(1991) 04 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 974 of 1991

Burma Rice Mills, Ghanaur — APPELLANT

Vs

Om Parkash Jagdish Kumar — RESPONDENT

Date of Decision : 25-04-1991

Acts Referred:

Citation : (1992) ISJ 200 : (1992) 2 LJR 70 : (1991) PLJ 339 : (1991) 2 PLR 456 : (1991) 2 RRR 351

Hon'ble Judges : A.P.Chowdhri, J

Advocate : Hemant Kumar, Advocate., Advocates for appearing Parties

Judgement

A.P. Chowdhri, J.

1. This order will dispose of two civil revisions, No. 974 and 975 of 1991, directed against the order dated 23.1.1991 passed under Order 41 Rule 5 of the Code of Civil Procedure by the learned District Judge, Patiala while admitting Civil Appeal No. 271 dated 5.10.1990 and Civil Appeal No. Z70 dated 5.10.1990 against the judgment and decree of Subordinate Judge 1st Class, Rajpura in the two cases. Both these revisions are being disposed of by a common order as they arise out of the same facts and involve common question of law and facts.

2. The respondents in the two revision petitions, namely Firm Om Parkash Jagdish Kumar and Firm Muni Lal Devinder Kumar obtained money decrees against the petitioners. The petitioners preferred regular first appeal in the Court of District Judge. The petitioners applied for stay of execution under Order 41 Rule 5 of the Code of Civil Procedure. The learned District Judge stayed the execution of the decree subject to the deposit of Rs. 1,25,000/ by the petitioners in the first case and a sum of Rs. 1,50,0001 in the second case by a specified date. Through these revision petitions, the aforesaid orders of the learned District Judge have been called in question.

3. Shri Hament Kumar, learned counsel for the petitioners contended, in the first instance, that the petitioners had entered into an agreement with the

respondents in the two cases in hand as well as some others on 15.10.1984 agreeing to sell rice mill etc. of the petitioners for an agreed amount and had in pursuance of the agreement handed over the possession of the property to the respondents and other agreement purchasers. As objection was, therefore, taken in the suit that the claim for recovery of money was not maintainable and the remedy of the respondents was to implement the aforesaid agreement. His second submission is that on the passing of the decree, the respondentsdecreeholders took out execution and 19 Bighas and 29 Biswas of land belonging to the petitioners was attached. The aforesaid land provided sufficient security and it would cause great hardship to the petitioners to deposit in cash the amount ordered by the lower appellate Court. In fact, the petitioners were not in a position to pay that much money and that is why they were forced to enter into an agreement of sale of their property. Failure of the petitioners may, therefore result in deprivation of even their right of appeal. It was, therefore, urged that sufficient security had been provided by the attachment of the aforesaid land and no further security should have been ordered by the Court.

4. Shri N.L. Sammi, learned counsel for the respondents submitted that the agreement of sale dated 15.10.1984 was incomplete. The various parties, including the respondents, had not signed the same. There was a categorical finding recorded under issue No. 5 by the trial Court that the said agreement was incomplete. etc. It was. never acted upon. Under issue No. 6, it was further found by the trial Court that possession of the rice mill etc. continued to be with the petitioners and the same had not been delivered to the respondents. He further submitted that the petitioners were persons of substance. They had paid off and settled the claim of three other parties and in the facts and circumstances of the case, the order passed by the learned District Judge was fair and equitable and should not be interfered with.

5. There is no dispute that before granting the stay of execution, the lower appellate Court could and should have called upon the judgmentdebtor to furnish security for due compliance of the decree in the event of dismissal of their appeal. What is disputed is whether the appellants should be called upon to deposit a sizeable amount in cash or to furnish any other form of security. After hearing the learned counsel for both the parties, I am of the view that in the facts and circumstances of the case, it would work hardship on the petitioners to deposit the specified amount in cash as, directed by the learned District Judge. It was stated in the grounds of revision that 19 Bighas 29 Biswas of land of the petitioners had been attached in execution of the decree. This fact was repeated at the time of hearing and it has. not been controverted. It has also not been shown that aforesaid land does not provide adequate security to cover the amounts of the decree. In a situation like this, asking the petitioners to deposit security in cash was not called for and if the petitioners are unable to comply with the order, it would result in denial of stay of execution resulting in hardship to the petitioners. In the facts and circumstances of the case both the revision petitions are allowed. The orders in question of the learned District Judge in both

the cases are set aside and instead it is directed that the execution of the judgment and decree under appeal before the District Judge shall be stayed on the judgment debtors (petitioners herein) furnishing security bond in the amounts specified in the ordersunder revision with one surety in alike amount to the satisfaction of the District Judge within one month of this order. The two orders under revision are modified to the extent mentioned above. The parties through counsel are directed to appear in the lower appellate Court on 8.5.1991 for further proceedings according to law.

