

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7467-2017(O&M)

Date of decision: 06.01.2023

Reserved on: 19.09.2022

Mahipal Deceased through LRs

....Petitioner

Versus

Punjab National Bank and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amit Jain, Advocate for the petitioner
Dr. Surya Prakash, Advocae for respondent no.4
Mr. Vineet Chaudhary, Advocate for respondent no.6

ANIL KSHETARPAL, J

1. The petitioners are the successors-in-interest of the auction purchaser-Late Sh.Mahipal, who was declared as the highest bidder in a court auction held on 4th May, 2001, with respect to the land measuring 42 Kanals 18 marlas land located in Village Silokhera. The court auction was confirmed on 28th February, 2008 and the sale certificate was ordered to be issued on 10th September, 2008. It is stated that the since the property is on lease, therefore, the petitioners should be delivered a symbolic possession of the property purchased by them through the court auction. The entire sale consideration has already been deposited by the petitioners.

2. The petitioners assail the correctness of orders dated 7th April, 2017 and 14th September, 2017 passed by the Executing Court.

The Executing Court has culled out the following issues for adjudication:-

“1 Whether the applicant/objector Sunita Jha is liable to be impleaded as LR of Late Dhirrender Brahamchhari, JD No.2 OPA (onus on applicant/objector Sunita Jha).

2. Whether the sale in favour of auction purchaser Mahipal is liable to be set aside on the grounds alleged by applicant/objector Sunita Jha? OPA (onus on applicant/objector Sunita Jha).

3. Whether the sale in favour of auction purchaser Mahipal is liable to be set aside on the grounds alleged by applicant/objector M/s Aparna Studio? OPA (onus on applicant/objector M/s Aparna Studio).

4. Whether the sale in favour of auction purchaser Mahipal is liable to be set aside on the grounds alleged by applicant MGF Developer Ltd.? OPA (onus on applicant/ objector MGF Developer Ltd.)

5. Whether the objections filed by the applicants/ objectors are not maintainable in the present form, as per the provisions of law? OPAP (Onus on auction purchaser Mahipal).

6. Relief.”

3. Since this Court is of the considered view that the matter is required to be remitted back to the Executing Court, hence, the detailed facts are not being noticed here by this Court. However, the relevant facts in brief as stated in the petition are as under.

4. In a civil suit, filed by the Punjab National Bank against the Shiva Gun Factory and late Swami Dhirender Brahmchhari, a judgment and decree for recovery of the amount was passed on 16th August, 1990. The execution petition filed in order to execute the decree was transferred to the competent court at Gurugram. Initially, the Court attached the said property in the year 1993. Late Swami Dhirender Brahmchhari filed an objection petition under Section 47 of the Code of

Civil Procedure, 1908 (hereinafter referred to as 'CPC') which was not pressed, resulting in its dismissal on 8th May, 1983. Thereafter, the court issued the warrants of sale. On 1st December, 2000, an application filed by Murli Chaudhary, an associate of the judgment debtors to stay the auction process of the property was rejected by the executing Court. Another application was filed on 3rd May, 2001 under Section 47 read with Order XXI, Rule 58 of Civil Procedure Code, 1908 was filed by M/s Aparna Studio Private Limited, allegedly in collusion with the judgment debtors. On 4th May, 2001 in the public auction the property was sold and the petitioners' father Late Sh.Mahipal was declared as the highest bidder. M/s Aparna Studio Private Limited filed another application on 10th May, 2001. Swami Surya Nand filed an objection petition on 30th May, 2001. Sh.Laxman Chaudhary filed the objections on 22nd September, 2001. According to the case of the petitioners, all the objections raised were almost identical. The objection petitions filed by M/s Aparna Studio Pvt. Ltd and Swami Surya Nand were not pressed and hence, were dismissed. By a detailed order passed on 28th February, 2008, the objection petition filed by Laxman Choudhary was also dismissed.

5. Pursuant to the orders dated 10th/22nd September, 2008 passed by the Court, the sale certificate was issued on 1st October 2008. Thereafter, the warrants of symbolic possession were required to be issued against M/s Aparna Studio Pvt. Ltd. However, M/s Aparna Studio Pvt. Ltd filed their objections. The same were ordered to be dismissed for non-prosecution as the objector or its learned counsel did not appear

before the Court on the due date. M/s Aparna Studio Pvt. Ltd filed an application for recall of the order dismissing the application for non-prosecution. The same was dismissed on 6th September, 2010. Thereafter, M/s Aparna Studio Pvt. Ltd stopped appearing in the Court and was proceeded against ex-parte. On 18th September, 2014 M/s Aparna Studio Pvt. Ltd once again filed application, when the execution petition was to come up for the issuance of warrants of symbolic possession. On 9th March, 2015, neither M/s Aparna Studio Pvt. Ltd nor its learned counsel appeared, resulting in the dismissal of its application for non-prosecution. On 13th, August 2015, M/s Aparna Studio Pvt. Ltd once again filed yet another application under Order 21 Rule 105, 106 CPC for recall of the order dated 9th March 2015. Thereafter M/s Aparna Studio Pvt. Ltd filed another application on 29th September, 2015 for recalling the warrants of possession issued by Executing Court which was disposed of by the Executing Court with the observation that only the symbolic possession was to be delivered. Thereafter, Smt.Sunita Jha as well as MGF Developments Limited filed applications in the execution petition. Smt. Sunita Jha claims to be the niece of Late Sh. Dhirender Brahamchari (judgment debtor no.2). She filed an application to bring her on record as LR of Late Sh. Dhirender Brahamchari. She also filed application for setting aside the sale of the property. Subsequently, Smt. Anurag Chaudhary, mother of Smt. Sunita Jha, Laxman Chaudhary and Sita Ram filed an application for bringing her on record as a legal representative of late Sh. Dhirender Brahamchari. M/s Aparna Studio Private Limited took a stand that Late Sh.Dhirender

Brahamchari gave the land in question to it during his lifetime. It is also contended that Sh.Laxman Chaudhary, Sunita Jha and Sita Ram were not in any manner related to late Sh.Dhirender Brahamchari. On 7th April 2017, the Executing Court culled out certain issues in order to decide the aforesaid controversy. Thereafter various applications filed for the correction / modification / recall of the order dated 7th April, 2017, were disposed of on 4th September, 2017, by culling out the issues, which have been extracted before.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. On the one hand, learned counsel representing the petitioner while referring to the detailed facts tried to impress upon the Court to direct the dismissal of the various applications/objection petitions. Whereas on the other hand, learned counsel representing the objectors contend that the Executing Court has only framed the issues for the decision of the case.

6. At the outset, it is important to note that the execution petition was filed on 29th October, 1991. In other words, the execution petition is pending for the last 32 years. From a careful perusal of the issues framed by the Executing Court, it is evident that the Court has failed to settle the issues in accordance with Order 14 Rule 1 CPC, which is extracted as under:-

“Framing of issues(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [after examination under Rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.”

7. It is evident on a bare reading of the aforesaid provision that the issues are required to be settled when a material proposition of fact or law is asserted by one party and denied by the other party. Each material propositions is required to form part of a distinct issue. It is evident that the Executing Court has not identified the material propositions of fact or law, which are required to be decided by the Court after framing them. The issues have been framed on the basis of various prayers made in the various applications. That is not a correct method of settling the issues. Moreover, the Executing Court has failed to notice the detailed facts leading to the present situation. Even the issue on question of the maintainability of the applications/objections at this stage has not been framed by the Court. The Executing Court should have examined Article 127 of the Schedule attached to the Limitation Act, 1963 in the context of the limitation in filing the objection petition. It is not

necessary for the Executing Court to always settle the issues and permit the parties to lead evidence. The executing Court may dismiss the execution petition if the same is either the abuse of process of the Court or is found without substance. The Court without framing the issues can call upon the objectors to produce the material evidence in support of their case, in order to prima facie evaluate, “As to whether there is some substance present in the objections or not?” As already noticed, previously, various applications have been filed by the various persons including the father of Smt.Sunita Jha for bringing them on record as LR's of Late Sh. Dhirender Brahamchari. The legal representatives are brought on the record in order to maintain the continuity in the proceedings and to permit the heirs to represent a party to the litigation, who has died before the adjudication of matter.

8. It has come on record that on 28.02.2008, legal representatives of judgment debtor no.2 were brought on record.

9. Keeping in view the aforesaid discussion, the orders dated 7th April, 2017 and 4th September, 2017 are set aside. The Executing Court is requested to take a holistic view of the matter. If the Executing Court finds that there are certain material propositions of fact or law on which the issues are required to be culled out for adjudicating, the Court will proceed to settle the issues. However, if the court finds that the various objections petitions/ applications can be decided without settling the issues, the Court will proceed accordingly.

10. Since the execution petition is pending for the last 32 years, therefore, the Executing Court is requested to make sincere

endeavours to finally decide the matter within 6 months, positively, from today.

11. With these observations made above, the revision petition stands disposed of.

12. All the pending miscellaneous applications, if any, are also disposed of.

06.01.2023
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE