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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2512-2022(O&M)
Date of decision:08.12.2022

BHAGIRATH AND ANR.
..... PETITIONERS

VS

ORIENTAL BANK OF COMMERCE AND ORS.
..... RESPONDENTS

CORAM :HON'BLE MR.JUSTICE ALOK JAIN

Present :- Mr. Aakash Singla, Advocate and
Ms. Vaishali Singla, Advocate for the petitioners.

Mr. Ankit Kaushal, Advocate for respondent No.1.

ALOK JAIN, J. (Oral)

CM-7669-CII-2022

Application is allowed and prayed for subject to just exceptions.

CR-2512-2022

The present revision petition has been filed under Article 227 of the Constitution of India praying for setting aside the impugned order dated 02.03.2022 passed by Ld. Civil Judge (Jr. Division), Ludhiana, whereby the Executing Court has dismissed the third-party objections.

It is contended by the learned counsel for the petitioners that the learned Court below has fell in error in not complying with the provision of Order 21 Rule 58 CPC and moreso, when the substantial right and protection under Section 41 of the Transfer of Property Act was available to the petitioners. He has submitted that the said property was purchased by the petitioners from one Parminder Singh, who purchased the said property from the State Bank of Patiala in proceedings for recovery initiated against M/s HP Industries by State Bank of Patiala. The said sale deed is also appended with the paper book as Annexure P-2.

Per contra, counsel for the respondent has submitted that the doctrine of *lis pendens* will come to play as per Section 52 of the Transfer of Property Act, the said sale made by the State Bank of Patiala never had the Authority of the Court as required under Section 52 of the Act. He relies upon the judgment of the Hon'ble Supreme Court of India in the case titled "***G.T. Girish Vs. Y. Subba Raju (D) by LRs and Anr***, wherein it has been held that the transferee or the beneficiary of the properties, which is disposed of by a party, cannot set up the case that he acted bonafide or in good faith. The relevant extract of the judgment is as under:

> *"92. The Doctrine of Lis Pendens is based on the maxim "pendente lite nihil innovetur". This means that pending litigation, nothing new should be introduced. section 52 of the Transfer of Property Act, 1882 (for short, `the TP Act'), which incorporates the Doctrine of Lis Pendens, is based on equity and public policy. It pours complete efficacy to the adjudicatory mechanism. This is done by finding that any disposition of property, as described in the Section by a party to the litigation will, in not any way, detract from the finality of the decision rendered by the court. It is clear that it is not based on the ground of Notice as laid down by Lord Craanworth in Bennamy v. Sabine, which has been followed by the Privy Council in the*

decision in 34 Indian Appeals 102. We may notice the following discussion in this regard in "The Transfer of Property, by Mulla, 12th Edition:

> *"The rule is, therefore, based not on the doctrine of notice, but on expediency, ie, the necessity for fine adjudication. It is immaterial whether the alienee pendente lite had, or had not, notice of the pending proceeding. This is, of course, no longer the case in England, or in Gujarat and Maharashtra, where the doctrine only affects transactions pendente lite if the lis has been duly registered."*

93. It is further important to notice that when a transaction is done, lis pendens or pending a case, the transaction is, as such, not annulled. The transaction is, in other words, not invalidated. In fact, as between the transferor and the transferee, it does not lie in the mouth of the transferor to set up the plea of lis pendens to defeat the disposition of property. Equally, the Principle of Lis Pendens is, not to be confounded with the aspect of good faith or bonafides. In other words, the transferee or the beneficiary of the property, which is disposed of by a party, cannot set up the case that he acted bonafide or in good faith. This enables the court and the parties in a Suit or a proceeding, which otherwise is in conformity with requirements of Section 52, to proceed in the matter on the basis that the adjudication by the court, will not, in any way, be subverted or delayed, when the day of final reckoning arrives.

94. The cardinal and indispensable requirement, which flows both from Section 52 and the principle, it purports to uphold, is that the transfer or dealing of the property, which is the subject matter of the proceeding, is carried out by a party to the proceeding. Section 52 uses the word `party' twice. It refers to the disability of a party to transfer or otherwise deal with the property, pending adjudication. This embargo is intertwined with the beneficiary of the veto against such transfer, being any other party thereto. In fact, the Special Bench of the Madras High Court in ManjeshwaraKrishnaya v. Vasudeva Mallya and Four Others, AIR 1918 Madras 578, puts the Doctrine of Lis Pendens as an extension of the Doctrine of Res Judicata. Thus, the sine qua non for the Doctrine of Lis Pendens to apply is that the transfer is made or the property is otherwise disposed of by a person, who is a party to the litigation. The Doctrine of Lis Pendens, only subject, however, the transfer or other disposition of property to the final decision that is rendered. The person/party, who finally succeeds in the litigation, can ask the court to ignore any transfer or other disposition of property by any party to the proceeding. This is subject to the condition that transfer or other disposition is made during the pendency of the lis.

95. The first defendant died pending the Suit on 06.08.1994. Her death was reported before the Court on 16.01.1995. The plaintiff brought on record, the husband of the first defendant by Order dated 25.08.1995, as defendant No. 1(a). Defendant No.

1(b), who is the son of the second defendant, sold the property on 19.09.1996, in favour of the appellant. It is thereafter that on 09.04.1997, the predecessor in interest of the appellant, viz., the son of the first defendant, and the second defendant were impleaded on 09.04.1997. The transfer made in favour of the second defendant was, therefore, made at a time, when the son of the first defendant was not a party to the Suit. Therefore, it is that the contention was taken before the Trial Court successfully by appellants that the transfer in favour of the appellant was not hit by Doctrine of Lis Pendens."

Per Contra counsel for the petitioners has submitted that even presuming that the doctrine of *lis pendens* had to be applied even then the Executing Court was bound to "adjudicate" the objections as per Order 21 Rule 58 of CPC enabling all the parties to have a right of proper trial. He further submitted that the Executing Court should have framed the issues and permitted the parties to lead evidence like an independent suit but the objections could not have been rejected summarily.

The contention raised by the counsel for the petitioners seems to be the correct position of law. Perusal of the Order dated 02.03.2022 clearly shows that the provisions of Order 21 Rule 58 of CPC have not been complied with. Accordingly, the present petition is allowed and the order dated 02.03.2022 is set aside and the matter is remanded back to the Executing Court to decide the objections by following the procedure prescribed under Order 21 Rule 58 of CPC.

It is made clear that the respondents shall get liberty to take all the defences available in law, including the issue of Section 52 of the Transfer of Property Act. Since the date of decree is 24.01.2009 and the execution was filed on 2015, learned Executing Court may consider expeditious trial of the objections, so as to protect the interest of the financial institutions also.

In the light of the above, the present petition is allowed.

Pending application, if any, stands disposed of.

(ALOK JAIN)
JUDGE

08.12.2022
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No