

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.25110 of 2012 (O&M)
Date of decision:13.02.2017

Pritpal Singh

... Petitioner

Vs.

Sub Divisional Magistrate-cum-Collector, Mohali and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H.B.S.Baidwan, Advocate
for the petitioner.

Mr. R.S.Chauhan, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

C.M.No.1470 of 2017

The present application is being moved for recalling of the order dated 17.01.2017 on the premise that the respondents had made incorrect statement owing to the fact that cause in the writ petition had become infructuous in view of the fact that the Sub Divisional Magistrate, who was ceased of the matter in respect of the petition filed for seeking the redemption of the mortgage had already passed the order dated 24.11.2016 (Annexure P-14).

Mr. Baidwan submits that the aforementioned order had been obtained at his back.

I am in agreement with the aforementioned argument of Mr. Baidwan as he submits that the application according to his client and

his arguments before the Competent Court was without jurisdiction.

In order to give justice and prevent mis-carriage of justice, much less not leaving the parties remediless, I deem it appropriate to recall the order.

CWP No.25110 of 2012 (O&M)

Mr. Baidwan, learned counsel appearing on behalf of the petitioner submits that vide order dated 08.11.2012 (Annexure P-9), the application for redemption, has been dismissed. He submits that this case has a chequered history. Earlier erstwhile vendees of the respondents had moved an application of similar nature on 21.03.1987 seeking redemption of the mortgage. The same was dismissed in default on 11.10.1998. The period of 12 years in the meanwhile had been elapsed. The petitioner had filed a civil suit seeking declaration to the effect that mortgagor had lost the right of seeking redemption. The aforementioned suit resulted into passing of the ex-parte judgment and decree dated 20.09.2011. Thereafter, the petitioner is stated to have sold the land to the bonafide purchaser.

However, the aforementioned land was sold by original mortgagee to the present respondents, who filed a petition seeking redemption before the Sub-Divisional Magistrate on 01.08.2012. The aforesaid petition was not maintainable as it was filed after a lapse of 24 years. A specific objection qua maintainability of suit was taken but the same vide impugned order has been dismissed. The aforementioned order was challenged in this Court. In the meanwhile, the respondents had also availed the remedy by filing a writ petition bearing No.8189 of 2013,

whereby, the concerned SDM keeping in view the factum of pendency of the present writ petition, adjourned the matter sine die. However, without informing the Court regarding the pendency of the present writ petition, the aforementioned writ petition as indicated in the application was withdrawn, vide order dated 5.12.2016 on the premise that the main redemption application has been decided, vide order dated 24.11.2016 (Annexure P-14).

He has also brought to the notice of this Court that both the writ petitions, i.e., present one and 8189 of 2013, were ordered to be heard together. This fact was not brought to the notice of the Court while withdrawing the writ petition bearing No.8189 of 2013. However, in the present application, it has been brought to the notice of the Court that prior to 05.12.2016, an order in C.M.No.4233 of 2016 came to be passed in the presence of the parties in CWP No.8189 of 2013 that the proceedings before the authority was almost near culmination and this Court had given the liberty to pass a final order, thus, there is gross abuse of process of law, once the writ petition was pending, the authority should not have passed the order. The respondents are playing hide and seek and trying to mislead this Court, therefore, the second application for redemption was liable to be dismissed on this ground alone.

Mr. R.S.Chauhan, learned counsel appearing on behalf of the respondents submits that the aforementioned order is appealable either by way of suit or any other remedy under Section 12 of the Redemption of Mortgage (Punjab) Act, 1913. He further submits that the limitation for filing a civil suit is still not being lost. The warrant of possession has been

issued in pursuance to the passing of the impugned order. The petitioner can seek the liberty, in accordance with law.

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

For the sake of brevity, the order dated 27.08.2016 extracted in the application is reproduced herein below:-

“C.M.-4233-CWP-2016 in CWP – 8189-2013

Dalbir Singh and another

vs.

Sub Divisional Magistrate cum Collector and others

Present: Mr. R.S.Chauhan, Advocate for the applicant-petitioner(s).

Mr. V.Ramswaroop, Addl.A.G.Punjab.

Mr. H.S.Baidwan, Advocate for respondents No.2, 4 and 5.

Learned counsel have informed the Court that the Court that proceedings before the Sub Divisional Magistrate, SAS Nagar, Mohali are nearing culmination.

Only order remains to be pronounced.

Adjourned to 11.11.2016.

It is made clear that the said authority shall be at liberty to pass the final order.

Sd/-

(Rajan Gupta)

Judge

August 27, 2016”

Once the aforementioned order had been passed in the presence of the counsel representing the petitioner, this writ petition was automatically liable to be rendered infructuous as there is no interim order or stay of further proceedings. Even the petitioner did not make any attempt to submit an application for stay. After having conceded the factum of continuation of the proceedings before the Sub Divisional Magistrate but the fact remains that there cannot be any abuse of process of law. It is conceded position on record that the order dated 24.11.2016 (Annexure P-14) has been passed which is challengeable in a civil suit. Thus, the petitioner is relegated to avail the remedy in accordance with law but not in the manner and mode as indicated in the application.

Accordingly, the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

February 13, 2017
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No