IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.M.No.2222-CII-2016 in/and
CR No.6022 of 2015 (O&M)
Date of decision:29.02.2016

Rakesh Yadav ... Petitioner

Vs.

M/s Mahindra & Mahindra Finance India Ltd. & another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Sachin Mittal, Advocate
for the applicant/petitioner.

Mr. Nitin Thatai, Advocate
for respondent No.1/applicant.

AMIT RAWAL J. (Oral)

C.M.No.27406-CII-2016 and
C.M.No.2222-CII-2016

The applications are allowed, subject to all just exceptions. Documents, Annexures R-1 to R-11 are taken on record.

CR No.6022 of 2015 (O&M)

The petitioner-judgment debtor is aggrieved of the order dated 26.08.2015, whereby, conditional warrants in execution of the arbitration award dated 30.12.2009, have been sought to be implemented.

Mr. Sachin Mittal, learned counsel appearing on behalf of the petitioner-judgment debtor submits that during the pendency of the objection, filed in the execution application, a direction was issued to the decree holder to produce the loan file, i.e., in order to prove, whether it contained the entry in respect of full and final payment of ₹7,20,000/- or not. The aforementioned order has already been noticed by this Court in the order dated 15.09.2015. Though the original receipt had not been produced yet conditional warrant of arrest had been issued. He further submits that in evidence, the petitioner has proved the receipt of money for award payment to respondent through testimony of Surinder from whom he had taken the loan, whereas, to a specific question in cross examination of respondent witness, it has unequivocally been admitted that there was an employee, namely, Kailash, to whom the amount was paid, thus, the Court has committed illegality and perversity in dismissing the objections. He further submits that during the pendency of the aforementioned petition, files of 56 cases with regard to extension of loan to various loanees, have been lost, therefore, there is strong presumption in favour of the objector and, thus, urges for setting-aside of the impugned order.

Mr. Nitin Thatai, learned counsel for the respondents submits that vehicles have been sold without NOC. No sane person, who is having valid receipt, would remain silent without asking for NOC. Photocopy of the receipt does not show any contents. The file pertaining to loan transaction along with other files though have been misplaced but ex parte award has attained finality which has not been challenged but only objections to the execution petition have been filed.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit in the aforementioned revision petition. In pursuance to the directions issued by this Court, respondent – Mahindra & Mahindra filed miscellaneous application bearing No.2222-CII-2016 supported by an affidavit, to contend that 56 files pertaining to the loans have been lost. In support of the defence, procedure and practice of receiving the loan amounts from the various loanees have been demonstrated vide application bearing No. C.M.No.27406-CII of 2015. Even receipts, vide which the respondent-decree holders have taken money, show machine number, file number and registration number and denomination received, in case of cash and if through cheques, then cheque number.

It is a matter of co-incident that loan file of present case has unfortunately been lost. The petitioner-judgment debtor is taking advantage of the same, whereas, onus was upon him to prove the same. The petitioner did not pursue for obtaining of the NOC, in order to clear the entry of hypothecation in the registration and without the same sold the vehicle. Witness, AW2- Surinder, who, is stated to have extended loan has not proved any statement of account, or any other independent receipt to show that under which capacity friendly loan or commercial loan was extended. Even the income tax return reflecting the entry showing the payment of aforementioned amount, had not been filed, in order to avoid the same**.** Even no rate of interest, as alleged by the petitioner, for discharging of loan liability has been mentioned.

In view of the aforementioned observations, there is no illegality and perversity in the order under challenge in execution of the conditional bailable warrants.

Accordingly, the revision petition is dismissed.

However, for the sake of adjudication of the lis, one opportunity is granted to the petitioner-judgment debtor to discharge the entire loan liability, in case, JD pays the same within a period of two months from the date of receipt of certified copy of this order, till then, the impugned order shall be kept in abeyance, failing which the impugned order vis-a-vis issuance of bailable warrants shall come into force.

(AMIT RAWAL)
JUDGE

February 29, 2016
savita