IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CR 6911 of 2010

Date of Decision: May 26, 2015

P.K.F. Finance Ltd.

…..Petitioner

Vs.

Mukhtiar Singh and ors.

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Ranjit Mehta, Advocate
for the petitioner.

Mr. A.S. Sodhi, Advocate, for respondent No.4.

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M.M.S. BEDI, J.

The petitioner is a Finance Company which has approached this Court aggrieved by the dismissal of its execution application by allowing the objection petition filed by objector Gurmeet Singh respectively, however, safeguarding the rights of the petitioner to file fresh execution application before the competent Court of jurisdiction for getting the award dated December 24, 2005 satisfied by way of attachment and sale of the property owned and possessed by the judgment debtor.

Brief facts relevant for the decision of the present revision petition are that respondent Mukhtiar Singh had entered into a loan agreement of Rs.4.70 lacs on May 20, 2004 with petitioner company for purchase of Truck with registration No. HR 58-1981. The amount was to be repaid in 35 instalments. Sardool Singh- respondent No.2 and Kulbir Singh his son, respondent No.3 stood as guarantors. It appears that there had been default in payment of instalments, resulting in initiation of arbitration proceedings. The respondents despite service did not appear before the Arbitrator as such the Arbitrator passed award dated December 24, 2005 holding that respondents No.1 to 3 are liable to pay an amount of Rs.5,77,799/-. It appears that the said award was not challenged before the District Judge, Jalandhar by the respondents. The petitioner, in order to seek implementation of the award filed an execution application before the District Judge, Jalandhar.

Upon receipt of notice in execution proceedings, respondent No.4- Gurmeet Singh filed objection under Order 21 Rule 58 CPC contending that he had purchased the property and in view of he being bonafide purchaser for consideration, the attachment of the property was not permissible. Petitioner claimed that he was bonafide purchaser of the property without any notice and had no knowledge about the earlier owners of the suit property having stood as guarantors of the amount of loan taken by respondent Mukhtiar Singh from P.K.F. Finance Company. In the present case, the objector had purchased the property by registered sale deed on April 11, 2005 whereas the borrowers were proceeded against ex-parte.

The short question which is required to be determined in the present case is whether Gurmeet Singh, objector who had purchased the property prior to the making of reference on February 9, 2004 as well as prior to the award dated December 24, 2005 could be foisted with liability to discharge the obligations arising out of the award dated December 24, 2005.

In the present case, respondent No.4 Gurmeet Singh had acquired right, title and interest in the property in dispute prior to the agreement. The right, title and interest of the owner of the property cannot be interfered with especially when the property was put under attachment after three years of the purchase of land by Gurmeet Singh, objector. The decree-holder finance Company had no doubt sought the execution of the decree but Gurmeet Singh who has acquired title in the property cannot be foisted with liability to clear the accounts. The learned Executing Court while allowing the objections of Gurmeet Singh, has safeguarded the rights of decree holder causing no prejudice to the petitioner.

I have carefully considered the contention of learned counsel for respondent No.4 that the transaction is hit by the principle of lis pendens because arbitration proceedings started in February 2005. The objector Gurmeet Singh had filed objections on the ground that he had purchased 35 Kanals 6 Marlas of land from Sardool Singh and 36 kanals 15 marlas of land from Kulbir Singh on April 11, 2005 whereas the execution application against Gurmeet Singh, objector seems to be not maintainable, he being not party to the litigation.

In view of the above circumstances, no ground is made out for interference in the impugned order. Dismissed. Nothing said in this order will prejudice the rights of the petitioner Finance Company to recover the amount in accordance with law from the actual loanee as well as guarantors.

May 26, 2015 (M.M.S.BEDI)
sanjay JUDGE