

Punjab National Bank v. Rajesh Kumar Jain and another  
(A. L. Bahri, J.)

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*Shukla v. Union of India and others* (4), and *Union of India and others v. L. Venkataraman etc.*, (5).

(8) Consequently, I allow this writ petition and hold that the petitioner and other workmen belonging to the category of *regular workcharged workmen* shall retire from service on attaining the age of superannuation that is, 60 years and shall not be retired on attaining the age of 58 years. Since the petitioner will be attaining the age of Superannuation on 31st December, 1991, and has been wrongly retired from service in pursuance of the impugned order dated 3rd November, 1989 (Annexure P-2), he shall be taken back in service forthwith, and he shall be entitled to all the arrears of salary and allowances, etc. to which he would have been entitled, had he not been retired from service in pursuance of the impugned order. As a consequence of the acceptance of this writ petition, the impugned communications dated 3rd November, 1989 (Annexure P-2) and 20th November, 1989 (Annexure P-5) shall stand quashed. However, there shall be no order as to costs.

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R.N.R.

Before A. L. Bahri, J.

PUNJAB NATIONAL BANK,—Petitioner.

*versus*

RAJESH KUMAR JAIN AND ANOTHER,—Respondents.

Civil Revision No. 2048 of 1990.

11th February, 1991.

*Code of Civil Procedure, 1908 (V of 1908)—O. 21, rl. 90—Objections of person not a party to suit or execution proceedings to set aside sale on ground of fraud dismissed by Court—Such order is appealable—No question of limitation would arise—Plea of fraud can be raised only when it comes to knowledge of person defrauded—To be determined on evidence—Plea of fraud cannot be dealt with summarily without affording opportunity of hearing.*

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(4) 1986 Lab. I.C. 1516.

(5) J.T. 1990 (2) S.C. 90.

*Held*, that the question for consideration is as to whether the present objector Punjab National Bank could have raised such objections as were contemplated under the Code for setting aside the sale before the same was confirmed. The obvious answer is in the negative as the bank was not a party either in the suit or in the execution proceedings and was thus not expected to file any such objection as contemplated under the Code. (Para 4)

*Held*, further, that fraud vitiates every act or action and plea of fraud can only be raised when it comes to the knowledge of person defrauded. Such a plea which is to be determined on evidence could not be considered or dealt with summarily without affording opportunity to the parties to prove the same. (Para 5)

*Petition under Section 115 C.P.C. for revision of the order of the Court of Mrs. Harmohinder Kaur Sandhu, District Judge, Chandigarh dated 21st February, 1990 affirming that of the Court of Senior Sub Judge, Chandigarh dated 7th October, 1989 dismissing the objection petition.*

*Claim : Objection Petition under order 21 R. 90 CPC.*

*Claim in Revision : For reversal of the order of both the Courts below.*

None, for the petitioner.

Mr. D. D. Verma, Advocate, for the respondent.

#### JUDGMENT

*A. L. Bahri, J. (Oral)*

(1) After confirmation of sale in execution in a money decree objections were filed by the Punjab National Bank, the present petitioner for setting aside the sale on the ground of fraud played by the Decree Holder and the Judgment Debtor. These objections were disposed of on receiving reply from the Decree Holder, but without trial,—*vide* order dated October, 7, 1989 by the Senior Sub Judge, Chandigarh, *inter alia* holding that after confirmation of the sale objections were not maintainable to the sale. An appeal was preferred against the said order which was dismissed by the District Judge, Chandigarh holding that the same was not maintainable, but Civil Revision was maintainable against the order of the Senior Sub Judge. Hence this Revision Petition by the objector—the Punjab National Bank.

(2) The Judgment Debtor had taken substantial amount of loan from the Punjab National Bank and in the building in dispute, the

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bank is the tenant. The amount due to the bank is stated to be to the tune of Rs. 10 lacs.

(3) Rajesh Kumar obtained a decree to the tune of Rs. 7,80,000 with interest against the Judgment Debtor M/s Progressive Poly Plast Company Chandigarh on July 29, 1988. In execution of the decree, the property of the Judgment Debtor was attached which is Shop-cum-Office at Manimajra. It was purchased by the Decree Holder after obtaining permission from the Court. The sale was confirmed on August 3, 1989. Punjab National Bank filed the objections on August 19, 1989 purporting to be under Order 21, R. 90 of the Code of Civil Procedure (hereinafter referred to as the Code). The allegation of fraud was pleaded that the Decree Holder and the Judgment Debtor colluded with each other, committed fraud and misstated facts with a view to get the property transferred in the name of other members of the family. The objector was not a party to these proceedings and came to know when Decree Holder issued a notice to the bank dated August 4, 1989 along with copy of the order of the Senior Sub Judge dated August 3, 1989. These objections were contested and the orders were passed by the Courts below.

(4) The approach of the Executing Court that after confirmation of the sale after observing due formalities, no application to set aside the same under O. 21 R. 90 of the Code was maintainable upon any ground which the objector could have taken on or before the date on which the proclamation of sale was drawn up. Further reference was made to O. 21 R. 90 of the Code that no such sale was to be set aside on any ground which the applicant could have put forth before the sale had conducted. The question for consideration is as to whether the present objector Punjab National Bank could have raised such objections as were contemplated under the Code for setting aside the sale before the same was confirmed. The obvious answer is in the negative as the bank was not a party either in the suit or in the execution proceedings and was thus not expected to file any such objection as contemplated under the Code. In the present case, the bank has approached the Court to set aside the sale being as a result of fraud. No question of limitation would arise. In this context reference may be made to the decision of Madras High Court in *Pandurangan and another v. Dasu*

Reddy (1) and of Calcutta High Court in *Nakul Chandra Dutta v. Ajit Kumar Chakrabarty and others*. The lower Appellate Court referred to the decision of this Court in *Baksho v. Pakhar Singh and another* (3), wherein it was held that objections to set aside the sale under O. 21 R. 90 of the Code could not be filed after confirmation and any such order would not be an order appealable under O. 43, R. 1(j). The ratio of this decision is not applicable to the case in hand as there was no plea of fraud raised and determined in that case.

(5) Fraud vitiates every act or action and plea of fraud can only be raised when it comes to the knowledge of person defrauded. Such a plea which is to be determined on evidence could not be considered or dealt with summarily without affording opportunity to the parties to prove the same. In such a case the bank was well within its rights to file objections to set aside the sale on the ground of fraud. In that situation the order of the trial Court in substance amounted to refusal to set aside the sale and was thus appealable. Be that as it may, since the matter has been considered in this Revision Petition, and the Executing Court had not afforded opportunity to the objector to prove the plea of fraud, the Revision Petition is accepted with no order as to costs. Orders of both the Courts below are set-aside. The case is sent back to the Executing Court for decision of the objections according to law. Parties through their counsel are directed to appear in the Executing Court on March 11, 1991.

J.S.T.

Before A. L. Bahri, J.

SAMPURAN SINGH,—Appellant.

versus

MUKHTIAR SINGH,—Respondent.

First Appeal from Order No. 95 of 1979.

22nd February, 1991.

*Workman's Compensation Act, 1923—S. 10—Workman's Compensation (Amendment) Act, 1976—Workman's application for compensation filed under the old Act—Act amended in the meantime with retrospective effect—Amended Act providing for enhanced compensation—Claim for enhanced compensation—Accident occurring during period of retrospective operation of the Amending Act—Workman entitled to enhanced compensation.*

(1) AIR 1973 Madras 107.

(2) AIR 1982, Calcutta 564.

(3) AIR 1985 P. & H. 322.