order XII, R.89, C.P.C). This stage shall be ‘taken to have been crossed once the purchase-money has been paid in full. Once this threshold is crossed, the auction and the sale of property can only be set aside on the basis of rules 89 to 91, C.P.C. and the reversal or setting aside of a decree will not impact its continuance. To complete the analysis, rule 92 of Order XXI, C.P.C. does not envisage any other ground to set aside a sale except those given in*

*rules 89 to 91 of Order XXI, C.P.C. The use of the expression “where immovable property has been sold in execution of a decree” are significant and convey a meaning that the property has in fact been sold and the position to that extent is irretrievable. In other words, the matter of sale, having passed through the conductor of auction proceedings, has shaped into a right to vest in the auction purchaser to have the sale confirmed in terms of rules 89 to 91 of Order XXI, C.P.C. The right comprised in rule 69 of Order XXI, C.P.C. relates to a stage when the immovable property has not been sold in execution of the decree. It has to be exercised before ‘the lot is knocked down’. This is the stage where the sale may be stopped.*

19. The case law relied upon by learned counsel for the petitioner is not relevant to the facts of this case. In Mst. Nadia Malik case supra, the facts are that admittedly 1/4<sup>th</sup> amount paid through cheque and remaining amount was not paid in 15 days and instead application for extension of time was made. It was in these circumstances, august Court held sale to be nullity. Further said case being in banking jurisdiction application was under section 19(7) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 and apex Court held that 20% deposit condition cannot be applied to give premium to the auction purchaser over his default. However, in present case as discussed above, the 1/4<sup>th</sup> was deposited with Court auctioneer in time and auction purchaser was also ready to deposit the remaining 75% in time but could not deposit due to stay by revisional Court. He also sought guidance of executing Court, which allowed him to deposit 75% of amount after revision was disposed

of. Beside above, in present case, instant application is not for setting aside sale under Order XXI Rule 90 CPC but to set aside auction proceedings. Similarly cases of Haji Zahid Saeed etc supra and Messrs Ali Match Industries etc supra are not applicable, being relating to cases where application under Order XXI Rule 90 was filed. Whereas in case of Sheikh Niamat Ali supra, Afzal Maqsood Butt supra, Muhammad Afzal Khan etc supra, admittedly 75% amount not deposit without due cause. In case of Khursheed Begum etc supra, the best property in locality was sold away on throw away price which resulted to injury due to material irregularities, which is not case here. In case of Brig. (Retd.) Mazhar-ul-Haq etc supra, Court held that non fixation of reserve price will have strong bearing on allegation of fraud but in this case, there is no question of fraud specially when the auction purchaser himself offered to cancel auction in his favour if his bid money be returned by objector/judgment debtor.

20. In nutshell, the case law relied upon by learned counsel for the petitioner relates to objection petition filed under Order XXI Rule 90 CPC to challenge sale. Once it is found that petitioner objection petition was not filed under Order XXI Rule 90 CPC nor it was to set aside the sale and further no substantial injury was caused

to petitioner due to alleged irregularities, the said case law is not relevant to the facts and circumstances of this case.

21. The petitioner in the concurrent findings recorded by both the Courts below could not point out any jurisdictional defect, material irregularity or misreading and non-reading of record, warranting interference by this Court in revisional jurisdiction.

22. In view of above discussion, this revision petition has no merits which is accordingly **dismissed.**

**(ABID AZIZ SHEIKH)**  
**JUDGE**

**Approved for Reporting**

**JUDGE**