

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CR-3376-2021(O&M)

DATE OF DECISION : 17.12.2021

Sudarshan Kumar Chakravarty

.....Petitioner

versus

Indian Overseas Bank and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Adarsh Jain, Advocate for the petitioner.

ALKA SARIN, J. (Oral) :

Heard in physical mode.

The present petition under Article 227 of the Constitution of India has been preferred for setting aside order dated 16.09.2019 passed by the Trial Court refusing to continue implementation of interim order dated 18.12.2018.

Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit inter-alia for declaration that the personal guarantee deed dated 17.01.2014 executed by the plaintiff-petitioner and handing over of the title deeds of House No.239, Sector-14, Faridabad to the defendant-respondent No.1 and 2 was an act of fraud and *void ab initio*. It was further prayed in the suit that a decree of declaration be granted in favour of the plaintiff and against the defendants declaring that the plaintiff-petitioner stands discharged from the guarantee liability as the same has become unenforceable against the plaintiff-petitioner and they be directed to return the original title deeds of House No.239, Sector-14

Faridabad. It was further prayed that the defendants be restrained from attaching the property as well as from interfering in the peaceful possession and enjoyment of the plaintiff-petitioner over the guaranteed property bearing House No.239, Sector-14, Faridabad, as detailed in the plaint. Along with the plaint (Annexure P-1) an application under Order 39 Rules 1 and 2 CPC (Annexure P-2) was also filed. The Trial Court passed the following order on 18.12.2018 (Annexure P-4) :

“Vakalatnama on behalf of defendant No.2 filed. Sh. N.K. Garg, Advocate appeared applicant for setting aside exparte order has been filed by defendant No.1 upon which learned counsel for the plaintiff has put his no objection. In these circumstance, the ex-parte order against defendant No.1 is hereby set aside. Now to come upon 23.1.2019 for filing reply of injunction application and the defendants are restrained from proceedings against the plaintiff except in due course of law.”

On 13.09.2019 the plaintiff-petitioner filed an application (Annexure P-5) under Section 151 CPC requesting for urgent attention and intervention of the Court. It was stated in the said application that the Court on 18.12.2018 had passed a restraint order against the defendants *“The defendants are restrained from proceedings against the plaintiff except in due course of Law.”* and that defendant-respondent No.1 had issued an e-auction sale notice dated 26.08.2019 in respect of the suit

property and had started receiving bids from 01.09.2019 and an auction was to be held on 16.09.2019. It was further stated that since the restraint order dated 18.12.2018 had neither been vacated nor modified, hence, the auction could not take place and, therefore, fresh restraint orders may be issued restraining the defendant-respondent No.1 from taking any action against the suit property.

The Trial Court vide impugned order dated 16.09.2019 dismissed the said application holding therein that term '*except in due course of law*' is not to be considered as a complete restraint order as it implies only that while taking action against the plaintiff, the defendants shall not use any force or unlawful means. Aggrieved by the said order, the present revision petition has been filed.

Learned counsel for the plaintiff-petitioner would contend that the suit itself is based on fraud which vitiates all acts and hence the application ought to have been allowed by the Trial Court. The second limb of the argument of the learned counsel is that earlier the defendant-respondent No.1 had issued an e-auction notice dated 29.08.2018 and after the passing of the order dated 18.12.2018 by the Trial Court the said auction was not conducted and now a fresh auction notice has been issued. Learned counsel has candidly admitted that the auction has since then been held though the same has not been confirmed. On a query put by this Court, the learned counsel is not in a position to deny that SARFAESI proceedings have already been initiated and are pending and the plaintiff-petitioner is a party therein.

Heard.

In the present case the plaintiff-petitioner had filed a suit inter-alia for declaration that the personal guarantee deed dated 17.01.2014 executed by the plaintiff and handing over of the title deeds of House No.239, Sector-14, Faridabad to the defendants No.1 and 2 was an act of fraud and *void ab initio* and further that a decree of declaration be granted in favour of the plaintiff and against the defendants declaring that the plaintiff stands discharged from the guarantee liability as the same has become unenforceable against the plaintiff and they be directed to return the original title deeds of House No.239, Sector-14 Faridabad. It was further prayed that the defendants be restrained from attaching the property as well as from interfering in the peaceful possession and enjoyment of the plaintiff over the guaranteed property bearing House No.239, Sector-14, Faridabad. On 18.12.2018 the Trial Court passed an order restraining the defendant-respondents from proceedings against the plaintiff-petitioner except in due course of law. The application (Annexure P-5) filed by the plaintiff-petitioner seeks to give a novel meaning to the words “*except in due course of law*” used in the order dated 18.12.2018 by contending that the same amounts to a blanket restraint order. The learned counsel for the plaintiff-petitioner has contended that the words “*except in due course of law*” would amount to a blanket restraint order inasmuch as after the passing of the said order the e-auction notice dated 29.08.2018 also stood withdrawn. This meaning, which the learned counsel has sought to give to the words “*except in due*

course of law”, is unacceptable. The words used by the Trial Court very clearly state that the defendant-respondents were restrained from proceeding against the plaintiff-petitioner “*except in due course of law*”.

The learned counsel appearing on behalf of the plaintiff-petitioner has not been able to show as to how the action taken by the defendant-respondents would not fall within the words “*except in due course of law*”. Admittedly, SARFAESI proceedings are pending and the plaintiff-petitioner is a party to the said proceedings. The defendant-respondent Nos.1 and 2, in the absence of a specific ad-interim order, cannot be said to have acted otherwise than in due course of law by putting the suit property to auction. There is also no explanation forthcoming for not approaching this Court since 16.9.2019 when the impugned order was passed. Admittedly, the application under Order 39 Rule 1 and 2 CPC (Annexure P-2) is still pending before the Trial Court. Further, the auction has already taken place though yet not confirmed.

In view of the above, I do not find any merit in the present case. The present revision petition is dismissed.

It is however, made clear that any observation made herein shall not have any bearing on the merits of the case pending before the Trial Court.

December 17, 2021
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(ALKA SARIN)
JUDGE

<u>NOTE:</u> Whether speaking/non-speaking : Speaking Whether reportable : YES/NO
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