2024:PHHC:066908

116.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.7032 of 2023
Date of decision: 13.05.2024

M/s Dharam Chand Shiv Kumar Commission Agent Sunam through Karta Rakesh Kumar .... Petitioner

Versus

M/s Shiv Shakti Rice Mill through partner Sweety Singla, Ashwani Kumar Singla and Hari Ram Bansal, Sunam Road Village Khokker, Tehsil Lehra, District Sangrur, and others
.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Mohd. Yousaf, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 17.10.2023 (Annexure P-9) passed by learned Civil Judge (Junior Division), Sunam, whereby the application filed by the petitioner-Decree Holder for permitting him to deposit sale consideration for the property sold by the Bank after setting aside the sale certificate, has been dismissed.

2. The brief facts, which are necessary for the disposal of present revision petition, are that the petitioner (hereinafter called, Decree Holder) was having business dealings with respondent No.1-firm. Respondents No.2 to 4 are the partners of respondent No.1 (Respondents No.1 to 4 are hereinafter called, Judgment Debtors). As the Decree Holder has some due against Judgment Debtors, the Decree Holder filed a Civil Suit No.829 on

20.12.2017 for recovery against them, which suit was decreed ex-parte vide judgment and decree dated 14.11.2018 and the Decree Holder was held entitled to recover Rs.6,88,966.33 paisa including interest @ 12% per annum from 30.11.2017 till the date of decree and future interest @ 6% per annum from the date of decree till its realization. The Decree Holder filed execution in January, 2018 against the Judgment Debtors, but when they did not pay the decretal amount, the Decree Holder got attached one house of the Judgment Debtors vide order dated 05.03.2019 and note of attachment was entered in the revenue record vide rapat No.372, dated 12.04.2019. However, during pendency of execution proceedings, respondent No.6 (hereinafter called, Auction Purchaser) moved an application for release of the property attached on the ground that he had purchased the property in an open auction held by respondent No.5-Punjab National Bank, Main Branch, Sangrur (hereinafter called, secured creditor). The Decree Holder filed reply to the application of Auction Purchaser. Vide order dated 31.08.2023 (Annexure P-5), the learned Executing Court released the property in favour of the Auction Purchaser.

2.1 Decree Holder moved application before the Executing Court for setting aside the sale proceedings and sale of property/Sale Certificate dated 26.04.2021, but vide impugned order, said application was dismissed.

3. Learned counsel for the petitioner-Decree Holder has argued that the Decree Holder moved the application under Order 21 Rule 66 CPC before the Executing Court. A notice of said application was ordered to be

served upon the Judgment Debtors. However, the secured creditor sold the property in open auction held on 25.03.2021 to the Auction Purchaser, for Rs.72,50,000/-, a close family member of Judgment Debtor No.1-Sweety Singla, and also issued Sale Certificate dated 24.06.2021. It is submitted that auction dated 25.03.2021 is illegal, null and void as no permission from the Executing Court was obtained to release the property from attachment. The property was sold at a much less value in connivance with Judgment Debtor-Sweety Singla and Auction Purchaser. The property was already attached, but in the sale certificate, it has been mentioned that property is free from all encumbrances. The realizable value of the property is Rs.1,09,70,000/- and distress sale value of the property is Rs.97,50,000/-. As per valuation report of approved Architect, even Judgment Debtor-Sweety Singla filed SA No.56 of 2021 before the Debt Recovery Tribunal, in which, Auction Purchaser was also impleaded as party, but all these facts were not disclosed by the Auction Purchaser in the Court. The sale is also deserved to be set aside as per the provisions of Order 21 Rule 89 CPC. The Decree Holder is ready to deposit the sale amount and same be got deposited.

4. I have heard the submissions of learned counsel for the petitioner and have gone through the file.

5. It is an admitted fact that the Judgment Debtor No.1/ respondent No.1 created equitable mortgage of the property in favour of secured creditor-Bank much prior to the filing of the suit and attachment of

the property. The equitable mortgage in favour of secured creditor created right in the property and attaching creditor is entitled to attach only the right, title or interest of Judgment Debtor. No doubt, Section 64 of CPC is intended to protect the rights of attaching creditor, but if right is already created in the property by creation of equitable mortgage, then right of attaching creditor cannot be allowed to override the same and such an attaching creditor cannot seek for setting aside of the sale of attached property. Moreover, recovery has been effected by the secured creditor under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called, SARFAESI Act). Under these circumstances, sale of the property can only be challenged before the authority which has sold the same and not before Civil Court in execution proceedings. As per the provisions of Section 34 of the SARFAESI Act, Civil Court has no jurisdiction to entertain any proceedings in respect of any matter which a Debt Recovery Tribunal is empowered under the SARFAESI Act. Petitioner has got remedy before the Debt Recovery Tribunal and not before the Executing Court.

6. In view of above, I do not find any illegality in the impugned order. The revision petition is without merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

May 13, 2024
sanjeev

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