

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.4475 of 2016 (O&M)
Date of Decision.20.03.2019

M/s Bhandari Poles & Allied Industries

...Appellant

Vs

Punjab Financial Corporation and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.R. Yadav, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby suit of the appellant-plaintiff seeking following reliefs has been dismissed:-

“(A) Suit for declaration to the effect that the sale of unit of the plaintiff including the land measuring 7 kanals 02 marlas bearing Khasra No.80R/16 situated in the revenue estate of village Gho, H.No.352 Tehsil Pathankot comprising of land, building, machinery, equipments, fittings, fixtures, well etc for consideration of ₹13,11,000/- (13.11 lakhs) at the back and without notice to the plaintiff and without conducting the property auction as well as without proper publication is illegal, null and void and liable to be set aside with direction to make fresh sale in the presence and with involvement of the plaintiff, after proper publication and notice, by way of proper auction and in the alternative to treat the entire outstanding loan amount in the loan

account of the plaintiff with defendants duly adjusted and satisfied with the sale of the unit by the defendants in their own manner and style at the back of the plaintiff.

(B) Suit for declaration to the effect that the demand of the outstanding amount by the defendants in the loan account of the plaintiff as conveyed vide letters dated 26.9.2007 and 06.11.2007 are illegal, null & void and in view of the taking over of the unit of the plaintiff and having been disposed off by the defendants by sale of the same and the defendants have no right to raise any demand from the plaintiff on the basis of the loan granted to the defendants.

(C) Suit for Mandatory Injunction directing to the defendants to deliver the truck No.PUG-2925 and Scooter No.PUG-1176 belonging to Shri Murti Lal and Brigadier P.K. Bhandari respectively which were detained in the premises by the defendants or in the alternative compensate the plaintiff with the costs of the same.

(D) Suit for mandatory injunction for direction to the defendants to adjust the entire outstanding in the loan account of the plaintiff on the basis of acquisition and sale of the unit by the defendants and to issue clearance certificate.

(E) Suit for Permanent Injunction restraining the defendants from making any recovery of account from

the plaintiff by any coercive means as the defendants have sold the entire unit of the plaintiff and have appropriated the proceeds.”

The plaintiff alleged that being a partnership firm had obtained a loan facility from the Punjab Financial Corporation after execution of the mortgage deed and invested certain amount for construction of the building and purchase of machinery. However, the unit became sick in the year 1994, which was taken over and sold by the defendants. Plaintiff approached the defendants to release the unit. Defendants demanded a sum of ₹ 1 lakh and agreed to re-schedule the loan amount but did not execute the document in that regard. In 2007, the property was put to auction. It forcibly taken possession of truck bearing No.PUG-2925 belonging to Murti Lal and scooter belonging to Brigadier P.K. Bhandari lying in the premises. The auction was conducted in most undue haste at lesser price and after realizing the aforementioned demand, balance outstanding amount had been paid back, which was totally unlawful.

Defendants opposed the suit and raised objection qua maintainability and defended their action regarding value of the property which was determined after taking assistance of a valuer and due publication. The plot was measuring 7 kanals 2 marlas. Objection qua non-joinder and mis-joinder of parties was also taken.

Since the parties were at variance, the trial Court framed following issues:-

“1. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP

2. *Whether the plaintiff is entitled to decree for mandatory injunction as prayed for? OPP*
3. *Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP*
4. *Whether suit of the plaintiff is not maintainable? OPD*
5. *Whether the plaintiff has concealed the material facts from the court? OPD*
6. *Whether no legal notice has been sent to the defendants before filing the present suit? OPD*
7. *Relief.”*

Plaintiff in support of evidence examined five witnesses and tendered documents Ex.P1 to P66. Defendants examined DW1 Kanwaljit Singh Bhatia, Senior Assistant, Punjab Financial Corporation, Amritsar and brought on record Ex.D1 to D18.

Mr. Yadav, learned counsel appearing on behalf of the appellant submitted that the suit was filed in the year 2008 for challenging the auction as defendants had sold the property at throw away price and without association of the plaintiff. The price of the property in the market was much higher and it would have warded off entire loan liability.

I am afraid aforementioned argument is not sustainable for the simple reason that the auction purchaser was not impleaded as party. As regards other relief, he submitted that neither truck nor scooter was mortgaged. It is settled law that moveable or immovable property cannot be taken into possession forcibly and in support of

aforementioned contention, relied upon judgment of Hon'ble Supreme Court rendered in **Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others AIR 1993 (SC) 935.**

This argument would also not be sustainable for the simple reason that owner of the vehicles is not plaintiff. In other words, plaintiff had no *locus standi* to espouse their grievance. This is what has been the import of the judgments and decrees rendered by the Courts below.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 20, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No