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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7672-2012

Date of decision : 19.03.2018

Shashi Bala

... Petitioner(s)

Versus

Union of India and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Sharma, Advocate
for the petitioner(s).

Ms. Anita Balyan, Advocate
for respondent No.1/Union of India.

AMIT RAWAL, J. (ORAL)

The petitioner-Shashi Bala, being third party, is aggrieved of dismissal of the objection vide order dated 25.10.2012 (Annexure P-6) filed in the execution application.

The respondent No.1/Union of India filed an arbitration case bearing No.47/25.2.1997 before the Civil Judge (Sr. Divn.), Chandigarh for making the award dated 14.10.1992 as the rule of Court against respondent No.2 Dhiman Welding Works. The trial Court made the aforementioned award as Rule of Court vide order dated 15.01.2001 (Annexure P-1). Resultantly, the Union of India filed an execution application seeking recovery of an amount by attachment and sale of the movable and immovable property of the judgment debtor by enclosing the list of the properties as under:-

1. *House No.529 and 530 Moti Mandi, Kacha Bazar.*
2. *Plot bearing Khasra No.15/21, Village Naggal, Tehsil and District Ambala,*

The property as disclosed by the firm at the time of work, is attached which may be attached and put to sale to realize the amount of the decree”.

The aforesaid execution application was objected to by the petitioner on the ground that the petitioner-objector is a widow of late Shri Madan Pal @ Madan Gopal son of Sh. Ram Saroop, who had purchased the House No.529 & 530, Sadar Bazar, Ambala Cantt., along with his brother Sarwan Kumar, vide sale deed dated 04.09.1970, who had expired on 17.07.1998 and enclosed the copy of the death certificate as well as the copy of the sale deed. It was stated that the decree was passed against Dhiman Welding Works and neither the petitioner/objector has any concern with the above said respondent No.2/Dhiman Welding Works nor the husband of the petitioner. The contents in the execution application were beyond the claim in the suit, yet attachment of the property had been sought.

The aforesaid objection was objected to by the Union of India on the premise that Sarwan Kumar was the partner of Dhiman Welding Works/respondent No.2 and the Firm-Dhiman Welding Works had submitted the details of the property as owned by the firm as well as its partner while executing the work of the decree holder. It is, in that backdrop of the matter, the impugned order dated 25.10.2012 came to be passed, rejecting the objection.

Mr. Deepak Sharma, learned counsel appearing on behalf of the petitioner submitted that the objection filed on behalf of the third party against the execution of the decree dated 15.01.2001, whereby the award *ibid* was made Rule of Court, the Executing Court was required to frame the issue by giving an opportunity to prove the factum of ownership, but

should not have dismissed the objection summarily. In support of his contentions, he has relied upon the provisions of Order 21 Rule 101 of the Code of Civil Procedure, despite that the trial Court dismissed the objection by holding that no evidence has been led. Respondent No.1/Union of India has not been able to prove that the firm was a partnership or a proprietorship as the certain statutory forms were required to be placed on record to connect the property, particularly 50% alleged to be given by Sarwan Singh, being partner or proprietor of Dhiman Welding Works, thus, urges this Court for setting aside the impugned order, under challenge.

On the contrary, learned counsel for respondent No.1/Union of India submits that the sale deed did not specify the correct position as indicated in the objection petition, whereas it was a candid and categorical stand of the Union of India that Sarwan Singh had given the details of the properties expressing himself to be partner of Dhiman Welding Works. It is, in that aspect of the matter, the property, aforementioned, was sought to be attached seeking recovery of the amount as per the award. There is no illegality and perversity in the impugned order, under challenge, thus, urges this Court for dismissal of the present revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is a force and merit in the submissions of Mr. Sharma, for, the Executing Court ought to have framed the issue as the objection, as contemplated under Order 21 Rule 101 CPC, was filed on behalf of the third party. The candid case of the petitioner was that she, along with Sarwan Singh, had purchased the property, aforementioned, vide sale deed dated 04.09.1970 and also enclosed the copy of death certificate

and the sale deed. The issues were required to be framed giving the opportunity to the parties to lead evidence to establish that the aforementioned property had no concern and if at all, Sarwan Singh was partner of the firm, it could have been confined to only 50% and not the entire one. Having not addressed the aforementioned issue, I am of the view that there is an abdication and aberration. The Executing Court is not to pass the order in mechanical and routine manner, but ought to have adjudicated each objection in most pragmatic and reasonable manner. The aforementioned issue has not been addressed in detailed for want of opportunity to lead evidence in support of the averments made in the objection viz-a-viz to the reply submitted on behalf of respondent No.1/Union of India.

For the foregoing reasons, the impugned order, under challenge is not sustainable in the eyes of law as the same suffers from illegality and perversity and is hereby set aside. The matter is remitted to the trial Court to frame the issue with regard to the objection and afford 4-4 effective opportunities to the parties to lead evidence. It is expected that the trial Court shall decide the matter as expeditiously as possible preferably within a period of one year from the date of receipt of the certified copy of this order.

With the aforesaid observations, the present revision petition stands allowed.

19.03.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**Whether speaking/reasoned **Yes**Whether Reportable **No**