IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ESA No.66 of 2015 (O&M)
Date of Decision: 11.10.2017

Surinder Kaur

......Appellant

Vs

Punjab and Sind Bank

....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. B.B. Bagga, Advocate
for the appellant.

None for the respondent.

****

RAJ MOHAN SINGH, J.

CM No.14574-C-of 2015

For the reasons mentioned in the application, delay of 51 days in re-filing the appeal is condoned.

Application stands disposed of.

ESA No.66 of 2015 (O&M)

[1]. Appellant has filed this appeal against the judgment dated 30.05.2015 passed by the Addl. District Judge, Chandigarh and order dated 10.03.2014 passed by the Civil Judge (Jr. Divn.) Chandigarh, whereby the objections under Order 21 Rule 58 read with Section 151 CPC were dismissed by

the executing Court and the same was upheld in appeal.

[2]. Learned counsel for the appellant submitted that the appellant is neither a judgment-debtor, borrower nor a guarantor in the instant case. Husband of the appellant had made certain transactions in the account which were treated to be as fraudulent by the decree-holder Bank. FIR was registered against the husband of the appellant in respect of said entries. The criminal prosecution arising out of the FIR ultimately resulted in acquittal of the husband of the appellant on 28.11.2008. The suit was filed by the Bank ultimately resulted in *ex parte* decree dated 04.02.2002 against the husband of the appellant. The appellant filed an application for setting aside the *ex parte* order and decree which was pending before the Civil Judge (Jr. Divn.) Chandigarh. The husband of the appellant was dismissed from the service of Bank on 26.05.1997 and he remain unemployed throughout. He also developed serious health problems and remained hospitalized including in PGI, Chandigarh. He could not get any re-employment being dismissed employee.

[3]. Learned counsel further submitted that the appellant was serving as an Associate Professor and from her earnings and savings, she brought up the children and also acquired household articles. These articles were not related to the

subject matter of the *lis* arising out of the action initiated by the Bank. She filed objection petition (3rd party objection) under Order 21 Rule 58 CPC read with Section 47/141 CPC in the execution filed by the decree-holder Bank. In the execution the articles which were purchased by the objector/appellant were attached and the same were delivered to the appellant on *Superdari* on 04.01.2012. The articles so attached were to the following effect:-

"(a)	*One Fridge Samsung company*	*Rs.18,000.00*
(b)	*One colour television L.G. company*	*Rs.28,000.00*
(c)	*One washing machine Samsung company*	*Rs.22,000.00*
(d)	*One Air Conditioner 1 Tone*	*Rs.8,000.00*
(e)	*One Dining table with chairs*	*Rs.10,000.00*
(f)	*One complete sofaset*	*Rs.12,000.00*
(g)	*Double Bed two wooden*	*Rs.12,000.00*
(h)	*Steel Almirah one*	*Rs.3,000.00*
(i)	*Two geyser*	*Rs.1,000.00*
(j)	*Five fans different make*	*Rs.2,500.00*
	Total	*Rs.1,16,500.00*

[4]. Learned counsel submitted that out of the aforesaid household articles, some of the articles were given to the appellant in the marriage being dowry articles and the remaining articles were acquired and purchased by the appellant through her own sources. The bills relating to the articles mentioned at serial No.(a) to (g) except item (d) were produced by the

objector which were indicative of the fact that the ownership was with the objector. The aforesaid household articles did not belong to the judgment-debtor. The objector/appellant was working as Associate Professor in Government College, Mohali for the last 20 years and she was earning good salary. The salary of the appellant was Rs.99,803/- and the household articles were either purchased by the appellant or some of the articles were given to her in dowry. None of the articles threatened to be attached were belonging to the judgment-debtor.

[5]. Learned counsel further submitted that the decree dated 04.02.2002 was assailed by the husband of the objector in separate proceedings and the application for setting aside the same was also pending before the competent Court. The objector was not liable to pay any amount to the bank, nor the articles which were exclusively owned and possessed by the objector could have been made subject matter of attachment. Husband of the appellant was the judgment-debtor, who was doing service with the decree-holder Bank. Since 1995, the judgment-debtor was without any regular employment and income. The judgment-debtor contested the legal battle and remained hospitalized after incurring heavy expenditure. The attachment order dated 15.11.2012 and consequential

attachment in respect of aforesaid household articles were totally unwarranted.

[6]. Learned counsel for the appellant submitted that endorsement on the bills were duly admitted by the Bank Manager while appearing as RW-1, therefore, execution of these bills and receipts was not required to be proved being the admitted documents.

[7]. The objections were filed by the objector in that context before the executing Court and the same were dismissed as pre-mature by the Court on the premise that the attachment has not been effected in pursuance to the orders. Thereafter objections were filed after the execution of warrant of attachment and the same was contested by the decree-holder Bank and the executing Court noticed the fact that the marriage of the judgment-debtor was solemnized with the objector in the year 1979. The objector made statement that two fans and one geyser were given to her as dowry articles in her marriage, but the same were not found 34 years old, therefore, the statement was found to be wrong in the context of air conditioner and geyser on the factum of gift made to her after the marriage by her parents and on various occasions. The verification of bills of M/s Electroage could not be made as the same was lying closed since 3-4 years back and the furniture shop was also not found

on the given address. The Court ultimately opined that the bills were fabricated and were not issued by the M/s Sundeep Electric & General Store and M/s Citizen Furniture Industries. It was also recorded that the bills were fabricated to misled the Court. The Court also held that the execution was filed in the year 2002 and the same was lingering on, on one pretext or the other. Objector had all the opportunities to prove her ownership as the issues were framed. Instead of getting opportunity throughout, the objector has only placed some bills qua the articles in question, but failed to examine any witness to prove authenticity and genuineness of the bills. The objections were dismissed and the said order was upheld by the Addl. District Judge, Chandigarh vide judgment dated 30.05.2015. That is how the present appeal came to be filed.

[8]. I have head learned counsel for the appellant.

[9]. Before the executing first Appellate Court, none appeared on behalf of the decree-holder Bank and the judgment was passed *ex parte*. In the present appeal notice of motion was issued on 01.12.2015 and thereafter respondent-decree holder was duly served. However, there was no representation on behalf of the respondent-Bank thereafter.

[10]. Apparently the household articles have already been

released on Superdari to the appellant and the criminal case registered against husband of the appellant ultimately resulted in acquittal of the husband. Thereafter only controversy was whether the appellant was owner of the articles. The statement of RW-1 i.e. Bank Manager was required to be appreciated by the Courts below in its letters and spirit. The Bank Manager has admitted the execution of bills and receipts purchased by the appellant. The Courts below were not justified in ignoring the admission made by the witness of the decree-holder. Once the execution of bills/receipts was admitted, thereafter being an admitted issue, the bills and receipts were not required to be proved in terms of their execution. The Courts below have recorded the findings only on the premise that the bills and receipts in respect of purchases of the articles were not proved by the appellant. The articles in question are such which cannot be conclusively held to be owned by the judgment-debtor particularly when he was out of job since the year 2005 and the objector/appellant on the other hand was serving as Associate Professor in the Government College.

[11]. Since the attachment was effected only after 03.12.2011, therefore, filing of objection on 07.01.2012 cannot be held to be belatedly filed. The first objection petition filed on 12.10.2011 by the appellant was dismissed on 03.12.2011 on

the ground as the same being premature. The articles so attached cannot be presumed to be under the ownership of judgment-debtor as no material was produced by the decree-holder on record.

[12]. On the other hand, the bills and receipts produced by the objector/appellant were not challenged by the decree-holder Bank inasmuch as that one of the witness of the decree-holder i.e. Bank Manager while appearing as RW-1 admitted the execution of bills and receipts. The fact once admitted was not required to be proved by way of any evidence, rather the evidence in the form of bills and receipts was conclusive enough to project a case of detachment of the attached articles. The household articles threatened to be sold were never purchased by the judgment-debtor, who was totally unemployed after his dismissal from service, rather these articles were purchased by the objector from her own resources, therefore, the intended attachment and consequential sale were totally on wrong premise. The appellant was neither a judgment-debtor, nor a guarantor in any manner. No summons were ever served upon the appellant. The appellant was also proceeded against *ex parte* at the instance of decree-holder in the suit. The acquittal ultimately entailed in projecting a *mala fide* attitude on behalf of the complainant-Bank and the very foundation of the claim

raised by the Bank stood demolished. The action of the decree-holder did not stand to test of judicial scrutiny.

[13]. In view of facts and circumstances of the case, I deem it appropriate to accept the present appeal. This appeal is allowed and the impugned orders are set aside. However, with a liberty to the decree-holder to execute the decree from the assets of the judgment-debtor in accordance with law.

October 11, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

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