

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5303 of 2014 (O&M)

Date of decision: 09.04.2015

Amarjit Kaur

... Petitioner

versus

M/s Magma Fincorp Limited and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rakesh Gupta, Advocate for the petitioner.

Mr. Nakul Sharma, Advocate for respondent No.1

K.Kannan, J.

The 3rd party who is a close relative of judgment debtor has objection to bring to an attachment caused for realisation of the amount secured through an award of the Arbitrator. The Court summarily rejected the petition and held that the property only belongs to the judgment debtor and the objection to the attachment cannot be entertained.

I hold that the procedure adopted by the Court is erroneous. If an attempt is made to enforce a money claim by attachment and sale of properties, a person who claims to be a owner has a right to make claim in relation to the property or cause an objection to the attachment. Such claim or objection must be entertained and perceived as an objection under Order 21 Rule 58 CPC and the procedure prescribed under the said provisions must be strictly followed. Clause 4 of Rule 58 states that any claim or objection which is adjudicated upon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree. The order passed would requires to be set aside as it does not follow the procedure and has taken a summary adjudication as regards the ownership of the property

which is impermissible.

The revision has been filed before this Court treating this to be an order otherwise than under order 21 Rule 58 CPC in view of the inartistic framing of the petition and wrong framing of law mentioned. will apply the correct provisions and quash the order. The counsel appearing on behalf of the respondents state the petitioner herself is the wife of one of judgment debtors and her own objection is with reference to the door number of the property but the document relied on has no connection to the property which is attached. I will not go into the merits of the contentions and I leave it to the Court below to examine whether the petitioner is the owner and the objection raised was justified. If the petitioner's claim were to be allowed, the attachment will cease but if the claim were to be dismissed and the Court finds that the objector is set up by the judgment debtor, the Court will impose appropriate punitive costs for engaging in what it may characterize as not a justifiable objection.

The impugned order is set aside and remitted to the Court below for adjudication in the light of the above observations. The civil revision petition is allowed and the parties may use all the resourcefulness for the expeditious disposal of the case.

09.04.2015

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(K.KANNAN)
JUDGE