IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.111 of 2020 (O&M)
Date of Decision: 4 .2.2020

Mohinder Singh ... Petitioner

Versus

Mohan Lal and another ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Gurnam Kaur Turka, Advocate for the petitioner

RAJIV NARAIN RAINA, J.

1. I have heard Ms. Turka for the petitioner and the papers on file have been perused.

2. Mohan Lal took a loan from State Bank of India (for short “the bank”) for purchasing a house. The loan was sanctioned on 27.1.2003. Mohan Lal created an equitable mortgage on the suit property as collateral security in case of default of payment. The original sale deed dated 12.2.2003 was deposited with the bank. The Bank filed a suit for recovery of loan and interest on failure of Mohan Lal to repay his loan. The suit for recovery of money was decreed on 6.10.2017 in favour of the bank. Mohan Lal became judgment-debtor. An appeal was filed by the bank to claim interest on the principal outstanding amount which was allowed on 20.2.2018.

3. After obtaining loan from the bank, Mohan Lal in connivance with one Mohinder Singh entered into an agreement to sell the suit house to him on 23.3.2012. Mohinder Singh filed a suit for specific performance

which was decreed on 25.1.2016 for recovery of ₹ 4.00 lakhs given as earnest money along with interest.

4. In execution of the decree, Mohan Lal was served but absented from the proceedings. To satisfy the decree, the house was put to auction by the court. On coming to know of this, the bank entered execution proceedings and filed its objections on the ground that the bank held the first charge on the house in dispute created on 10.2.2003 when loan was sanctioned and money disbursed.

5. Strange as it may seem, the decree holder Mohinder Singh filed reply to the objections of the bank stating that Mohan Lal and the bank were in collusion with each other to deprive him of his money. They had allegedly prepared false and fabricated loan documents only to deprive rights of the decree holder in his suit by auctioning his property. Earlier, the objections of Mohan Lal, JD and his daughter had been dismissed by the Executing Court. Thus it was argued that the decree holder Mohinder Singh had a right to his money by way of execution from the sale proceeds receivable from the auction of suit property.

6. On the other hand, the objector-bank in its objections stated that the house in dispute sold by auction could not have been sold and the sale is liable to be set aside in the presence of bank holding its decree dated 6.10.2017 in its favour because it held the first charge over the suit property. The first charge meant that the bank had lien over the house in dispute. Therefore, it could not be put to auction except at the hands of the bank to satisfy the loan. The Executing Court found no evidence of collusion between the bank and Mohan Lal as alleged by Mohinder Singh. There could be none whatsoever. The objections of the bank have been maintained by the learned Additional Civil Judge (Sr.Division), Patiala by

order dated 24.7.2019 from which this petition arises praying that the order be set aside as contrary to law.

7. I do not find any error in the impugned order as Mohan Lal played fraud on the bank in surreptitiously entering into sale agreement with Mohinder Singh to avoid payment of loan. But that scheme has failed miserably. The loan extended by the bank to a defaulter who has cheated the lender is public money of the State Bank of India which it has every right to recover. If it is unable to do so from Mohan Lal successfully of which there is ample prima facie evidence, then it can always fall down on the property and recover its loan along with the agreed rate of interest in execution of its superior decree through public auction and return the balance, if any, to the borrower.

8. In view of the above legal and factual position, I find absolutely no merit in this petition which is dismissed in limine.

9. As far as Mohinder Singh is concerned, he is free to recover his earnest money as decreed from Mohan Lal by whatever legal means he adopts. The decree he has secured for recovery of ₹ 4.00 lakhs with interest against Mohan Lal behind the back of the bank is a piece of waste paper as far as the bank goes, which cannot take away the rights of the State Bank of India to recover its public dues from the defendant Mohan Lal in its suit.

(RAJIV NARAIN RAINA)
JUDGE

4.2.2020
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *Yes/No*