IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-2060-2018 (O&M)
Date of Decision10.01.2019

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Dipti Rustogi and another

. . . . . Appellants

Vs.

General Public and another

. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

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Present: - Mr.Varun Gupta, Advocate,
for the appellants.

Mr.D.K. Singal, Advocate,
for the respondents.

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RAKESH KUMAR JAIN, J.

This appeal is filed against the order dated 28.2.2018 by which a petition filed under Section 8 of the Hindu Minority and Guardianship Act, 1956 [hereinafter referred as 'the Act'] by the parents of one Akshat Rustogi, seeking permission to sell the property/house bearing No.P-6L, Model Town, Rewari [hereinafter referred to as 'the property in question'], belonging to the minor Akshat Rustogi, to discharge the debts of the creditors from whom money was borrowed to pay the debts of the bank, in order to save the property in question, mortgaged with the bank, being sold at a lesser price, as a distressed sale, has been dismissed.

In brief, the property in question was owned by one Ved Parkash Rustogi, who was running a shop in the name and style of M/s Hardwari Lal & Sons in the new grain market, Rewari. Ved Parkash Rustogi had obtained a loan of ₹45 lakh from ICICI Bank, Brass Market, Rewari [hereinafter referred to as 'the bank'] after mortgaging the property in question. He executed a registered Will bearing No.407/3 dated 4.2.2016 in the name of his grandson Akshat Rustogi, son of the appellants. He died on 18.6.2016 but at that time the loan was still outstanding. The bank started the process of selling the property in question being the mortgaged property but since it was not less than the value of ₹60 lakhs and the appellants being the parents of Akshat Rustogi in whose favour property had devolved by virtue of a registered Will found that the amount to be recovered by the bank is less and the property in question may be sold at a lesser price, arranged the money from their relatives and paid to the bank. Thereafter they filed the petition under Section 8 of the Act, seeking permission to sell the property in question, in order to pay their creditors from whom they had borrowed the money for the purpose of payment to the bank. Although it has come on record that the property in question was mortgaged by the original borrower, namely, Ved Parkash Rustogi and that the present appellants had made the payment to the bank to redeem the property from mortgage and also the evidence to the effect that the loan amount has been deposited after borrowing the same from several persons yet the petition filed under Section 8 of the Act has been dismissed on the ground that the sale of the property in question is not for the necessity or advantage of the minor as provided under Section 8(4) of the Act.

At the time of preliminary hearing, this Court had passed the following order on 25.4.2018: -

> *"The application under Section 8 of the Hindu Minority and Guardianship Act filed by the appellants for sale of the property of their minor son Akshat Rustogi was dismissed by the Civil Judge (Sr. Div.),*

Rewari vide impugned judgment 28.2.2018. The case of the appellants before the lower Court was that the property was likely to be sold by the Bank (ICICI Bank) for recovery of the debt. The lower Court, on appreciation of evidence has found that the appellant have led evidence to prove that the loan has been paid by borrowing the amount from several persons, contrary to the pleadings. In view of the contradictions in the pleadings and the evidence the application was dismissed holding that the sale will not be made for interest of the minor.

Taking into consideration the circumstances of this case, we deem it appropriate to implead ICICI Bank, Rewari through its Manager as respondent No.2 in exercise of powers under Order 1 Rule 10 CPC as the presence of said bank is necessary for just decision of the claim of the appellants to ensure that the property is free from all encumbrances and that there is absolutely no charge of any other person on the property before we arrive at a conclusion that the sale would be beneficial for the interest of the minor.

> *Let respondent No.1 General Public be served through publication in 'The Tribune' having vide circulation in the area of Rewari for 30.7.2018. Notice to respondent No.2 be also issued for the date fixed. Requisite process fee and publication charges etc. be deposited within a week.*

Thereafter the following order was passed on 30.7.2018: -

> *"None appeared on behalf of respondent No.1 General Public despite publication of notice in the Newspaper.*
>
> *Counsel for the appellant submits that the property stands redeemed and is no more in possession of the Bank and the Bank has issued no objection certificate.*
>
> *In view of above said circumstances, prima facie, the appellant can be given permission to sell the same.*
>
> *Counsel for respondent No.2-Bank, however, seeks time to confirm the facts.*
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> *Adjourned to 14.9.2018 for arguments."*

Learned counsel appearing on behalf of the bank has orally stated before us that the entire amount of the bank has already been paid and the property in question is now free from all encumbrances. Thus the only issue which is required to be decided is "as to whether this Court should grant permission to the appellants to sell the property in question to pay money of the creditors from whom they have borrowed the same to make the payment to the bank to obtain no due certificate?"

As a matter of fact, the loan was taken from the bank by the testator, namely, Ved Parkash Rustogi by mortgaging the property in question but he executed a registered Will in favour of his grandson Akshat Rustogi of the said mortgaged property which devolved upon him after the death of Ved Parkash Rustogi on 18.6.2016. Since the property in question, which was stated to be not less than ₹60 lakhs, was being sold by the bank to recover its dues at a throw away price, therefore, the present appellants arranged the money from various persons, which fact is not in dispute, and paid to the bank to redeem the mortgaged property. This effort was made by them to secure the property in question from being sold for a song but in this process they also created liabilities which have to be discharged by them but they do not have any other source except the property in question from which they wanted to realise the amount in cash. Section 8 of the Act provides that the natural guardian of a Hindu minor has the power to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate. Section 8(2) of the Act provides that the natural guardian shall not without permission of the Court sell the immoveable property of the minor and Section 8(4) of the Act provides that the Court shall not grant permission to the natural guardian to do any of the acts mentioned in Sub-section (2) except in case of necessity or for an evident advantage to the minor.

In the present case, had the appellants/natural guardians of minor Akshat Rustogi not secured the money from the market for the purpose of paying debts of the bank then the property in question, which was mortgaged by the grand-father of the minor, would have definitely been sold may be at a price less than its actual value. Thus, it was an action taken by the appellants towards protecting the property of the minor but in the said process they themselves have become debtors of an amount of which they are not in a position to pay otherwise than the sale of the property.

Thus in our considered opinion, it would be just and expedient, if permission is granted to the appellants to sell the property in question to discharge the debts of the persons from whom they had borrowed the money to pay the loan amount of the bank and the remaining amount shall be deposited by them in the account of the minor from the sale proceeds.

In view of the aforesaid observations, the present appeal is hereby allowed and the impugned order is set aside.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
10.01.2019 **JUDGE**
Vivek

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