IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR 907 of 2019 (O&M)
Date of Decision: February 07, 2020

Vijay Kumar and another ….Petitioners

Versus

State Bank of Patiala and anr. …..Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr.Krishan Singh, Advocate for the petitioners.

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MAHABIR SINGH SINDHU, J.

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 19.08.2019 passed by learned Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri, (hereinafter referred to as 'Executing Court'), whereby applications filed by both petitioners/JDs for setting aside their ex-parte proceedings vide orders dated 21.01.2016 and 01.07.2017 have been dismissed.

Brief facts of the case are that petitioner/defendant(JD) No.1 vide his application dated 29.10.2007 approached respondent No.1-State Bank of Patiala/decree holder (hereinafter referred as 'respondent Bank') for availing loan of Rs.3,50,000/- on account of purchase of a new "Ford Icon Car", whereas petitioner No.2/defendant (JD) No.2 stood his guarantor. Loan was sanctioned and advanced by respondent Bank vide demand draft No.768471 dated 01.11.2007 drawn in favour of respondent No.2-defendant No.3 i.e. M/s Kanav Motors, Jagadhri, which was to be re-payable by the borrower in 84 equal monthly instalments of Rs.6132/-

along with interest at the rate of 11.75 %. Borrower did not pay any instalment, rather it came to the notice of respondent Bank that even the Car was also not purchased by petitioner No.1(JD), thus, all three i.e. both the petitioners/JDs in connivance with respondent No.2, cheated the respondent Bank. Consequently, respondent Bank issued notice dated 04.08.2008 to both the petitioners/JDs for refund of loan amount along with interest. Even an FIR No. 477 dated 23.10.2008 under Sections 406, 420, 467, 468, 471, 120-B IPC was also registered against all three mentioned above at Police Station City, Yamuna Nagar.

Simultaneously, respondent Bank filed Civil Suit No.211 of 2009 for recovery of loan amount along with interest to the tune of Rs.4,39,377.07 (principal Rs.3,50,000+Rs.89388/-). Petitioner No.1 (JD) contested the suit; whereas petitioner No.2 and respondent No.2 were proceeded against ex-parte by learned trial Court on 27.03.2010 and 19.03.2012, respectively. Ultimately, the suit was decreed by learned civil Court vide judgment and decree dated 31.03.2015 holding both the petitioners liable(joint and several), to pay an amount of Rs.4,39,377.07 along with pendente lite as well as future interest at the rate of 11.75% w.e.f. 24.09.2009, till its realization. On the basis of above decree, execution proceedings were initiated by the respondent Bank for recovery of total amount of Rs.7,76,554/-, against the both the petitioners/ JDs, but they were proceeded ex-parte vide order dated 21.01.2016 and 01.07.2017, respectively. Petitioner (JD) No.1 filed application on 04.01.2019 for setting aside the ex-parte order, whereas petitioner (JD) No.2 moved the application on 14.02.2019, which were opposed by the respondent Bank and learned Executing Court ultimately dismissed the applications while passing impugned order on 19.08.2019. Hence, the present revision.

It is contended on behalf of the petitioners that neither petitioner No.1/borrower received any loan amount from the Bank; nor the petitioners were aware about the recovery proceedings, thus, learned executing court committed a grave error of law while passing the impugned order. Further argued that since both the petitioners along with respondent No.2 have already been acquitted by learned Judicial Magistrate Ist Class (for short 'JMIC'), in FIR No.477 dated 23.10.2008, on the same set of allegations lodged by the respondent Bank/ DH, therefore, petitioners/JDs cannot be held liable to re-pay the loan amount for purchase of alleged 'Ford Icon Car' on the basis of alleged civil Court decree. In support of his contention, learned counsel for the petitioners has relied upon the judgment passed by Coordinate Bench of this Court in **DLF Pramerica Life Insurance Co. Ltd. Vs. M/s Dev Comptech Pvt. Ltd.**, 2018 (4) PLR 436.

Heard learned counsel for the petitioners and perused the paper-book.

Concededly, the suit for recovery filed by the respondent Bank for an amount of Rs.4,39,388.07/- (principal amount Rs.3,50,000 + Rs.89,388 as interest) along with pendente lite as well as future interest @11.75% per annum w.e.f. 24.09.2009 till its realization was decreed by learned Civil Court vide judgment and decree dated 31.03.2015 and the same has attained finality. Also necessary to be mentioned here that only petitioner (JD) No.1 contested the suit; whereas petitioner (JD) No.2 as well as respondent No.2/ defendant No.3 were proceeded ex-parte before learned Civil Court on dated 27.03.2010 and 19.07.2012, respectively. Thereafter, respondent Bank filed execution application for recovery of the decretal amount along with interest i.e. total Rs.7,76,554/-, but despite the service of defendant No.2 through his mother, he did not choose to appear, and consequently was proceeded ex-parte by learned executing court on 21.01.2016. Although, initially, petitioner No.1 (JD) joined the execution proceedings, but subsequently he also did not continue and proceeded ex-parte on 01.07.2017.

Paper-book reveals that both the petitioners along with respondent No.2 were acquitted in the criminal case arising out of FIR No. 477 dated 23.10.2008, by learned JMIC, giving them benefit of doubt, vide judgment dated 03.11.2018. Thus, both the petitioners, despite their valid service, just to take the benefit of their acquittal, moved separate applications on 04.01.2019 and 14.02.2019 for setting aside the ex-parte orders of learned executing court after a considerable delay without any justifiable reason (s).

No doubt, both the petitioners along with respondent No.2 have been acquitted by learned JMIC in FIR No. 477 dated 23.10.2008 on same set of allegations, as pleaded in the civil suit, but their acquittal will not frustrate the decree, in any manner till it is set aside. This Court has no hesitation in saying that mere acquittal of a judgment debtor in a criminal case, although on the same set of allegations as pleaded in the plaint, will not absolve him from the liability arising out of the civil court decree, till it is set aside by a Court of competent jurisdiction.

Since as on today, there is a valid decree existing against both the petitioners, therefore, they are under legal obligation to honour the same, as the decree dated 15.03.2015 is duly executable, despite their acquittal.

Also necessary to record here that during the course of hearing, this Court gave an option to the petitioners to deposit an amount of Rs.3,50,000/- to show their bonafide, but learned counsel representing them, after seeking instructions, outrightly declined the same on the plea that they are not in a position to re-pay any amount. Thus, the bonafide of the petitioners is also questionable.

The judgment of Coordinate Bench in **DLF's** case (supra) cited by learned counsel for the petitioners is not helpful in any manner for the following reasons:-

i) *In that case, there was a delay of only 10 days in putting appearance by defendant before learned trial Court in pursuance of the summons issued in a case filed under Order 37 CPC, but in the present case, the suit for recovery has already been decreed on 31.03.2015 and the same has attained finality;*

ii) *In that case, the amount in question i.e. Rs.15 lacs were deposited by the defendant before learned trial Court to show its bonafide subject to the final outcome of the suit; but in the present case, both the petitioners outrightly rejected the offer even to deposit an amount of Rs.3.5 lacs out of the total liability of Rs.7,76,554/-;*

iii) *Petitioner (JD) No.1-borrower was proceeded ex-parte on 21.01.2016 during the execution proceedings, but an application for setting aside the same was filed after a period of approximately three years i.e. on 04.01.2019.*

In view of the facts and circumstances discussed hereinabove, this Court is of the opinion that both the petitioners are trying to delay the execution proceedings on one pretext or the other, just to frustrate the valid decree for recovery of public money by the respondent Bank and thus, the present petition is complete misuse of the process of the Court. Consequently, the same is liable to be dismissed.

Ordered accordingly.

The above observations may not be construed as an expression of opinion on the merits of the proceedings pending before learned executing court.

February 07, 2020 **[MAHABIR SINGH SINDHU]**
sanjay **JUDGE**

Whether speaking/reasoned yes/no
Whether reportable? Yes/no