

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

2025:PHHC:063592

**EFA-9-2015(O&M)****Date of decision: 14.05.2025****KOTAK MAHINDRA BANK LTD****..Appellant****Versus****SANJAY LAMBA AND ORS****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. D.K. Singal, Advocate
for the appellant.

Mr. Aman Garg, Advocate
for respondent No.3 and 4.

ANIL KSHETARPAL, J(Oral)

1. Surprisingly, the First Appellate Court has dismissed the execution petition on wholly incorrect basis. There is an arbitration award in favour of predecessor of the appellant for recovery of the amount. In fact, the City Financial Consumer Finance India Limited extended credit facilities to judgment debtor No.1 and 2 on creation of equitable mortgage by deposit of title deeds. On account of default in repayment, arbitration proceedings were initiated, which resulted in award passed on 13.10.2005 by the Arbitrator. During the arbitration proceedings on 09.12.2004, judgment debtor No.1 and 2 sold the property in favour of Sh. Nahar Singh, who in turn sold the property in favour of respondent Smt. Usha Grover and Sh. Govind Raj Grover vide sale deed dated 15.09.2008. The award passed by the Arbitrator is executable in terms of Section 36 of the Arbitration and Conciliation Act, 1996. When the execution petition was filed, the respondent Smt. Usha Grover and Sh. Govind Raj Grover filed the objection petition, which has been allowed on the ground that decree holder-bank neither got registered any equitable mortgage with



regard to plot in the office of Sub-Registrar nor got entered the factum of mortgage in revenue record. The order is incorrect because once there was an equitable mortgage by deposit of title, the rights of mortgagee are superior. The vendees shall be responsible to pay the amount, failing which the mortgaged property is required to be sold.

2. Learned counsel for respondent submits that they are the bonafide purchasers of the property. The argument has no substance because the title of judgment debtor No.1 and 2 was subject to charge created by them. Hence, they could transfer the property along with the aforesaid charge, which has been created upon the property.

3. Consequently, the appeal is allowed. The impugned order passed by the Executing Court is set aside with a request to the Executing Court to proceed with the matter.

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

May 14th, 2025

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*