IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5647 of 2019(O&M)
Date of Decision: 11.09.2019

Corporation Bank, G.T. Road, Tarori, District Karnal

.....Petitioner

Versus

Vikram Singh and others .....Respondents

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

Present: Mr. Mahesh Dheer, Advocate
for the petitioner.

Mr. Sanjiv Gupta, Advocate
for the caveator/respondent.

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RAJ MOHAN SINGH, J.

[1]. Petitioner/Bank has assailed the orders dated 06.08.2019 and 17.08.2019 passed by Additional Civil Judge (Senior Division), Kurukshetra vide which directions were issued to the petitioner to release part of the mortgaged property in the

execution filed by respondent No.1 against respondent No.2 and others.

[2]. The controversy has to be appreciated in the light of earlier decision rendered by this Court in ***CR No.3617 of 2018*** titled ***Vikram Vs. Lakhwinder Singh and another*** on 17.11.2018. In the aforesaid revision petition, order dated 26.04.2018 passed by the trial Court was assailed by the present respondent No.1 vide which his execution was dismissed by the executing Court. One Balbir Singh was recorded as owner in possession of land measuring 2 kanals 14 marlas. He entered into an agreement to sell with present respondent No.1 vide agreement to sell dated 15.03.2005. Balbir Singh, Kulwant Singh and Lakhwinder Singh are real brothers. Kulwant Singh stood as attesting witness. Total sale consideration was fixed as Rs.1,15,00,000/-. No target date was fixed for execution of sale deed and time was not made essence of the contract. Balbir Singh could not execute the sale deed.

[3]. A civil suit for specific performance was filed by respondent No.1 in which interim injunction was granted in favour of respondent No.1 on 30.05.2011. Despite the interim injunction, Balbir Singh sold the suit property in favour of his brother Lakhwinder Singh on 31.05.2011. Mutation was also sanctioned. Lakhwinder Singh and Kulwant Singh were allowed

to be impleaded as party defendants in the suit under Order 1 Rule 8 CPC.

[4]. On 22.07.2011, a compromise was effected between the parties according to which the dispute was settled with mutual consent. It was agreed between the parties that the suit property would be sold and out of sale proceeds, 1/6th share of respondent No.1 shall be given to him and the remaining 5/6th share shall be given to Lakhwinder Singh etc. It was also decided that in case, Balbir Singh raise any objection, then it shall be the responsibility of Lakhwinder Singh etc. The compromise was applicable only after withdrawal of cases from the Courts and in the event of violation of compromise, both the parties were held entitled to get the compromise implemented with the process of the Court.

[5]. The matter was referred to Permanent Lok Adalat where an award was passed on 10.08.2011 after noticing the incriminating facts in respect of compromise Ex.PA. Statements of parties were already recorded on 23.07.2011. Statements of defendants No.2 and 3 therein were again recorded on 10.08.2011, wherein they again reiterated their stand in terms of compromise. Ultimately, both the parties did not honour the commitment and the execution was dismissed vide order dated 26.04.2018.

[6]. In the aforesaid CR No.3617 of 2018, this Court after recording detailed facts on record held in para Nos.15 and 16 to the following effect:-

> *"[15]. There are two options available before the executing Court. During the course of arguments, it came to fore that the remaining land measuring 2 Kanals 6 Marla has been mortgaged by defendant No.1 in favour of a Bank. The executing Court shall visualize selling of land as a joint venture of the parties. Out of the sale proceeds, 1/6th share of sale proceeds would be credited in favour of the petitioner. Out of the remaining share of sale proceeds, the liability of the Bank can be warded off and residual thereof can be given to respondent No.1. The second way out is to fix the market value of 2 Kanals 6 Marlas of land on the basis of prevailing market rate. Out of the amount so quantified, 1/6th of the same can be credited in favour of the petitioner and the remaining amount may go to respondent No.1, leaving him to answer the claim of the Bank.*
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> *[16]. In the light of aforesaid facts, this revision petition is accepted. Impugned order dated 26.04.2018 passed by the Addl. Civil Judge (Sr. Divn.) Kurukshetra is set aside and the execution petition is ordered to be revived. The executing Court is directed to dispose of the execution with in a period of six months in view of observations made hereinabove."*

[7]. Thereafter, an application was filed by Lakhwinder Singh on 03.07.2019 to treat the compromise dated 28.05.2019

as nullified. Apparently, after decision by this Court in CR No.3617 of 2018, both the parties entered into compromise on 28.05.2019. The execution was revived by this Court vide order dated 17.11.2018 and the executing Court was directed to dispose of the execution within a period of six months. However, the period of six months was extended later on by this Court.

[8]. On 28.05.2019, the decree holder Vikram Singh and judgment debtor Lakhwinder Singh again entered into a settlement vide compromise deed Ex.PX and site plan Ex.PY. Both the parties suffered their statements before the Court in token of confirmation of aforesaid settlement and site plan. On the next date of hearing i.e. on 03.07.2019, Lakhwinder Singh filed an application for treating the compromise dated 28.05.2019 as cancelled and for decision of the execution on merits.

[9]. Executing Court vide order dated 06.08.2019 held that compromise Ex.PX is required to be enforced between the parties. $1/6^{th}$ share of respondent No.1 in the form of shops No.36, 38 and 39 as per site plan Ex.PY attached to compromise deed Ex.PX has to be given to respondent No.1 after releasing the same from mortgaged property. The mortgage was created in the month of September 2014 despite the stay granted by the Court on 30.05.2011.

[10]. Vide the impugned order dated 06.08.2019, the executing Court has directed the petitioner/Bank to release part of the property i.e. shops/plots No.36, 38 and 39 as shown in site plan Ex.PY within the stipulated period and on such release, judgment debtor Lakhwinder Singh shall proceed to get the same registered in the name of Vikram Singh (decree holder) as per terms and conditions of compromise Ex.PX. The said order was sought to be reviewed by moving an application under Section 114 read with Order 47 CPC. Executing Court dismissed the said application as well vide order dated 17.08.2019. That is how, the present revision petition has been preferred by the petitioner.

[11]. During course of arguments, it has been found that shops No.17, 18 and 19 on the extreme right corner of site plan Ex.PY have been released by the Bank in favour of the judgment debtor after creation of mortgaged deed and the same have already been sold by the judgment debtor Lakhwinder Singh in order to answer the debt of the petitioner.

[12]. In view of aforesaid facts, challenge to the impugned orders made by the Bank is wholly unwarranted as the judgment debtor has not come forward to assail the same. Perusal of site plan Ex.PY would show that there are number of shops/plots. Shops/plots No.17, 18 and 19 have already been released in

favour of the judgment debtor by the Bank. Shops/plots No.36, 38 and 39 are required to be released in favour of the decree holder/respondent No.1 in order to satisfy his 1/6th share in the suit property which was settled between the parties in the compromise dated 28.05.2019 even after decision of this Court in CR No.3617 of 2018 on 17.11.2018. Impugned order dated 06.08.2019 has been passed in the application filed by the judgment debtor and the judgment debtor has not come forward to assail the same, rather a review petition was filed by the Bank.

[13]. It appears that Bank has tried to espouse the cause of the judgment debtor for the reasons best known to the petitioner. Perusal of site plan Ex.PY would show that there are number of shops situated in both sides of the road. Three shops have been released in favour of the judgment debtor by the petitioner/Bank itself. Three shops have been ordered to be released in favour of the decree holder under the impugned order. There are so many remaining shops which would suffice to serve the purpose of satisfying the mortgaged debt of the petitioner.

[14]. In view of above, I find no justification to interfere in this revision petition as the impugned orders are just and legal. There is no error of jurisdiction in the impugned orders, nor any

indulgence can be granted in favour of the petitioner. This revision petition is accordingly dismissed.

11.09.2019 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No