IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 2778 of 2015 (O&M)
Date of decision: 30.4.2015

Dev Raj

.. Petitioner

v.

Ramesh Kumar

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sushil Kumar Verma, Advocate for the petitioner.

...

Rajesh Bindal J.

Challenge in the present petition is to the order dated 20.3.2015, passed by the learned court below, whereby in execution of the decree passed against the petitioner, the court had attached the property and put the same for auction.

Learned counsel for the petitioner submitted that the property in question was not registered in the name of the petitioner, rather, the same had been transferred in the name of his son before even filing of the suit in a family settlement, hence, the same could not be attached and sold. He further submitted that earlier also, this fact had come on record and the court, while opining not to proceed against that property, directed that the petitioner be sent to civil imprisonment for 30 days. The order was complied with by the petitioner, hence, the same property could not be put to auction.

The subsequent action of the court below directing attachment of the same property would be barred by the principles of *res judicata.*

After hearing learned counsel for the petitioner, I do not find any merit in the submissions made by learned counsel for the petitioner. It is a case in which the petitioner is trying to play hide and seek. The suit was filed by the respondent for recovery of the loan advanced to the petitioner, for which a pronote was executed by him. Before filing the suit on 7.6.2005, a legal notice was sent on 16.4.2005. Immediately thereafter, the petitioner transferred his property in the name of his son vide sale deed dated 3.5.2005. The suit was decreed on 1.12.2005. The decree attained finality. As the amount was not paid, execution was filed, in which the property owned by the petitioner was sought to be attached, however, on receipt of report that the property had already been transferred in favour of the son of the petitioner before filing of the suit, the petitioner was directed to be put in civil imprisonment. Thereafter, again application was filed by the respondent claiming that transfer in favour of the son was fraudulent just with a view to defeat the rightful claim of the decree-holder, as the transfer was effected after the loan had already been raised and not only this after the respondent had issued legal notice on 16.4.2005 before filing the suit. Immediately thereafter, on 3.5.2005, the property owned by the petitioner was transferred in the name of his son. The suit was filed on 7.6.2005, which was decreed on 1.12.2005 and till date, the decree could not be executed. Learned counsel for the petitioner has not been able to point out any material on record showing the circumstances under which he was required to transfer the property owned by him in the name of his son. In the absence of any reasonable explanation for the same, such a transfer can certainly be opined to be an effort to avoid execution of the decree, which may be passed against the petitioner. Mere civil imprisonment does not absolve the petitioner of his liability.

The principles of *res judicata* would also not be applicable in the facts and circumstances of the case as no legal issue as such was decided by the court at the earlier stage. Only certain facts had been noticed in the order.

For the reasons mentioned above, I do not find any reason to interfere with the impugned order. The petition is, accordingly, dismissed.

(Rajesh Bindal)
Judge

30.4.2015
mk