

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16498-2018

Date of Decision:21.11.2019

Savitri Sharma

..... Petitioner

Vs.

The Recovery Officer, Debt Recovery Tribunal-I, SCO 39-40, Sector 8-C,
Chandigarh and another

..... Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE SUVIR SEHGAL**

Present: - Mr.V.K. Sachdeva, Advocate,
for the petitioner.

Mr. Atul Mahajan, Advocate,
for respondent No.2.

Mr.Vivek Goyal, Advocate,
for respondents No.3 & 4.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is directed against the order dated 28.05.2018 passed by the Recovery Officer, Debt Recovery Tribunal-II, Chandigarh [hereinafter referred to as 'the Tribunal'] by which objection filed by the petitioner in the execution of the decree has been dismissed.

This case has a chequered history which can be narrated briefly as under: -

The petitioner (Savitri Sharma) purchased a booth No.749, Motor Market & Commercial Complex, Manimajra, Chandigarh [hereinafter referred to as 'the property in dispute'] vide registered sale deed dated 22.11.1983. The Punjab National Bank/respondent No.2 [hereinafter referred to as 'the Bank'] filed a suit for

recovery of ₹7,31,683/- against as many as 19 defendants in which the petitioner was arrayed as defendant No.17. The suit was decreed on 28.10.1996 and the decree drawn by the Civil Court read as under: -

“It is ordered that the suit of the plaintiff is hereby decreed for the recovery of ₹5,80,994/- against defendant No.1 alone. The suit of the plaintiff is also decreed for recovery of ₹20,610/- against defendant No.1 Dharam Pal and defendant No.9 Komal Sharma. The suit of the plaintiff is also decreed for the recovery of ₹13,095/- against defendant No.1 and Vimal Kumar Sharma Defendant No.10. The suit of the plaintiff is further decreed for a sum of ₹29,500/- against defendant No.1 Dharam Pal and Defendant No.12 Rakesh Latta. The suit of the plaintiff is further decreed for the recovery of ₹28,836/- against defendant Dharam Pal and Defendant No.11 Shri Parmod Kumar Sharma. Thus a total decree for the recovery of ₹6,73,035/- is hereby passed with proportionate costs. Defendant No.1 and other defendants against the decree has been passed will be jointly and severally liable to pay the decretal amount to the extent of their liability specification mentioned above. The plaintiff bank will be further entitled to interest at the rate of 12% p.a. from the date of filling of the suit till realization of

the decretal amount on the principal sum of adjudged i.e. Rs.6,73,035/- (the liability to pay the interest of defendants No.9, 10, 11 and 12 will be limited to the extent of amount decreed against them). The suit of the plaintiff is also decreed for permanent injunction restraining the defendants No.2 and 3 from disbursing the amount lying in the account No.9059 at United Commercial Bank, Sector 17, Chandigarh, SF A/c No.10456 and SF A/c No.10461 maintained at Haryana State Co. Op. Bank to anyone else except the plaintiff and the plaintiff bank will be entitled to realize the amount lying in these accounts. However, the suit of the plaintiff against the remaining defendants fails and is hereby dismissed.”

Dharam Pal Sharma (Defendant No.1), who happened to be an Accountant of the Bank and his children (defendants No.9, 10 and 11), filed the appeal against the aforesaid judgment and decree which was dismissed on 5.10.2005 (Annexure P-4). However, in the meantime the property in dispute was resumed by the Municipal Corporation, Chandigarh because of non-construction. The said order of resumption was challenged by the petitioner by way of CWP No.2050 of 2003 which was dismissed on 07.02.2003 but ultimately she was successful before the Hon'ble Apex Court when the

decision of this Court dated 07.02.2003 was set aside vide order/judgment dated 30.10.2007. The Municipal Corporation, Chandigarh also restored the property in the name of the petitioner vide order dated 8.1.2008 and on 19.5.2008, the Chief Administrator, UT, Chandigarh issued an occupation and usage certificate in favour of the petitioner. While these proceedings were separately going on, the Bank filed an application before the DRT, Chandigarh in order to obtain a recovery certificate in respect of the decretal amount with interest, on the basis of the Civil Court decree dated 28.10.1996, by sale of mortgaged and hypothecated property of the judgment debtors. The recovery certificate was issued by the Tribunal on 16.10.2003 only against Dharam Pal Sharma, Komal Sharma, Vimal Kumar Sharma, Parmod Kumar Sharma and Rakesh Latta, who are arrayed as defendants No.1, 9, 10, 11 and 12 in the suit. The bank then filed an application for execution on 9.3.2004 on the basis of the recovery certificate dated 16.10.2003 by attachment and sale of the personal assets of Judgment Debtors No.1 and 4 to 7 but not against the petitioner. While the said execution application was pending, Judgment Debtor No.1 unfortunately expired on 05.10.2005. This fact was not brought to the notice of the Executing Court. In the pending execution application, the bank filed an application on 18.1.2006 for attachment of the property in dispute and got it attached vide order dated 14.2.2006.

As per the petitioner, no notice of attachment was ever issued or served upon her. The property of the petitioner remained attached under the order of the Recovery Officer but on 19.12.2008, the Recovery Officer released the property of Panchkula by holding that the Bank had failed to produce any document to show the ownership of Dharam Pal Sharma but the property of the petitioner was not released rather, on 3.2.2009, the property of the petitioner was ordered to be auctioned on 17.3.2009. The reserve price of the property in dispute was fixed at ₹21 lakh for the alleged recovery of ₹16,06,685/-. The property was sold in the auction to private respondents No.3 & 4 and sale certificate was issued on 20.4.2009 and possession was delivered on 30.4.2009. After all this had happened, the petitioner came to know somewhere in May 2009 that her property has been sold by the Bank in execution of the decree dated 28.10.1996. The petitioner filed an appeal on 10.6.2009 under Section 30(1) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 [hereinafter referred to 'as the Act'] for setting aside the auction and sale of the property in dispute which was conducted on 17.3.2009. The appeal remained pending before the Presiding Officer of the Tribunal for three years and ultimately the same was withdrawn on 14.9.2002 because as per the petitioner, the remedy was to file an objection before the Recovery Officer and not by way of an appeal. In any case, the

petitioner filed the objections on 26.9.2012 along with an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 1233 days. The said application was dismissed on 16.2.2015 by the Recovery Officer. The petitioner filed an appeal against the said order before the Tribunal which was allowed on 29.1.2018 and the matter was remanded back to the Recovery Officer to decide the same afresh in accordance with law. Vide Impugned order, the Recovery Officer again dismissed the objection filed with the application under Section 5 of the Limitation Act, 1963 on the ground of limitation and also on the ground that the objector/petitioner could not establish that the booth was purchased by Dharam Pal Sharma by his own funds. As a matter of fact, the Recovery Officer did not allow the petitioner to maintain her objection but also decided her objection on merits by observing that the petitioner/objector had to establish that the booth was purchased by her own funds and not from the funds of Dharam Pal Sharma.

Counsel for the petitioner has submitted that there a gross injustice has been caused to the petitioner right from the beginning as the Tribunal and the Recovery Officer both have committed serious error of law in executing a decree which was not passed against her. In this regard, it is submitted that there was no decree passed by the Tribunal under the Act rather the Tribunal was executing the decree passed by the Civil Court in terms of Section 31(A) of the Act. In order to substantiate his contention, he

has again drawn our attention to the decree. The decree has been passed against the defendants by name with specific amounts and the suit against rest of the defendants was categorically dismissed. He has argued that the decree has in fact been passed against Defendants No.1, 9, 10, 11 and 12 but no decree has been passed against defendant No.17 (petitioner). It is further submitted by him that the petitioner has been held to be the owner of the property in dispute because she has a registered sale deed in her favour dated 22.11.1983 and her ownership has been accepted in the matter which had gone upto the Hon'ble Apex Court and the Municipal Corporation, Chandigarh has also issued an occupation and usage certificate and restored the property which was once resumed because of non-construction. He has further submitted that the petitioner has been unnecessarily penalized and harassed for such a long time by the Bank by dragging her in to an unnecessary litigation in which she had to spend a huge money by engaging advocates before the Tribunal and before the Recovery Officer.

Counsel appearing on behalf of respondent No.2/Bank, while countering the argument raised by counsel for the petitioner, has submitted that it is a case where the Bank has been cheated by its dishonest employee namely, Dharam Pal Sharma, who was the Accountant of the Bank at the relevant time. He has submitted that the petitioner should be relegated to her remedy under the statute by filing an appeal before the Tribunal against the order passed by the Recovery Officer. He has further submitted that the property in dispute has been purchased in the name of Savitri Devi (petitioner) with the funds made available by Dharam Pal Sharma, which was embezzled by him as an Accountant of the Bank, therefore, the property in dispute virtually belongs to Dharam Pal Sharma, and therefore, the same has been sold by the Bank. However, he could not deny that no finding has

been recorded by the Civil Court that the property in dispute is purchased by Dharam Pal Sharma with the embezzled funds in the name of his wife Savitri Devi.

Counsel appearing on behalf of respondents No.3 & 4 has submitted that they have purchased the property in dispute in an open auction and were not aware of the title of the property because it was sold on the basis of sale certificate. Therefore, their interest is required to be protected in case this Court comes to a conclusion that the sale of the property of the petitioner was illegal at the hands of the respondent/Bank.

We have heard counsel for the parties and perused the record with their able assistance.

The only issue which requires reconsideration is as to whether the decree, which has been passed against the defendants No.1, 9, 10, 11 and 12, could have been executed against the petitioner who was defendant No.17 in the suit, more particularly, when the suit qua her was dismissed by the trial Court?

In this regard, we would again refer to the operative part of the decree, which we have already reproduced in the earlier part of this order, in which the amount to be recovered has been specifically mentioned and against whom the suit has been dismissed is also recorded therein. For the sake of ready reference, we would add that the petitioner is arrayed as defendant No.17 in the civil suit and there is no decree passed against her rather the operative part of the decree in her favour reads as under: -

“However, the suit of the plaintiff against the remaining defendants fails and is hereby dismissed.”

Once there is no decree passed against the petitioner by the Civil Court, which has attained finality, because the appeal was filed only by the husband of the petitioner and her children, which was dismissed, and no effort was made by the Bank to challenge the decree to saddle the petitioner also with the liability for which they had gone to the Tribunal for the purpose of seeking execution despite the fact that the Bank knew it very well that there is no decree against the petitioner but it still filed execution and obtained recovery certificate and filed execution in respect of the property in dispute and the reason given by counsel for the Bank is that the property in dispute was purchased by Judgment Debtor No.1 in favour of Judgment Debtor No.17 from the funds which he had embezzled from the Bank. This fact is known to the Bank but there is no evidence on record on the basis of which the Court could have made up its mind that the property in dispute had actually been purchased by Judgment Debtor No.1 from the embezzled funds in favour of Judgment Debtor No.17. Once all the parties were before the Civil Court and the issue No.16 specifically framed was that *“whether defendant No.1 had the legal means to acquire the property in his own name and the name to his near and dear as alleged i.e. defendants No.9 to 18?”* but the said issue was decided against the bank and the language used by the Civil Court is that *“so in view of this evidence adduced by the defendants, a definite opinion cannot be drawn that the money paid by defendant No.1 or his family members for the purchase of properties to defendants No.6 to 8 was obtained by defrauding the plaintiff bank. So the issue is hereby decided against the plaintiff and in favour of contesting defendants”*. Once this issue has been decided and if the Bank was aggrieved against the finding of the Civil Court, it should have challenged at least the said issue by way of an appeal otherwise it is well settled that the

judgment of the Court which attains finality has to be accepted as it is. The very fact that the suit of the plaintiff/Bank was dismissed against rest of the defendants including the petitioner, there was no occasion for the Bank to have proceeded against the petitioner and involve her in the rigamarole of litigation without considering this fact that she is a widow, whose husband had expired in 2005 and has been running pillar to post for protecting her property which had been purchased by her. She was made a shuttle-cock by the Tribunal as the objection filed by her was kept alive on record for three years then she was told that appeal was not maintainable and has to file objections with an application for condonation of delay. She filed objections which were dismissed on the ground that there was a delay of 1233 days though she was already before the Courts for the last three years in appeal and Section 14 of the Limitation Act, 1963 could have easily applied but not only the application filed by her was again dismissed by the Recovery Officer on the ground that the delay cannot be condoned and she has not disclosed source of acquiring the title over the property. All these facts clearly indicates that there is heartless proceedings carried out by the Bank against the petitioner just for the sake of recovery of their money which had been allegedly embezzled by Dharam Pal Sharma (Defendant No.1) when he was working as an Accountant in the Bank.

Today also counsel for the Bank has argued that the petitioner should be relegated to avail the remedy of appeal against the order passed by the Recovery Officer which has to be filed again before the Tribunal. We do not understand how many times the Bank would make this widow lady to suffer by taking the shelter of the provisions of law in which it is though provided that the order of the Recovery Officer is appealable but while exercising our extraordinary jurisdiction under Article 226/227 of the

Constitution of India, we are setting aside all the orders much less impugned orders passed by the Recovery Officer and also the sale certificate dated 20.4.2009, issued in favour of the auction purchasers (respondents No.3 & 4) and direct the auction purchasers to return the possession of the property in dispute to the petitioner with in a period of 15 days from the date of receipt of certified copy of this order. At this stage, counsel appearing on behalf of respondents Nos. 3 & 4 has submitted that the shop is lying vacant and the possession has not been taken so far.

Be that as it may, if the property in dispute (shop) is locked by respondents No.3 & 4 then they will open the lock and handover the possession to the petitioner and if the shop is locked by the Bank then they will open the lock and handover the possession to the petitioner, within a period of one month from today.

It is needless to mention that respondents No.3 & 4 may apply to the Bank for the refund of their money because the title of the property is not going to be transferred in their names because of this order.

With these observations, the present petition is allowed.

(RAKESH KUMAR JAIN)
JUDGE

(SUVIR SEHGAL)
JUDGE

21.11.2019
Vivek

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*