

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 113

CR-4194-2018 (O&M)

Date of decision : 05.07.2018

Achhra Singh

..... Petitioner

VERSUS

Surjit Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Lakhwinder Singh Mann, Advocate, for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The factual matrix of the matter in brief which needs to be noticed for adjudicating upon the present petition is that the respondent had instituted a suit for recovery against the petitioner which was decreed by the Trial Court on 27.01.2017. Such judgment and decree was challenged in appeal by the petitioner. The appeal was admitted and is now listed for arguments on 07.08.2018. In the meanwhile, in execution of the aforesaid judgment dated 27.01.2017, the Executing Court has directed the property of the petitioner to be sold in auction. This order passed by the Executing Court has been challenged in the present proceedings.

Learned counsel for the petitioner submits that the Executing Court has erred in directing the auction of the petitioner's property during the pendency of the appeal filed by the petitioner against the judgment and decree dated 27.01.2017, specially when such appeal had been admitted and is listed for final arguments. He further submits that alongwith his appeal the petitioner had filed an application seeking stay of the aforesaid

judgment and decree on which no order has been passed by the Appellate Court. According to learned counsel, in the absence of any order passed by the Appellate Court on his application for stay, the Executing Court acted in haste to direct auction of the petitioner's property in execution of the decree under appeal. In support of his contentions, learned counsel for the petitioner has cited the following judgments:-

1. Mool Chand Yadav and another vs. Raza Buland Sugar Co. Ltd. Rampur and others (1982) 3 SCC 484; and
2. Ashwani Kumar Bindra vs. Satish Kumar and another, 2018 (2) Law Herald (P&H) 1253.

In ordinary course, before approaching this Court through the present petition the petitioner should have pressed and invited an order by the Appellate Authority on the application for stay filed by him alongwith his appeal. There is nothing on the record to show that the stay application was pressed before the Appellate Court. The same remains pending. No order has been passed by the Appellate Court either rejecting or accepting the application filed by the petitioner seeking interim protection during the pendency of his appeal. The petition is premature. Accordingly, the petitioner is relegated to seek his remedy for the grant of stay of the aforesaid judgment and decree dated 27.01.2017 before the Appellate Court where his appeal is admittedly pending.

In the peculiar facts of the present case where the auction of the petitioner's property is stated to be on 05.07.2018 i.e. today itself, to effectively enable the petitioner to avail of his remedy as above, this Court is of the view that the ends of justice would be served if the operation of the order dated 14.05.2018 (Annexure P-5), passed by the Executing Court is

stayed only for a period of two weeks from today.

It is, however, clarified that this Court has expressed no opinion on the merits of the matter and that the above directions granting stay for a period of two weeks are purely on the basis of the peculiar facts of the present case and as noticed above only to enable the petitioner to avail of his aforesaid remedy.

The petition stands disposed of accordingly.

05.07.2018
shamsher

[DEEPAK SIBAL]
JUDGE

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