IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ESA No.221 of 2016(O&M)

Date of decision:7.11.2016

Kiran Bala …..Appellant

VERSUS

Oriental Bank of Commerce, Sonepat and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Naresh Kaushik, Advocate for the appellant.

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REKHA MITTAL, J.

The present appeal directs challenge against orders dated 03.09.2010 passed by the Additional Civil Judge (Senior Division0, Sonepat (hereinafter referred to as 'the executing Court') and dated 16.08.2016 passed by the Additional District Judge whereby the objection petition preferred by the appellant/objector was dismissed and the order passed by the executing Court has been affirmed in appeal.

Counsel for the appellant has submitted that the Oriental Bank of Commerce, Sonepat (insured/bank) filed a suit for recovery of Rs.1,24,832/- under Order 34 of the Code of Civil Procedure, 1908 (in short 'CPC') by sale of mortgaged property against Kapoor Singh Rana-respondent No.2. The suit was decreed vide judgment and decree dated 19.04.2005. The appellant purchased the house in question (house No.334/27) Kalupur, Sonepat from Shanti Devi – respondent No.3 vide registered sale deed dated 08.03.2006 on payment of valuable sale consideration and other expenses. Shanti Devi purchased the said house from Kapoor Singh Rana vide sale deed dated 28.02.2003 through process of the Court in execution of a decree dated 09.09.1999 passed against Sh. Kapoor Singh Rana. It is further submitted that later it was revealed that Kapoor Singh Rana, at the time of purchase of said house from one Sham Lal, obtained a house loan of Rs.95,000/- from the Bank where he was employed. He paid the instalments of loan upto 29.07.1995 and thereafter, became a defaulter. It is further argued that neither Smt. Shanti Devi was aware of mortgage of suit house in favour of the bank qua loan taken by respondent No.3 nor the present petitioner was aware of the said fact nor the factum of mortgage was recorded in the revenue records, therefore, attachment and sale of the suit house for realisation of the decretal amount in execution of the decree passed against Sh. Kapoor Singh Rana would cause a serious prejudice to rights of the petitioner. It is further submitted that the petitioner being a bona fide purchaser without knowledge of an encumbrance upon the house cannot be made to suffer for no fault attributable to him. The last submission made is that the executing Court decided the objection petition without framing issues and providing an opportunity to adduce evidence, therefore, the impugned orders may be set aside and the matter may be remitted to the executing Court for decision afresh, in accordance with law.

I have heard counsel for the appellant, perused the paper-book particularly the orders impugned.

It is an undisputed position of the case that Sh. Kapoor Singh Rana, erstwhile owner of the house in question, raised a loan against mortgage of the house in question in the year 1990. As per plea of the appellant, Kapoor Singh Rana executed an agreement to sell dated

29.10.1992 in favour of Smt. Shanti Devi on the basis whereof Smt. Shanti Devi sought specific performance of the agreement that culminated in the judgment and decree dated 09.09.1999 duly affirmed in appeal by the District Judge, Sonepat. In proceedings for execution of the said decree, sale deed of the suit house was executed in favour of Smt. Shanti Devi. Later, Shanti Devi sold the house to the appellant vide sale deed dated 08.03.2006.

There is no denial that the Bank filed a suit for recovery of Rs.1,24,832/- along with interest with a prayer for realisation of the decretal amount by sale of the mortgaged property. The suit was decreed in favour of the bank and against Kapoor Singh Rana and the proceedings have attained finality. As the suit property stood mortgaged in favour of the bank prior to agreement to sell dated 29.10.1992 purported to be executed by Sh. Kapoor Singh Rana in favour of Smt. Shanti Devi, the appellant cannot escape his liability qua satisfaction of the decretal amount by attachment and sale of the house in question, admittedly mortgaged in favour of the bank. In this view of the matter, I find myself unable to accept the submissions made by counsel for the appellant that the orders impugned are liable to be set aside on any score whatsoever or the matter is liable to be remitted to the executing Court for decision afresh after framing of issues and adducing evidence.

To be fair to the appellant, counsel has referred to judgment of Kerala High Court **Francis Vs. Navodaya Kuries & Loans, 2010 (4) CCC 76**. The referred authority deals with an entirely different controversy and has got no bearing on the facts of the case in hand.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in *limine*.

NOVEMBER 7, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no