

2023:PHHC:074842

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4716-2018 (O&M)
Date of Decision: May 24, 2023

Surjit Kaur

...Petitioner

Versus

State Bank of India and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Umesh Aggarwal, Advocate
for the petitioner.

Mr.Chandeep Singh Advocate
for respondent No.1.

ARCHANA PURI, J.

CM-9721-CII-2023

It is submitted by learned counsel for the applicant-petitioner that in consonance with the order dated 19.05.2023, he was required to place on record the written statement as well as copy of the judgment, relating to the execution. It is now submitted that inadvertently, the written statement was stated to have been filed, but however, the judgment in question was an ex-parte judgment and therefore, the written statement was not, so filed. Considering the same, now, present application has been filed for placing on record the judgment dated 23.01.2008 passed by learned Civil Judge (Jr.

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Divn.) and copy of objections filed by the petitioner Surjit Kaur dated 22.09.2014 as Annexures P-7 and P-8. In view of the averments made in the application, same is allowed and the requisite documents are taken on record.

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Challenge in the present revision petition is to the order dated 19.07.2018 (Annexure P-6) passed by learned Executing Court, on an application filed by the present petitioner/objector Surjit Kaur, for summoning of the files relating to two cases.

It is submitted by learned counsel for the petitioner that in pursuance of the ex-parte judgment dated 23.01.2008, copy whereof is Annexure P-7, respondent No.1-State Bank of India had filed the execution petition. During the pendency of the said execution petition, present petitioner Surjit Kaur had filed the objections, copy whereof is Annexure P-8. In the objection petition, it was submitted that sale deed dated 21.03.2003 was got executed by impersonating Surjit Kaur by some other lady and the said sale deed was mortgaged with State Bank of India, at the instance of one Raj Kamal. Relating to the same, it is submitted that FIR No.177/2003 under Sections 420, 467, 468, 471 and 120-B IPC, Police Station "B" Division, Amritsar was registered against Raj Kamal. Said Raj Kamal had since been convicted by learned trial Court, vide judgment dated 17.04.2013.

Even, Mohinder Kaur, through General Power of Attorney holder i.e. present petitioner had filed a civil suit, challenging the sale deed dated 21.01.2003 before the Civil Court and the said civil suit was decreed, vide judgment dated 04.07.2016, copy whereof is Annexure P-4. It is submitted that since this sale deed had been executed, on account of impersonation by some other lady as Surjit Kaur-present petitioner, therefore, the present petitioner resisted the execution of the said ex-parte judgment, by filing of the objection petition.

In the objection petition, the evidence has already been recorded and it is at the final stage of the arguments, to be addressed on the said objection petition. However, it is submitted that since there is question of impersonation of Surjit Kaur, in the entire controversy, therefore, only for the purpose of perusal by the Executing Court, the photographs annexed with the sale deed as well as original documents, containing photographs and signatures of Surjit Kaur, on the basis whereof, in the criminal case, conviction of Raj Kamal was recorded, are required to be summoned. However, vide impugned order, the said application has been dismissed.

It is also stated by learned counsel for the petitioner that he shall not be calling for any evidence, in pursuance of summoning of the aforesaid record.

On the other hand, learned counsel for respondent No.1-State Bank of India submits that earlier also, the petitioner had an opportunity to

summon the requisite record, but however, he did not do so and the application in question has been filed for delaying the matter.

However, the aforesaid submission, so made, is bereft of merits, simply on the score of filing of the application. It is pertinent to mention that the requisite files of the cases titled '*Mohinder Kaur vs. Raj Kamal*' and '*State vs. Raj Kamal*' are sought to be summoned, only to substantiate the plea of impersonation of present petitioner Surjit Kaur, vis-a-vis, execution of the sale deed dated 21.03.2003 and also with regard to the documents, required to be shown to the Court qua impersonation, in connivance with Raj Kamal, who had since been convicted by learned trial Court.

Since, no such evidence, as such has been stated to be recorded further, the summoning of the requisite files, shall facilitate the Executing Court to reach the appropriate conclusion, vis-a-vis, the plea impersonation, as such, raised by the petitioner/objector.

Considering the same, it shall be appropriate, if the aforesaid requisite files are summoned, which shall be of assistance to the Executing Court to decide the objections.

Accordingly, the present revision petition is hereby allowed and the impugned order is set aside, with a direction to learned Executing Court to summon the requisite files of the aforesaid cases, for making reference during the time of addressing of the arguments, on the objection petition.

However, these observations are circumscribed only for the purposes

of deciding the present revision petition and summoning of the record of the aforesaid two files, shall not, in any manner, be taken as expression of opinion, by this Court, so far as, the objection petition is concerned.

May 24, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No