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

C.R. No.186 of 2011 (O&M)
Date of Decision.19.10.2016

M/s Raj Industries ....Petitioner

Vs

Union Bank of India and others ....Respondents

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Pankaj Gupta, Advocate
for the petitioner.

Mr. Yogesh Goel, Advocate
for the respondent-Bank.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner-judgment debtor is aggrieved of the impugned order whereby his objections against the auction of the property and appeal filed against thereto, have been dismissed.

Mr. S.K. Garg Narwana, learned Senior Counsel assisted by Mr. Pankaj Gupta, Advocate appearing for the petitioner submits that the bank had filed the civil suit bearing No.189 of 1993 for recovery of the amount of ₹9,17,950.50 by invoking the provisions of Section 34 of the Code of Civil Procedure. The suit was decreed vide judgment and decree dated 15.01.1994. In the meantime, Recovery of Debt Tribunal Act, 1993 came into force and the matter was referred to DRT, Jaipur. Before the matter could be transferred, application under Order 9 Rule 13 CPC was moved but the same had also been dismissed. In fact, order of the DRT dated 11.07.1997 was suffering, from following, irregularities:-

(i) Land measuring 4 kanals 6 marlas was mortgaged whereas 8 kanals 14 marlas of land has been put to auction.

(ii) The objections under Rule 61 of the Income Tax Rules as applicable were moved within a period of 30 days on 26.02.1998, the same has erroneously been dismissed.

(iii) The Debt Recovery Tribunal had not taken into consideration another aspect that in view of the transfer of the judgment and decree, the DRT was required to issue recovery certificate. In the absence of the same, the judgment and decree of the trial Court could not have been executed in the manner and mode indicated above.

(iv) No doubt, as per the statutory requirement, 5% of the total amount was required to be deposited, the same was deposited on 31.08.2006.

All these facts have not been appreciated by the Debt Recovery Tribunal, thus, urges this Court for setting aside the same and remitting back the matter to the DRT in view of the aforementioned aspects.

Per contra, Mr. Yogesh Goel, learned counsel appearing for the respondent-Bank submits that the petitioner had not mortgaged the property with the respondent-Bank but also with other bank i.e. State Bank of India but since the petitioner was in default, the aforementioned suit was filed in the first instance. Even other banks had also initiated proceedings and objections filed but the same have been dismissed. The objection of the petitioner is not maintainable as it was not accompanied by statutory amount and the limitation for depositing the same as per Article 127 of the

Limitation Act is 60 days. The submissions of the petitioner are totally baseless and frivolous, much less, not sustainable, for, the petitioner for the purpose of obtaining the loan mortgaged another area of 4 kanals 6 marlas, total 8 kanals 14 marlas and therefore, the plea of putting the property in auction more than what has been mortgaged, is totally baseless, thus, urges this Court for confirming the finding under challenge.

As regards the issuance of recovery certificate, he submits that it is a procedural lapse/irregularity which can be rectified at any point of time.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Narwana, learned Senior Counsel, for, the objections admittedly were filed within 30 days from the date of the auction which was conducted on 28.01.1998 but the same was not accompanied by the statutory amount as provided under Rule 61 of the Income Tax Act, 1961 which is para-materia of provisions of Order 21 Rule 89 CPC. The aforementioned objection not accompanied by statutory amount, cannot be treated to be maintainable as it is mandatory requirement of law. Admittedly/concededly, the amount of ₹17 lacs and odd amount was deposited on 31.08.2006. In one of the matters taken up in appeal against the order dated 03.12.2009 passed in Execution Petition No.52 of 1984 titled "State Bank of India Vs. M/s Super Diesel Vertical Engine Manufacturing Company and others" whereby objections filed by the third party were accepted and in the appeal, the details of property mortgaged was surfaced as under:-

> "Ex.R22 reveals the details of the mortgaged property are as under:-
>
> "**Khewat /Khatauni No.** **Rect. No.** **Kill No.**

99/104	31	17/1/1/1(0-8) 17/1/2(1-4) 24/2/1(2-14)

Total:4 kanals 6 marlas i.e.2600 sq. yds. appx. situated in Mauja Fatehpur Chandela.

Ex.R23 reveals the details of the mortgaged property are as under:-

"**Khewat /Khatauni No.**	**Rect. No.**	**Kill No.**
99/104	32	17/1/1/1(0-8) 17/1/2(1-4) 24/2/1(2-14)

Total:4 kanals 6 marlas i.e.2600 sq. yds. appx. along with house No.307,situated in Mauja Fatehpur Chandela.

In fact, the petitioner had mortgaged land measuring 4 kanals 6 marlas in khewat No.99/104 rect. No.31 and another piece of land bearing rect. No.32 i.e. 4 kanals 6 marlas, in all it is 8 kanals 14 marals, thus, there is no force in the submission of Mr. Narwana, learned Senior Counsel regarding the auction of more property than the mortgaged one.

As regards the non-issuance of recovery certificate, I am of the view that the aforementioned aspect is purportedly a procedural irregularity, particularly when there is already a judgment and decree of the trial Court dated 15.01.1994 passed in the civil suit aforementioned. In my view, the objections are not only devoid of merit but misconceived.

I do not find any error in the order under challenge, much less, the order cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

October 19, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes