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

CR-3661-2012 (O&M)

Date of decision : 28.01.2016

M/s Guru Nanak Foundry and Workshop and another

...Petitioners

Versus

Oriental Bank of Commerce and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Giri, Advocate
for the petitioners.

None for the respondent-Bank.

Mr. I.P.S. Doabia, Advocate
for the applicant-PFC.

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?

AMIT RAWAL, J. (ORAL)

CM-15322-CII-2014

Prayer in this application is for adding the applicant Punjab Financial Corporation (respondent No.2.) as a necessary and property party for adjudication of the *lis*.

For the reasons stated in the application, the application is allowed subject to all just exceptions.

CM stands disposed of.

CR-3661-2012

The petitioners are aggrieved of the impugned order

dated 03.02.2012 whereby the application dated 15.11.2007 filed by the respondent-Bank i.e. Oriental Bank of Commerce (hereinafter called 'Bank' directing the Record Keeper to return the original sale deed , has been allowed.

Mr. Ashok Giri, learned counsel appearing on behalf of the petitioners, submits that the petitioners had obtained a loan from the Bank and in lieu thereof, sale deed Ex.P-5 was mortgaged with the Bank. Since, there was a breach of the payment of loan installments, the Bank instituted a suit. However, during the pendency of the suit, the matter was compromised which resulted passing of the decree dated 23.09.2003 vide which the defendant agreed to pay the entire compromise amount to the bank, and the Executing Court vide order dated 28.05.2007 directed the Record Keeper to release the original sale deed in their favour. Therefore, an application at the instance of the Bank for retaining the sale deed/not returning the same, was not maintainable and prays for setting aside of the order.

There is no representation on behalf of the Bank, despite having been served as per the service report dated 09.09.2013.

Mr. I.P.S. Doabia, learned counsel appearing on behalf of the Punjab Financial Corporation (hereinafter called 'PFC'), submits that the Bank in many correspondence had undertaken to give the original sale deed aforementioned, as the judgment-debtor had also taken a loan, in essence, PFC had a second charge on the aforementioned property, and, therefore, the aforementioned sale

deed cannot be returned to the petitioner-judgment debtor and rightly so, the application has been allowed. In support of his contentions, he has drawn the attention of this Court to the provisions of Order 13 Rule 9 CPC and prays for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

It is matter of record that the trial Court vide order dated 28.05.2007 directed the Record Keeper, after receiving the report, to return the original sale deed to the petitioners.

The aforementioned order has attained finality. The second application, in my view, without recalling of the order aforesaid, much less, challenging the same amounts to review of the order which is not sustainable. The alleged undertaking of Bank given to PFC has not been disclosed to the Court at the relevant point of time.

There is no dispute to the provisions of Order 13 Rule 9 CPC. Since, the petitioners-defendants compromised the matter and in lieu thereof, the Bank received the agreed amount as per the compromise decree dated 23.09.2003 and in view of the order dated 28.05.2007, in my view, the application of the Bank was not maintainable. The trial Court, in my view, has committed illegality in allowing the application without noticing the aforementioned facts, though there is a passing reference.

Keeping in view the aforementioned facts, the impugned

order dated 03.02.2012 allowing the application dated 15.11.2007 filed by the respondent-Bank directing the Record Keeper to return the original sale deed, is hereby set aside.

With the aforesaid observations, the revision petition is allowed.

28.01.2016
yogesh

(AMIT RAWAL)
JUDGE