

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

**Civil Revision no.5831 of 2018
Date of Decision:04.09.2018**

Mohinder Singh

.....Petitioner

Vs.

Narinder Kumar

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Rohit Khullar, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (Oral)

By this petition the petitioner challenges the orders of the learned Additional Civil Judge (Senior Division), Garhshankar, dated 09.05.2018 and 25.07.2018 (Annexures P-10 & P-11 respectively), by the first of which the application filed by the petitioner-judgment debtor under Order 21 Rule 29 read with Section 151 of the CPC, praying for staying the execution proceedings, has been dismissed; and vide the second order the objections filed by the petitioner to the draft sale deed that is to be executed in favour of the decree holder, have also been dismissed, with a further direction issued that a local commissioner would execute the sale deed in favour of the decree holder on behalf of the petitioner-judgment debtor.

2. As regards the application filed under Order 21 Rule 29, seeking a stay on the execution proceedings, it has been held by the learned executing Court vide the order Annexure P-10, that firstly, the petitioner-judgment debtor, despite having knowledge of the suit filed by the respondent-plaintiff, seeking a decree of specific performance of the

agreement of sale entered into between the parties, he did not actually contest that suit and in fact during its pendency, he “shrewdly hypothecated” the suit property to the Punjab & Sind Bank for an amount of Rs.8,00,000/-, which amount he did not repay at all, and even having filed a written statement in the suit, he thereafter did not contest it and was proceeded against *ex parte*.

3. In the written statement, he took a stand that he had only agreed to sell the site beneath the shop to the decree holder, for a sum of Rs.22,00,000/-, of which he had received only Rs.6,00,000/- as earnest money.

On the other hand, the decree holder cleared the outstanding loan over the disputed property, alongwith interest thereupon and pursuant to the decree issued in his favour, also deposited the remaining sale consideration in Court, totalling a sum of Rs.42,30,000/-.

The decree holder also placed on record the clearance certificate issued by the Punjab & Sind Bank.

It is further noticed by the executing Court in the impugned order, that even an application under Rule 2-A of Order 39 had been filed by the respondent-decree holder against the petitioner and another person, and further, the petitioner had appeared initially through one counsel on 14.05.2010 and later through another counsel, thereby showing that he had complete knowledge of the pendency of the suit. (In any case, with a written statement filed by the petitioner-defendant (judgment debtor), he very obviously knew of the suit instituted against him).

Consequently, holding that the application under Order 21 Rule

29 seeking a stay on execution proceedings, was only to further harass the decree holder, the application was dismissed.

4. As regards the objections filed by the petitioner-judgment debtor, to the draft sale deed prepared, on the basis of which the final sale deed was to be got executed in favour of the decree holder qua the suit property, again repeating the same reasoning and noticing that as per the decree, the decree holder was to deposit the remaining sale consideration of Rs.12,00,000/- within two months, with even more amount having been deposited, the objections raised by the petitioner were found to be not tenable.

An argument also having been raised on behalf of the petitioner before the executing Court that the property had been allotted to him by the Mandi Board, on specific terms and conditions, that contention was rejected in view of the fact that a sale deed dated 05.03.2007, executed by one Smt. Satya in favour of the petitioner-judgment debtor, was placed on record by decree holder, showing that as a matter of fact he had purchased the property from her and there was no allotment in his favour by the Mandi Board on any specific terms and conditions.

5. Hence, eventually holding that even the objections were only filed to deprive the decree holder of his right, the said objections were dismissed, with the Naib Nazir of the Court appointed as a Local Commissioner to execute the sale deed in favour of the decree holder on behalf of the judgment debtor, to satisfy the decree of specific performance of the contract.

6. Before this Court, learned counsel for the petitioner has pointed

to that part of the impugned order wherein the contention of the petitioner was noticed, to the effect that the suit property was his sole residential house and that he had already filed a suit seeking a declaration to such effect, also seeking the setting aside of the judgment and decree dated 22.03.2013 (the decree sought to be executed).

It was also contended before the executing Court that the decree had been obtained by means of fraud.

7. Having considered the aforesaid arguments also, I find no reason to interfere with the impugned orders, in view of the fact that as regards the fraud allegedly perpetrated behind the back of the petitioner in obtaining the decree by the respondent, that has been dealt with in detail by the learned executing Court in the manner already noticed hereinabove, to the effect that the decree was actually not at the back of the petitioner, who had duly filed his written statement and thereafter had chosen to in fact mortgage the property with the bank only to try and frustrate the decree.

Other than that, as regards it being contended to be the sole residential house of the petitioner with him thereby invoking clause (ccc) of the proviso to Section 60 (1) of the Code of Civil Procedure, it is to be noticed that even in this petition, it is admitted that upon the site in question a shop has been constructed by the petitioner, though it is also stated that his residential house is constructed alongwith. Firstly, however, no evidence with regard to it being his sole residential property is shown to be led before the executing Court and secondly and more pertinently, clause (ccc) of the proviso to Section 60 (1) of the CPC, (as applicable to the States of Punjab and Haryana and U.T. Chandigarh), is subject to a

rider contained therein, which reads as follows:-

“Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recorded.”

Hence, in the opinion of this Court, the subject matter of the agreement of sale itself, as was sought to be enforced by the respondent-decree holder in the suit filed by him, being the said plot and building constructed upon it, it would be a property specifically charged with the debt sought to be recorded and consequently not protected by the aforesaid provision.

8. Keeping in view the above, I see no reason to entertain this petition or to interfere with the orders impugned, in any manner.

Hence, this petition is dismissed in *limine*, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

September 04, 2018.

dharamvir/dinesh

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No