

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:1.3.2016

Civil Revision No.1542 of 2016

Surinder Singh and another

---Petitioners

vs.

M/s HDB Financial Services Limited

---Respondent

Civil Revision No.1543 of 2016

Surinder Singh and another

---Petitioners

vs.

M/s HDB Financial Services Limited

---Respondent

Civil Revision No.1544 of 2016

Surinder Singh and another

---Petitioners

vs.

M/s HDB Financial Services Limited

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.R.S.Bajaj, Advocate
for the petitioners

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

Rekha Mittal, J.

This order will dispose of Civil Revision Nos.1542, 1543 and

1544 of 2016 as these have emerged out of common order dated 28.1.2016 passed by the Additional District Judge, Jalandhar, whereby the two applications, one filed by the respondent-decree holder for putting residential house of the judgment debtor to auction for recovery of decretal amount and the second filed by the petitioners/judgment debtors for initiating legal action against Padeep Walia and his associates, have been disposed of.

Counsel for the petitioners has submitted that once the executing court has initiated the process for auction of plot Nos. 2 and 3 measuring 16 marlas and the auctioneer Sh. Rajesh Kumar Arora, Advocate, Jalandhar has made a report (Annexure P-3) to the effect that the said property can be sold in case legal action is taken against Sh. Pardeep Walia, creating hindrance in the process of auction, permission to break open the main gate of Zenith Public School with police help be allowed, a proper and wider publicity is required for inviting adequate number of bidders, the executing court has committed a serious error by allowing application of the respondent to put the residential property of the petitioners to auction for realization of the decretal amount by keeping aside plot Nos. 2 and 3, earlier ordered to be sold in auction. It is further submitted that in view of the reports on the warrants issued by the court as well that of the court auctioneer, action is required to be initiated against Sh. Pardeep Walia.

I have heard counsel for the petitioners and perused the records with his assistance.

Counsel for the petitioners, in response to a query raised by the Court has informed that an amount of more than Rs. 70 lacs is outstanding

against the judgment debtors on the basis of an arbitral award passed in favour of the decree holder. He has also not disputed that the property which was earlier ordered to be auctioned for realization of the decretal amount as well as the house now ordered to be put to auction were mortgaged with the decree holder for repayment of the loan.

The executing court has noticed that a dispute is pending in the civil court qua the property earlier ordered to be sold as Pardeep Walia claims possession of the said property on the basis of registered lease deed dated 6.12.2004. Since the said property has been twice put to auction and is under litigation, no bidder agreed to bid for the same. As per report of the Bailiff, the said property is in possession of Pardeep Walia who has installed a gate and, therefore, did not allow the court auctioneer and the judgment debtors to have an access to the property.

Counsel for the petitioners has not denied that such a civil suit is pending in the court whereby Pardeep Walia claims his possession on the basis of registered lease dated 6.12.2004 purported to be executed by the vendor of the petitioners. Once the property(s) ought to be sold for realization of a decretal debt, is already subject matter of litigation before a court of law and two efforts made by the Court for auction of the said property have proved futile. I do not find any error much less illegality in the order passed by the executing court for auctioning other property of the petitioners for realization of decretal amount. I would hasten to add that as the petitioners have mortgaged both the properties in favour of their creditor M/s HBD Financial Services Limited for repayment of the loan amount, the petitioners cannot make a choice as to which property should

be put to auction for realization of the decretal amount.

This apart, the Court proposed to counsel for the petitioners that in case the petitioners furnish an adequate security for repayment of the outstanding liability, they can be permitted to alienate plot nos. 2 and 3 at their own level and deposit sale consideration in the Court for satisfaction of the award passed in favour the decree holder. Counsel has expressed inability of the petitioners to furnish any security or sell plot nos. 2 and 3 themselves.

Taking a commutative view of the facts and circumstances discussed hereinbefore, the petitioners cannot be allowed to escape their liability by insisting upon that firstly plot Nos. 2 and 3 should be put to sale and if outstanding liability is not satisfied only then the residential house of the petitioners be sold.

For the foregoing reasons, I do not find any merit in the petition much less illegality in the impugned order. As a result, the petitions are dismissed.

(Rekha Mittal)
Judge

1.3.2016
paramjit