IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.8795 of 2015
Date of Decision.23.12.2015

Gurpal Singh ....Petitioner

Vs.

State Bank of India ....Respondent

Present: Mr. BPS Virk, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. There is lack of honesty on the part of the revision petitioner in approaching this Court against an order of arrest issued by the Executing Court. The arrest is sought by the creditor bank which obtained also a mortgage in relation to the property. I have seen through the decree. The preliminary decree passed allows for particular sums stated to be recovered from the defendant and also states that if the defendant did not repay the money within a period of six months, the preliminary decree will be treated as final decree. It would be evident, therefore, that the bank obtained to itself the benefit of personal remedy against the mortgagor as well as his right to bring a sale of hypotheca.

2. It is brought out now before me that a third party has purported to have obtained an agreement in relation to the very same property and also obtained decree against the mortgagor-plaintiff. It

becomes obvious, therefore, that a sale of hypotheca could be obstructed at the instance of the person who has obtained the decree against the mortgagor. The Bank has resorted to a remedy of enforcement of personal decree against the mortgagor seeking for arrest. The objection taken is that the petitioner can proceed only against the property and not against the petitioner. It is the further contention that if the sale is obstructed by the decree holder pursuant to a decree for specific performance, the bank should resort to an action against the petitioner for arrest. It is the further contention that if only the sale is obstructed by the decree holder pursuant to a decree for specific performance, the bank should resort to action against the petitioner. The contention is untenable, for, the action against the petitioner is being pursued only for not repaying the loan which he had obtained from the bank but has created a cloud on his title of the property which was mortgaged by suffering a decree for specific performance brought at the instance of a third party. The bank was competent to seek for enforcement in the manner done before the Executing Court and there was nothing wrong by the Court to order arrest for recovery of sum. The counsel for the petitioner relies on a judgment of Supreme Court in ***Jolly George Varghese and another Vs. The Bank of Cochin 1980(2) SCC 360*** where the Supreme Court set out the international covenants relating to coercive proceedings and referred to resort to this provision for arrest as the last remedy. It is literally the last remedy which the bank was trying to enforce, for the sale of hypotheca will come to nothing if there is a third party claim in respect of the same property. The provisions of Section 51 CPC itself is a manner of enforcement and there is no fetter that the Executing Court will set for itself.

3. There is no error in the order passed by the Court below and there is no justificaion for intervention in the revision petition. The revision petition is dismissed.

(K. KANNAN)
JUDGE

December 23, 2015
Pankaj*