

In the High Court for the States of Punjab and Haryana, at
Chandigarh

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1. Civil Writ Petition No. 19852 of 2015

Date of decision: September 18, 2015

Sarabjit Singh ..Petitioner

Versus

Tehsildar, Gurgaon,Haryana and others ..Respondents

2. Civil Writ Petition No. 19864 of 2015

Bhupender Singh ..Petitioner

Versus

Tehsildar, Gurgaon,Haryana and others ..Respondents

Coram: **Hon'ble Mr. Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Ms. Roma Bhagat,and
Mr. D.N.Chaturvedi, Advocates
for the petitioner.

- 1.Whether to be referred to Reporter? Yes/No
- 2.Whether the judgment should be reported in the
digest ? Yes/No

Mahavir S.Chauhan, J.

M/s Incentive Travels Pvt. Ltd. (respondent No.5) and
Anil Gujral (respondent No.6) applied for and got sanctioned credit
facility to the extent of Rs. 105 lacs in their favour from HDFC Bank-
respondent No.2 (hereinafter referred to as "the bank") in the year
2005 and created an equitable mortgage in favour of the bank in
respect of their property identifiable as property No. Q-3/12, DLF
City, Phase II, Gurgaon. The credit limit was later on enhanced.

Petitioner Sarabjit Singh along with Bhupender Singh (petitioner in CWP No. 19864 of 2015) claimed to have stood guarantors for repayment of the loan amount. The loanees failed to adhere to the fiscal discipline of the bank and it led to filing of an original application (OA No. 178 of 2010) before Debt Recovery Tribunal, Delhi (for short,"the Tribunal") wherein the learned Tribunal on June 18,2014 passed the following order:-

“ In the result.-

I) The original application is allowed.

II) The applicant shall be entitled to recover the sum of Rs. 3,54,49,593/- with simple interest @ 14.5% p.a. From 16.08.2010 onwards until recovery with cost from D1 to D5 jointly and or severally.

III) The applicant shall be entitled to recover the debt by sale of the mortgage property bearing No. Q-3/12, DLF City, Phase II, Gurgaon,Haryana.

IV) A Recovery Certificate shall be issued on the above terms.

V) Defendants No.1 to 5 are directed to appear before the Recovery Officer on 19.08.2014.”

Pursuant to decree dated June 18,2014, the bank initiated proceedings to take possession of the mortgaged property and approached the District Magistrate concerned for the purpose. It was conveyed to Tehsildar, Gurgaon (respondent No.1).

In the meantime, Civil Suit No. 355 of 2010, Ketika Kohli Swahney versus M/s Incentive Travels Pvt. Ltd. came to be decreed for the recovery of Rs. Ten lacs vide decree dated August 03,2010

by learned Additional District Judge, New Delhi. An execution application filed by the decree holder was transferred to the learned District Judge, Gurgaon as the mortgaged property was situated within the jurisdiction of that court. Incidentally, the property mortgaged in this case was the same as in the case out of which the instant Civil Writ Petition has arisen, i.e., No. Q-3/12 DLF City, Phase II, Gurgaon, Haryana.

Learned District Judge, Gurgaon, the executing Court passed the following order on May 14, 2011:-

“ Pursuant to summons being issued to the Jds Nos. 1 to 3 vide my order dated 22.11.10, Sh. Vishal Gupta Advocate had put in appearance on their behalf on 15.1.2011 and had sought time for filing objections, for which purpose the case was adjourned to 26.2.2011 and then to 2.4.2011 subject to adjournment costs of Rs. 500/- to be deposited with District Legal Services Authority, Gurgaon, but the said amount of costs has not been deposited to date and nor has any one put in appearance on their behalf today pursuant to the case being adjourned for today vide order dated 2.4.2011 despite the case being repeatedly called out. It is already 10.00 a.m. The court timings are from 8 a.m. to 2 p.m. The Jds are hereby accordingly proceeded against ex parte. The execution petition in hand arises out of order dated 06.08.2010 passed by Ms. Ina Malhotra, Additional District Judge, New Delhi in Suit No. 355 of 2010 titled “Ketika Kohli Swahney versus M/s Incentive Travels Pvt.

Ltd. and others, which suit was decreed for recovery of Rs. Ten lakhs vide order dated 03.08.2010. Proclamation in accordance with provisions contained in Order 21 Rule 66 CPC of sale of property already attached in the light of the provisions contained in Order 21 Rule 54 CPC vide my order dated 27.11.2010 is ordered to be issued as per the following schedule:-

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| <i>1. At court house as well as through publication in the News Paper "Times of India"</i> | <i>09.06.2011</i> |
| <i>2. At the spot</i> | <i>28.6.2011</i> |
| <i>3. Sale</i> | <i>14.7.2011</i> |
| <i>4. Report</i> | <i>6.8.2011</i> |

The expenses for publication/proclamation of sale be deposited within one week from today and only thereafter shall the warrant of sale be issued."

The mortgaged property has ultimately been sold on 17.9.2011.

To lay a challenge to order dated May 14,2011 (Annexure P4), Sarabjit Singh has brought Civil Writ Petition No. 19852 of 2015 and Bhupinder Singh has preferred Civil Writ Petition No. 19864 of 2015. In view of commonality of facts and circumstances involved therein, both the writ petitions are proposed to be disposed of by this common order being passed in Civil Writ Petition No.19852 of 2015.

We have heard learned counsel for the petitioner/s.

Grievance put forth on behalf of the petitioners is that the property in question could not be attached and sold in execution of

the decree dated August 03,2010 because possession of this very property was ordered to be taken over in execution of decree dated June 18,2014 passed by the learned Tribunal and proceedings in this regard were pending before the first respondent but he did not apprise the executing court of pendency of these proceedings. According to the learned counsel inevitable consequence of sale of the property of the loanees (respondent Nos. 5 and 6) is that property of the petitioners would be put to sale to satisfy the decree of the learned Tribunal.

We, however, regret our disinclination to entertain the instant writ petitions for the following reasons:-

i) Order dated May 14,2011 (Annexure P4) passed under Rule 64 of Order XXI of the Code of Civil Procedure, 1908 cannot be challenged by way of a writ petition under Articles 226/227 of the Constitution of India. Remedy available to a person aggrieved of that order lies elsewhere.

ii) As per case of the petitioners pursuant to order dated May 14,2011, the mortgaged property has already been sold on September 17,2011. Sale of the property has not been challenged. That being so challenge to the order issuing schedule of sale becomes illusory.

iii) Petitioners are neither the owners nor purchasers nor persons in possession of the property in question. Therefore, they cannot be heard to make a grievance against the impugned order issuing schedule of sale thereof.

iv) Order Annexure P4 was passed on May 14,2011 and in instant writ petitions have been filed in the year 2015, i.e., after more than four years of passing of the said order and thus suffer from delay and laches and are liable to be dismissed on that count for, no explanation, much less satisfactory explanation is coming forth for the delay.

In the consequence, the writ petitions are dismissed in *limine*.

(SATISH KUMAR MITTAL)
JUDGE

September 18,2015

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(MAHAVIR S.CHAUHAN)
JUDGE