

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No.4546 of 2006 (O&M)
Date of Decision:18.12.2018**

Liyakat and others

...Petitioners

Versus

Oriental Bank of Commerce and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sanjiv Gupta, Advocate for the petitioners.
Mr.C.B.Goel, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

The judgment debtors are in the revision petition against the order passed by the executing court, dismissing their objections and which have been upheld in the appeal.

A suit for recovery was filed by the Oriental Bank of Commerce on the basis of amount borrowed by executing a mortgage-deed. The suit was decreed on 16.5.1988. The property in dispute was put to auction on 15.10.2005. The report was submitted to the court on 31.10.2005. Thereafter the parties proceeded in the wrong direction. An application was filed by the judgment debtors on 19.10.2005 under Order 21 Rules 89 and 90 of the Code of Civil Procedure and deposited 25% of the decretal amount. On 11.11.2005, the judgment debtors deposited the entire amount with the decree holder, i.e. Bank, which withdrew the execution petition on 23.1.2006.

The judgment debtors also filed an application for dismissal of the execution petition on 3.1.2006.

The learned executing court dismissed the objections filed by the judgment debtors vide order dated 17.3.2006 and confirmed the auction. Appeal against same has been dismissed.

It may be noted that during the pendency of the appeal, application has been filed by the judgment debtors-petitioners that they are ready to deposit 5% of the amount as required under Order 21 Rules 89(1)(a) of the Code of Civil Procedure.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the orders passed by the courts below.

In the considered view of this Court, both the courts have overlooked the fact that the suit was under Order 34 of the Code of Civil Procedure and not a simpliciter suit for recovery of the amount. Once the suit was for recovery, in alternative sale of the property mortgaged, such suit would be governed under Order 34 of the Code of Civil Procedure and it cannot be treated as a simpliciter suit for recovery.

Hon'ble the Supreme Court, while interpreting the provisions of Order 34 Rule 5 of the Code of Civil Procedure, has gone to the extent of laying down that if the appeal against the confirmation of sale is pending and judgment debtor tenders the amount, the payment is valid. Reference in this regard can be made to a judgment passed by Hon'ble the Supreme Court in **U.Nilan Vs. Kannayyan (Dead) through LRs, 1999(8) SCC 511.**

Keeping in view the aforesaid position of law, the orders

passed by the courts below are liable to be and hence, set aside. The case is remitted back to the learned executing court to re-examine the issue with reference to the provisions of Order 34 of the Code of Civil Procedure and thereafter pass a fresh order within a period of three months positively.

Disposed of, accordingly.

Parties through their counsel are directed to appear before the Successor Court on 14.1.2019.

18.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No