

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

LPA No. 8 of 2015 (O&M)

DATE OF DECISION : 18.03.2015

Sanjeev Walia

.... APPELLANT

Versus

Hakam Din and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. Kamal Kumar Gaind, Advocate,
for the appellant.

* * *

SATISH KUMAR MITTAL, J. (Oral)

Sanjeev Walia, an agreement holder, has filed this intra-court appeal under Clause X of the Letters Patent against the order dated 25.11.2014 passed by the learned Single Judge, whereby an application (CM No. 14345 of 2014) filed by the appellant herein to implead him as a party in the writ petition (CWP No. 14924 of 2014) filed by Hakam Din (respondent No.1 herein) has been dismissed, while observing that he is not a necessary party to be impleaded in the said writ petition, and the writ petition has been allowed.

Hakam Din had filed the aforesaid writ petition seeking direction to the Tehsildar, Khanna, District Ludhiana, to register the sale deed of land measuring 3 Kanals 4 Marlas situated in village Galwadi,

Tehsil Khanna, District Ludhiana, in his favour, in view of the sale certificate dated 08.06.2011 (Annexure P-1) issued by the State Bank of Patiala. Hakam Din was the auction purchaser of the said land in the auction, which was conducted by the bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'). The sale certificate was issued by the bank in his favour in accordance with law, but the Tehsildar refused to register the sale deed on the basis of the sale certificate, stating that the suit for specific performance filed by the appellant herein is pending and the stay order is operating therein.

It is pertinent to mention here that the appellant has filed suit for specific performance of the agreement dated 02.08.2005 against Ajmer Kaur, owner of the aforesaid land, which was mortgaged with the bank and was sold in auction under the SARFAESI Act as she was defaulter of the bank. The said suit is pending before the civil court. After getting the sale certificate issued in his favour, being the highest bidder and the auction purchaser Hakam Din wanted to get the sale deed registered in his favour, and when registration of the sale deed was declined by the Tehsildar, he moved an application before the civil court for becoming party to the aforesaid suit for specific performance. The said application was dismissed. Thereafter, Hakam Din filed the aforesaid writ petition seeking direction to Tehsildar to register the sale deed in his favour, pleading therein that he has

purchased the land in accordance with law under the SARFAESI Act, and his right cannot be defeated by the Registrar/Tehsildar, while not permitting him to get the sale deed registered. The said writ petition was pending before the learned Single Judge, when the appellant filed an application stating that he is a necessary party and he should be impleaded as party in the writ petition. Vide the impugned order dated 25.11.2014, the said application has been dismissed by the learned Single Judge, while observing as under :-

“Any attempt to stall registration of sale when the property is sold by a Bank under SARFAESI will be wholly legally untenable. The application is now at the instance of a third party who claims to have filed a suit for specific performance against the debtor from the bank and seeks to contend that the sale proceedings are null and void and, therefore, he must also be heard. There can be no interdict against the sale or registration at the instance of a person who was not a party to the loan transaction. If he holds an agreement and has filed a suit for specific performance and obtains a decree that the sale proceedings taken by the Bank was illegal, the sale obtained at the auction and registered through the court order will fall to ground as a necessary consequence thereof. However, there can be no presumption that a person who holds property from the borrower from the Bank had any pre-existing right superior to a bank which holds the security when the latter seeks to enforce the security by resort to the provisions under SARFAESI Act of 2002.

The application for impleadment is dismissed.”

Vide the same order, while allowing the main writ petition and directing the Tehsildar to register the sale deed on the basis of the aforesaid

sale certificate, the learned Single Judge has protected the interest of the appellant, while observing as under :

“There can be no power for the Registrar to refuse registration on any ground other than what is prescribed under Sections 71 and 72 of the Registration Act. If the holder of an agreement has a case to contend that the sale proceedings are invalid, it is clarified that the registration of the sale in favour of the petitioner will always be subject to the outcome of a civil court decree on the validity of the sale. The registration which is directed to be done through the court order has nothing to do with the issue of whether the sale effected conforms to the provisions of SARFAESI and whether the applicant-3rd party had any superior right over the bank that holds the security from the original owner of the property and the rights of the auction purchaser claiming under the rights of the bank to put the security for auction.”

The aforesaid order dismissing the application of the appellant and allowing the writ petition filed by respondent No.1 herein, is under challenge in this appeal.

We have heard learned counsel for the appellant and have gone through the order passed by the learned Single Judge.

Learned counsel for the appellant argued that Hakam Din and Ajmer Kaur are in collusion, as the agreement for sale was for a consideration of ₹ 3,35,000/-, whereas in auction the sale consideration came to be more than ₹ 10,00,000/-. Therefore, the appellant will be deprived of the enhancement in value of the land.

As far as the aforesaid contention is concerned, interest of the

appellant has already been protected by the learned Single Judge. It has been argued by learned counsel for the appellant that after the passing of the impugned order, suit for specific performance filed by the appellant has become infructuous. In our opinion, this argument is totally mis-conceived. The aforesaid suit for specific performance will continue and as per the direction given by the learned Single Judge to the effect that registration of the sale deed in favour of Hakam Din will always be subject to the outcome of the civil suit, interest of the appellant has already been protected. In case, the suit is dismissed and the sale deed is not registered, then the harm caused to the auction purchaser cannot be compensated. Therefore, in our opinion, the learned Single Judge has rightly observed that registration of the sale deed in favour of the auction purchaser will always be subject to the outcome of the civil suit.

Thus, the impugned order passed by the learned Single Judge does not call for any interference.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

March 18, 2015
ndj

(HARINDER SINGH SIDHU)
JUDGE