IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 200 of 2020 (O&M)
Date of Decision: 14.02.2020

Ranbir Singh

......Petitioner

Vs.

Cental Bank of India and another

.........Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Robin Dutt, Advocate,
for the petitioner.

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AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order of the learned execution court dated 02.09.2019, by which his objections as a judgment-debtor against execution of the Award have been dismissed.

The contention of the petitioner before that court was that in fact the Award passed by the National Lok Adalat on 13.08.2016, pursuant to which the suit filed by the respondent Bank seeking recovery of Rs. 9,10,337/- was decreed in its favour, was an Award that was obtained by undue influence and fraud committed upon the petitioner/judgment-debtor, inasmuch as the Branch Manager of the Bank who was present before the learned National Adalat, had assured the petitioner that he would not press for immediate payment and would grant him some time to repay the loan on (allegedly), the petitioner having told him that his crop had been damaged.

Thereafter, the petitioners signatures are stated to have been obtained (on what the petitioner understood to be a document by which the time limit had been increased to repay the loan).

The learned execution court, however, rejected that contention, noticing that the statement of the petitioner had been made before the National Lok Adalat, with the petitioner having firstly admitted his signatures upon the Award dated 13.08.2016 and further, the settlement having been for an amount of Rs. 6,00,000/-, whereas actually the suit was for recovery of Rs. 9,10,337/-.

Hence, it was held that obviously the said amount of settlement had been reached with the knowledge of the petitioner, and the objections filed were only to further delay execution proceedings.

Consequently, the objections were dismissed.

Before this court, Mr. Robin Dutt, learned counsel for the petitioner, reiterates the contention raised before the execution court, to the effect that the Award was the result of a fraud played upon him by the Bank Manager and consequently, it needs to be set aside.

He has next contended that vide a separate order passed on the same date, i.e. 02.09.2019, the execution court also directed issuance of a warrant of sale in respect of the property of the petitioner, with the date for the court notice set as 16.09.2019, with the spot notice to be issued on 27.09.2019 and with the auction thereafter to be held on 09.10.2019. The sale was to be effected on 21.10.2019.

The argument is that the procedure prescribed for attachment of an immovable property to satisfy a decree, as stipulated in Rule 54 of Order XXI of the Code of Civil Procedure, was not actually followed, with the procedure prescribed for actual sale of the property, in Rule 64, having been straight away resorted to by the trial court.

Upon query to him, learned counsel submits that as a matter of fact the property could not be sold despite the dates of auction and sale having been set at that stage for October 2019.

He has also submitted that in fact he had filed an application before the learned National Lok Adalat seeking to review of its earlier order dated 13.08.2016, (passing an Award in favour of the decree-holder, i.e. the respondent-Bank herein).

A copy of that application is stated to be Annexure P-2 with the present petition, which however is shown to be undated, i.e. as to when it was actually filed before the Lok Adalat.

Learned counsel submits that it has still to be taken up by the National Lok Adalat.

Having considered the arguments, though otherwise learned counsel may have had a 'valid argument' as regards non-following of proper procedure under Rule 54 of Order XXI for initial attachment of the property, however, no orders passed prior to 02.09.2019 by the execution court have been placed on record to substantiate the contention that actually no notice was ordered to be issued in terms of Rule 54.

Even presuming the contention to be correct 'at face value', what will not be ignored by this court is that this petition itself has been filed on 06.01.2020, i.e. well after both the orders dated 02.09.2019 were passed by the execution court , in the presence of counsel for the present petitioner.

Hence, obviously, he did not challenge the orders either rejecting his objections or directing sale of the property after due auction and notice for that purpose, for about 2½ months after even the date of sale had gone by and therefore he is simply taking advantage at this stage, of the fact that the property could not be auctioned.

Equally obviously, the petitioner has been now well put to notice with regard to attachment and the sale of property, and the contention which may have been available to him immediately after 02.09.2019, with regard to attachment of his property, is no longer available to him, in the opinion of this court.

As regards the contention on the merits of the order passed, rejecting the petitioners' objection, I fully agree with the reasoning given by the execution court, to the effect that the petitioner having signed a deed of compromise resulting in an Award passed in favour of the respondent-Bank, with the amount to be recovered from the petitioner reduced from Rs. 9,10,337/-, to Rs. 6,00,000/-, he cannot now take a plea that a fraud had been played upon him, especially as it is not denied that the petitioner is not an illiterate person.

Keeping in view the aforesaid this petition is dismissed in *limine.*

Upon the petition having been dismissed, Mr. Dutt submits that the petitioner in fact will be able to raise the amount of Rs. 6,00,000/- to be paid to the respondent-Bank within a period of three months, and therefore his property may not be auctioned.

Though otherwise there would be no reason to entertain that request at this stage, two and a half years after the Award passed by the Lok Adalat, however, since eventually the respondent-Bank is concerned only with recovery of the money loaned to the petitioner, in terms of the settlement reached by it, it is considered reasonable that if the petitioner actually deposits the decretal amount with the execution court within three months from today, i.e. by 13.05.2020, including any interest awarded on that amount, the property attached will not be sold.

However, it is made absolutely clear that if by 13.05.2020, the amount is not returned, along with the interest aforesaid, this part of the order staying sale of the property for that period shall deemed to have not been passed and the property shall be put to auction and sale immediately thereafter.

It is to be noticed that at the time when the order was pronounced in court, inadvertently this court had not noticed that the decretal amount was actually Rs.9,10,337/-, with the appellant having stated that he would be able to raise only an amount of Rs.6 Lakhs within a period of three months.

However, when the draft order came up for signing, the aforesaid discrepancy was noticed and therefore, with this court in any case not having agreed with the contention raised in any manner, what shall be payable by the petitioner by 13.05.2020, shall be the entire decretal amount.

February 14, 2020 **(AMOL RATTAN SINGH)**
nitin/dharambir **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No.