IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.1670 of 2014 (O&M)
Date of Decision.13.12.2018

M/s Dharam Pal Mahesh Kumar, Commission Agent ....Petitioner

Vs

Satpal ...Respondent

2. **C.R. No.2039 of 2014**

M/s Dharam Pal Mahesh Kumar, Commission Agent ....Petitioner

Vs

Satpal ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naveen Gupta, Advocate
for the petitioner.

None for the respondent.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two revision petitions bearing No.2039 of 2014 and 1670 of 2014 preferred at the instance of the petitioner-decree holder.

The petitioner-plaintiff succeeded in suit claiming ₹1,80,000/- along with interest @9% w.e.f. 03.06.2002 vide Anexure P-4 and execution application under Order 21 Rule 11 CPC was filed along with list of properties of respondent-JD. Vide order dated 28.08.2012, the Executing Court directed the bailiff to attach the property of the JD to the extent of ₹2,84,049/- and adjourned the matter to 01.09.2012 for awaiting the report. Vide order dated 01.09.2012, after receiving the warrant of attachment which was duly effected, issued the schedule of auction, in the following manner:-

Court House	Spot	Auction	Report
8.9.2012	12.9.2012	27.9.2012	29.9.2012

The Executing Court vide impugned order dated 23.03.2013 dismissed the execution application for non-compliance of deposit of process fee, list of properties and munadi fees. Vide order dated 13.08.2012, the trial Court dismissed the application for issuance of warrant of attachment against the property of judgment debtor on the premise that the judgment debtor had already executed the release deed in his favour of his son vide released deed dated 18.03.2004.

It was contended that the respondent-judgment debtor had executed the pronote and receipt on 26.04.2002 and the suit was filed on 25.04.2005. Therefore, the aforementioned act of release deed was a fraudulent transaction as per the provisions of Section 53 of the Transfer of Property Act. In support of the aforementioned submissions Mr. Naveen Gupta, relied upon judgments passed by this Court in ***Smt. Shallo Devi and another Vs. Mohinder Singh and others AIR 1971 P&H 325*** and ***Waryam Singh alias Barwam Singh Vs. Rameshwar Dass and another (1989-2) Vol.XCVI PLR 68***.

It was next contended that even if provisions of Section 53 were not applicable, the execution application could not have been dismissed as the aforementioned money could be recovered through the assets of the judgment debtor.

There is no representation on behalf of the respondent despite service. The revision petition is of the year 2014 and therefore, I proceeded to decide the same.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit. It would be apt to reproduce Section 53 of the Transfer of Property Act, which reads as under:-

> *"53. **Fraudulent transfer**.— (1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.*
>
> *Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.*
>
> *Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.*
>
> *A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.*
>
> *(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.*
>
> *For the purposes of this sub-section, no transfer made without consideration shall be deemed to have*

been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

It is far fetched to form an opinion that the release deed dated 18.03.2004 was a fraudulent transfer as pronote was of 26.04.2002 whereas the suit was filed almost a year after the release deed. Even provisions of Order 38 Rule 5 CPC dealing with attachment before decree could not be invoked as the judgment debtor did not have any title and interest in the property. Plaintiff has not been able to prove on record that execution of the release deed was actuated from malice or intention to defraud. In other words, to ward off the liability *vis-a-vis* the property belonging to judgment debtor. There is no dispute to the ratio decidendi culled out in the judgments referred to supra, as the facts revealed that it was during the pendency of the case and close to the transaction, which is not in existence in the present case.

The orders dated 13.08.2012 and 07.11.2013 rejecting the application for attachment of the property allegedly belonging to the judgment debtor and affirmed by the lower Appellate Court, impugned in C.R. No.1670 of 2014 do not suffer from any infirmity and illegality and the same is hereby dismissed.

As regards C.R. No.2039 of 2014, I deem it appropriate to grant two effective opportunities to the petitioner to initiate action in execution application by seeking attachment of other immovable or movable property of the judgment debtor in accordance with law or detention in case of default. The trial Court could not have been harsh in dismissing the execution application.

In view of the aforementioned facts, the impugned orders dated 23.03.2013 and 25.11.2013 are hereby set aside and the execution application is restored on file with a direction to be decided in terms of the direction given herein above.

Resultantly, C.R. No.2039 of 2014 is disposed of.

(AMIT RAWAL)
JUDGE

December 13, 2018
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No