IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

101+208

CM-13114-CWP-2023 IN/AND
CWP-15286-2017 (O&M)
Date of Decision: 11.08.2023

SAVITA SHARMA

... Petitioner

VERSUS

VIJAY BANK & ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Devender Rattan, Advocate
for the petitioner.

Mr. B.S. Badhran, Advocate
for the respondents.

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VINOD S. BHARDWAJ, J. (ORAL)

CM-13114-CWP-2023

This is an application for placing on record the documents i.e. Annexures R-1 and R-2.

Before proceeding further with the present application, it is noticed that the respondents have already been proceeded against *ex-parte* vide order dated 12.05.2023. It has also been noticed that a costs of Rs.5,000/- was also imposed upon the respondents vide order dated 13.01.2023; and as per report of the Registry, the order dated 13.01.2023 has not been complied with so far.

Learned counsel for the respondents has made an oral request for seeking permission to join the proceedings from the present stage and also prays for some time to comply with the order dated 13.01.2023.

The request is not opposed by learned counsel for the petitioner.

Accordingly, the respondents are allowed to join the proceedings of the present case from the present stage, subject to depositing the costs already imposed upon the respondents within a period of 15 days from today.

Registry is directed to recover the costs from the respondents.

Further, for the reasons mentioned in the present application, the same is allowed subject to all just exceptions.

The Annexures R-1 and R-2 are ordered to be taken on record.

Registry is directed to tag the same at appropriate place of the paper book and page mark the same.

MAIN CASE

The prayer in the present petition is for seeking issuance of directions to the respondents to release the original title deed/sale deed bearing Vasika No.15066 dt. 20.03.2003 registered with the Sub-Registrar Ludhiana for a property measuring 169 Sq. Yards situated at Taraf Saidian, Hadbast No.172, Abadi New Madhopuri, Tehsil and District Ludhiana.

Briefly summarized, the facts of the present petition are that the petitioner and her husband, being the owners in possession of the property described above, had applied for a housing loan with the respondent-Bank and had also availed a Cash Credit Limit. The abovesaid property was mortgaged and the original title deeds were submitted with the respondent-

Bank. The abovesaid loan account had been cleared in the year 2011-12 by the petitioners.

After clearing of the said loan account, the husband of the petitioner applied for release of the original title deed vide application dated 02.04.2012, however, despite issuing clearance of all the dues against the housing loan and the CC Limit, the bank refused to return the original title deed/sale deed to the petitioner on the pretext that Ramesh Sharma- husband of the petitioner stood as a guarantor on 08.08.2008 to the extent of Rs.15,00,000/- plus interest for the repayment of the loan amount in the account of M/s Pooja Hosiery, Ludhiana. Borrower had defaulted in the payment of the loan of the firm and as such, the original title deed cannot be returned. It is contended that there was no mortgage or lien created by the petitioner or her husband against the said property and as such, the respondent cannot legally retain the title deed or refuse to return the same.

A complaint bearing CC No.756 dated 03.10.2013 was thereafter filed by the petitioner before the District Consumer Disputes Redressal Form, Ludhiana which was disposed of vide order dated 12.06.2014 on the ground of jurisdiction and considering that the matter was already pending before the Debts Recovery Tribunal-II, Chandigarh. Liberty was granted to the petitioner to approach the appropriate Authority i.e. the Debts Recovery Tribunal.

It is further averred that the respondent-Bank had filed OA No.441 of 2011 before the Debts Recovery Tribunal-II, Chandigarh under Section 19 of the Recovery of Debts Due To Bank and Financial Institutions Act, 1993 against M/s Pooja Hosiery and its sole proprietor Mr. Vikram

Singh (the borrower), Mr. Vijay Pal and Mr. Ramesh Sharma as the Guarantors. An application under Order 38 Rule 5 of the C.P.C. read with Section 151 of the CPC for attachment of the property in question was also filed before the Debts Recovery Tribunal-II, Chandigarh numbered as IA-167.

On receipt of the notice of the said IA, the husband of the petitioner preferred his objections and reply. It was specifically stated that the half share of the property had been transferred in favour of Savita Sharma vide Transfer Deed dated 13.06.2011, Vasika No.5884 and thereafter, Savita Shamra had become the full owner of the property in dispute.

Upon hearing arguments of the respective parties on the application under Order 38 Rule 5 CPC, the same was dismissed by the Debts Recovery Tribunal-II, Chandigarh vide order dated 19.01.2016. The operative part of the said order is extracted as under:

> ***"This is an application for attachment of property of defendantNo.4 before judgment.***
>
> ***The property mentioned in the application which has been sought to be attached vide this application is for the reason that since charge to other property mortgaged by defendant No.2 is not traceable or identifiable, this property be attached.***
>
> ***Reply has been filed alongwith property papers. It is clear from the reply that this property had already been transferred in the name of the wife of defendant No.4 who is the guarantor. The property has already been transferred to the wife on 10.06.2011 which is before the legal notice was issued.***
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> ***For the reason stated above, it is clear that the property which was of the defendant No.4 is no longer in the ownership of defendant No.4. As such, relief sought in this IA cannot be granted.***

IA is dismissed."

It was specifically noticed that insofar the lien on property of defendant No.4 i.e. Ramesh Sharma (husband of the petitioner) is concerned, since he was not the owner of the property, the order of attachment could not be passed. The abovesaid order of 19.01.2016 has become full and final and has not been challenged by the respondent-Bank.

However, notwithstanding the order of dismissal of the application under Order 38 Rule 5 C.P.C. for seeking attachment of the property in question having become final, the title deeds in question are not being released.

Written statement on behalf of the respondent-Bank has been filed wherein, while admitting the factual aspects noticed above, it is averred that Ramesh Sharma – husband of the petitioner had executed the guarantee agreement for the Cash Credit Limit of M/s Pooja Hosiery, which was declared NPA on 31.03.2010 by the bank and while initiating proceedings under the SARFAESI Act, 2002 and after noticing that no property was mortgaged by M/s Pooja Hosiery and he had played a fraud with the Bank qua which an FIR had been registered, recovery proceedings by way of an application was filed against M/s Pooja Hosiery before the Debts Recovery Tribunal-II, Chandigarh, wherein Ramesh Sharma-husband of the petitioner was also impleaded as party being guarantor, in the said recovery application. The title deeds have thus been validly and lawfully retained by the respondent-Bank. It is also mentioned that Ramesh Sharma –husband of the petitioner had transferred the share of the property in question in favour of his wife Savita i.e. the petitioner vide Transfer Deed dated 13.06.2011 without obtaining permission from the Bank and as such, the said Transfer Deed cannot have any bearing on the rights of the petitioner or be taken into any consideration.

Counsel for the respondent-Bank had also prayed for some time to place on record the necessary documents so as to establish that a lien on the abovesaid property had been created by the husband of the petitioner.

Vide Civil Misc. Application No.15286 of 2017, the additional document Annexures R-1 had been placed on record, which is a letter of guarantee and as per the said letter, Ramesh Sharma-husband of the petitioner had solely/jointly and severally stood guarantee for repayment upto but not exceeding Rs.15,00,000/- alongwith interest. Learned counsel for the respondent-Bank could not refer to any clause by which any lien/mortgage had been created by Ramesh Sharma- husband of the petitioner namely Savita on the above house.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The undisputed facts that emerge from the consideration of the rival submissions are that the petitioner had initially availed a term loan as well as CC Limit from the respondent-Bank and that the above said dues had been duly cleared. A 'No Dues Certificate' had also been issued by the respondent-Bank. The lien created with respect to the property measuring 169 Sq. Yards described in the present petition thus seized to exist. However, solely on account of Ramesh Sharma standing as guarantor for the advance made to M/s Pooja Hosiery, the title documents have not been released. It is further evident that the respondent-Bank had initiated proceedings before the Debts Recovery Tribunal-II, Chandigarh after declaring M/s Pooja Hosiery as Non-Performing Asset (NPA) under the SARFAESI Act, 2002. An application under order 38 Rule 5 CPC had also been moved alongwith the petition for seeking attachment of the above property. After consideration of the relevant submission, the application under Order 38 Rule 5 CPC for attachment was declined by the Debts Recovery Tribunal-II, Chandigarh. The said order has already attained finality.

The respondent-Bank has failed to refer to any provision on the basis whereof it is entitled to retain the abovesaid title deeds. Even though there may be no dispute with respect to the entitlement of the respondent-Bank to effect recovery from the husband of the petitioner for the amount for which he stood as guarantor, however, the same does not mean that the respondent-Bank can exercise dominion over property without taking recourse to the due process of law.

The right to attach a property/ creation of a lien on any property is created either under the orders of the Court and/or by virtue of an agreement between the parties. No document has been placed on record on the basis whereof it can be ascertained that Ramesh Sharma had created a lien or mortgaged the aforesaid property with the respondent-Bank for securing the repayment of the amount advanced by the respondent-Bank to M/s Pooja Hosiery or that any order has been passed by a competent Court directing attachment of the said property.

On the other hand, the specific application moved by the respondent-Bank for seeking attachment of the property was declined after noticing that Ramesh Sharma had no title over the property and hence, could not create any lien against the abovesaid property as well. Having chosen not to impugn the order and/or to take recourse to further appellate proceedings, the respondent-Bank has become bound by the decision taken on the said application and till such time that an appropriate order is passed by the competent Court directing attachment of the property and/or authorizing the respondent-Bank to seize the said property, the action of the respondent-Bank, at this juncture, suffers from lack of jurisdiction and authority. The same would thus be liable to be set aside.

Ordered accordingly.

The respondent-Bank is directed to return the title deeds of the petitioner, without prejudice to its rights to pursue its remedies including seeking attachment of the property in question, if so advised, in accordance with law.

Petition stands allowed accordingly.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

11.08.2023.
rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No