IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6558 of 2018(O&M)
Date of Decision-28.09.2018

Amit Kumar and another ... Petitioners

Versus

Kotak Mahindra Bank Limited ... Respondent

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

Present: Mr. Rajesh Gupta, Advocate
for the petitioners.

***

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 27.08.2018 passed by Additional District Judge, Ambala, vide which petitioner No.1/judgment debtor was proceeded against *ex parte* and warrant of sale of property of petitioner No.1/judgment debtor was issued by the executing Court/Additional District Judge, Ambala.

[2]. Perusal of the record would show that earlier an order dated 29.05.2018 was passed vide which warrant of sale of property of petitioner No.1/judgment debtor was issued. Thereafter, a compromise was effected between the parties on 19.07.2018 and petitioner No.1/judgment debtor gave two cheques towards full and final discharge of his liability. The cheques on being presented for encashment were dishonoured. As a consequence of dishonouring of cheques, order dated 29.05.2018 was revived.

[3]. Perusal of the record would further show that M/s Citifinancial Consumer Finance India Limited vide agreement dated 18.07.2012 assigned its right of being loaner in favour of M/s Kotak Mahindra Bank Limited. The award was passed in favour of M/s Citifinancial Consumer Finance India Limited and against the petitioners, but vide the aforesaid agreement between M/s Citifinancial Consumer Finance India Limited and M/s Kotak Mahindra Bank Limited, rights in respect of loan transaction between M/s Citifinancial Consumer Finance India Limited and the petitioners were assigned in favour of M/s Kotak Mahindra Bank Limited and for all intends and purposes, decree holder became assignee of the loan.

[4]. Petitioners have assailed the order dated 27.08.2018, vide which after proceeded against *ex parte*, warrant of sale of property of the petitioner No.1 was issued as per schedule given in the impugned order itself.

[5]. Learned counsel for the petitioners submitted that in view of Order 21 Rule 16 CPC, where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the applications were made by such

decree-holder. Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor, and the judgment debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution.

[6]. Perusal of the aforesaid provision would show that the same is not applicable where the matter is covered under Section 146 CPC when a person is claiming against any other person. Nothing in this Rule shall affect the provisions of Section 146, and right of the transferee in the property, which is the subject matter of the suit, who can apply for execution of the decree without a separate assignment of the decree as required under Order 21 Rule 16 CPC.

[7]. Order 21 Rule 16 CPC would apply a situation where decree has been passed jointly in favour of two or more persons and the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law. In the instant case, award/decree was passed in favour of M/s Citifinancial Consumer Finance India Limited. It was only on account of agreement dated 18.07.2012, rights of M/s Citifinancial Consumer Finance India Limited being loaner were assigned in favour of M/s Kotak Mahindra Bank Limited. In the execution, warrant of sale of property of the judgment debtor was issued vide order 29.05.2018 and the said order was never assailed by petitioner No.1, rather in order to avoid his liability, he allegedly

entered into a compromise on 19.07.2018 without there being any real intention to honour the liability and issued two cheques which on presentation, were dishonoured and thereafter, order dated 29.05.2018 was revived.

[8]. Since the order dated 29.05.2018 was never challenged, therefore, consequence of that order in the form of impugned order cannot be held to be illegal. Arguments raised by learned counsel for the petitioners are totally bereft of merits.

[9]. In view of above, this revision petition is found to be without any substance and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

28.09.2018
Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No