

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 3525 of 2012 (O&M)

Date of decision: 24.07.2015

M/s Bawa Daswandha Singh Waryam Singh

... Petitioner

versus

The Punjab and Sind Bank and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Jaivir Yadav, Advocate for the petitioner.
Mr. B.P.S. Dhaliwal, Advocate for respondent No.1.
Mr. Anil Kshetarpal, Senior Advocate with
Mr. Sauravb Garg, Advocate,
for respondent Nos. 3, 4, 5, 6 and 8.

K.Kannan, J.

The revision is against the order dismissing an application filed under Order 34 Rule 5 by one of the judgment debtors. It was a case of the creditor-Bank which having obtained a secured asset for the loan did not proceed for enforcement of security under order 34 but obtain a simple money decree against the partnership firm and its partners on 30.07.1986. In execution of the decree, the property was brought for sale and sold on 28.07.1991. The objections were taken` by several of the

defendants, the details of which are not relevant, but, it is an admitted fact that all their objections were dismissed at various times and taken to the logical end by prosecution of cases in higher forums meeting with similar fate. An aspect which is relevant for us is only that the sale was confirmed, on account of pendency of these proceedings, beyond the period of 90 days, only on 13.11.2002. After the sale was confirmed it appears that the judgment debtors and some other persons claimed the property on a plea that there had been a compromise with the creditor-Bank on 08.03.2004 and filed an application under Order 34 Rule 5 for setting aside the sale. The Court dismissed it.

I fail to see as to how the application under Order 34 Rule 5 was competent at all. I have already brought out the fact that the suit was not filed for securing preliminary decree for sale of hypotheca for which a final decree was possible at a later time. If the suit was for enforcement as a simple money claim and the properties which had been originally offered as security has been later brought for ejectment and sale, then all the trappings of Order 34 got cast away. An application under Order 34 Rule 5 is the procedure for final decree where the amounts due under the preliminary decree could be settled and if the amount stipulated in the

preliminary decree is fully paid in the manner directed, it will make possible for a Court to order the creditor-plaintiff to deliver the documents and if necessary to release the mortgage property as directed in the decree and also order if necessary to put the defendant in possession. If the mortgage property is also sold in pursuance of such a decree, the Court will not pass an order unless the defendants in addition to the amount mentioned in the preliminary decree also deposits the amount for payment to the purchaser solatium 5% and give further directions for making perfect the title in relation to the property sold. These proceedings cannot be invoked in a situation where the property sold is after money decree and auction is confirmed through orders of Court. The confirmation of sale brings a *terminus quo* as regards the claim against auction purchasers and if any such sale can be assailed it is possible only in the proceeding under Order 21 Rule 90 CPC for any of the reasons set forth. The sale for enforcement of money decree cannot be modified as a preliminary decree for sale of hypotheca by the only fact that the sale that took place were in respect of the properties shown as security at the time of obtaining the loan. The initiation of the proceedings under Order 34 Rule 5 itself was incompetent as rightly found by the Court below. In this case, it will be

evident that after the objections of some of the judgment debtors and tenant which were filed in the year 1981 had been dismissed in various forums, there has been an attempt to compromise with the creditor-Bank perhaps under a wrongful assumption that the sale which had taken place could be annulled by such a process. There could have been no compromise in the absence of such a purchaser who had secured a right in the property by Court auction purchase.

There is no error in the order for an intervention. The civil revision petition is accordingly dismissed with above observations.

(K.KANNAN)
JUDGE

24.07.2015

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