IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4394 of 2012
DATE OF DECISION: October 7,2016

Jagmohan Kataria and others

…Appellants

versus

State of Punjab and others

…Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Aakash Singla, Advocate for the appellants.
Mr.Amit Chaudhary, Addl.A.G., Punjab.

AMIT RAWAL, J.

The appellants-plaintiffs are aggrieved of the judgment and decree dated 5.5.2012 rendered by the lower Appellate Court whereby the judgment and decree of the trial Court has been set aside.

Mr.Aakash Singla, learned counsel appearing for the appellants submits that a suit for permanent and mandatory injunction was filed on the ground that the Private Limited Company known as Astra Pharmaceutical Company had availed the loan facility of Rs.3,24,000/- in the year 1978. The Company raised the loan from defendant No.3, namely, Director, Industries & Commerce, Punjab, Chandigarh. The

Company could not run for profit despite the hard labour done by the Managing Director. The loan obtained by the aforesaid Company was not paid, therefore, the necessity arose for the issuance of recovery certificate by defendant No.3 which was sent to the Collector for recovering the amount by adopting any mode, including the mode of recovery as arrears of land revenue. The recovery of the principal amount was to be recovered from the Company and, therefore, no recovery could be made from the plaintiffs being the Directors of the Company. However, defendant No.2 was recovering the principal amount along with interest by adopting the mode of recovery as arrears of land revenue. He submits that the trial Court had passed an innocuous decree restraining the defendants No.1 and 2 from causing any recovery of the alleged loan amount along with interest on the basis of recovery certificate issued by defendant No.3 for recovery of the amount by any mode of recovery, including the mode of recovery of land revenue from the plaintiffs in personal capacity and further issued mandatory injunction to defendant No.3 to withdraw its recovery certificate. The liberty was given to the defendants to recover the amount from the assets of the company and recovery can also be secured from the property/assets of the company. However, the learned First Appellate Court came to the conclusion that recovery of principal amount along with interest can be made by adopting the mode of recovery as arrears of land revenue from the debtors from the movable and immovable assets. It further came to the conclusion that no recovery is to be made from the personal properties of the plaintiffs. He submits that once the mortgage property of the Company is available, nothing prevents from securing the loan amount by selling the same. The Appellate Court while allowing the appeal in part has given the following observations:

> "....the findings of the learned trial Court on issues No.01 and 02 are set aside holding that the defendants are at liberty to proceed ahead into the matter and make recovery of its dues from the debtor company. No arguments were advanced on issue No.03 before me at the time of arguments and, therefore, the findings recorded by the learned Lower Court on this issue stands upheld."

Thus, the findings of the Appellate Court are under challenge.

Mr.Amit Chaudhary, learned Additional Advocate General, Punjab appearing for the respondents submits that the recovery certificate is always issued after making all efforts in accordance with law.

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

The clause 5 of the mortgage deed dated 6.6.1988 provides that in case the mortgagor or his company or the unit is shut down permanently or closes the business due to any other reason, the loan would be recovered with penal interest @16% per annum in lump-sum.

During the course of arguments, Mr.Singla has also relied upon the provisions of The Punjab Public Moneys (Recovery of Dues) Act, 1983, particularly, Section 3 to contend that where any person is a party to any agreement, relating to a loan, advance or grant given, or relating to credit in respect of, or relating to hire-purchase of goods sold by the State Government, a banking company, a Corporation or a Government company, as the case may be, makes a default of repayment of loan, in that case, the State Government or the authroised officer on behalf of the State Government, may send a certificate to the Collector mentioning the sum due from the such person. Sub section 3(b) of the aforesaid Section provides that in every case of a mortgage, change or other encumbrances on immovable property, such property or, as the case may be, the interest therein of the person referred to in sub section (1) shall first be sold in proceedings for recovery of the sum due from that person and any other proceedings. He submits that once the mortgage property is available, there was no occasion for defendant No.3 to issue certificate against the personal property of the plaintiff-appellants.

Having given my thoughtful consideration to the arguments, I am of the view that the aforesaid findings of the learned First Appellate Court are perfectly in accordance with law. In case the loan amount is realised by the respondents from the mortgaged property, perhaps, there would be no grievance of the plaintiffs-appellants and if otherwise, they shall be at liberty to seek recovery in accordance with law.

With the aforesaid modification in the judgment and decree of the learned First Appellate Court, the present appeal stands disposed of.

October 07,2016 (AMIT RAWAL)
KD JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No