(1991) 07 MP CK 0028

In the Madhya Pradesh High Court

Case No : C.R. No. 277 of 1989

Chiranjilal APPELLANT

Vs

Central Bank of India RESPONDENT

Date of Decision : 29-07-1991

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 6

Citation : (1994) 80 CompCas 573

Hon'ble Judges : A.G. Qureshi, J

Bench : Single Bench

Advocate : Agrawal, for the Appellant; Jindal, for the Respondent

Final Decision : Dismissed

Judgement

A.G. Qureshi, J.—This revision petition is directed against the order dated August 23, 1989, passed by the Eighth Additional Judge in the court of the District Judge, Indore, in C. S. No. 3 of 1989 whereby the lower court has directed the present applicant to produce the truck before the court for attachment and sale.

2. The facts leading to this revision petition, in short, are that the non-applicant, the Central Bank of India, filed a suit for recovery of loan against the applicant and his guarantor. Along with the suit the non-applicant also filed an application under Order 39, Rule 6 of the Civil Procedure Code, for interim sale of truck No. CPO 7868 on the ground that the truck was hypothecated with the bank. The present applicant denied the fact of the pledge of the truck with the bank, but the trial court was satisfied that the truck was pledged with the bank and hence passed the impugned order. Hence, this revision petition.

3. On a perusal of the order impugned I find that the learned lower court has taken into consideration the facts that, prima facie, a loan of Rs. 3,00,000 was taken by the applicant from the bank on August 29, 1980, for purchase of three trucks and, at the time of obtaining the loan, the applicant entered into an agreement with the bank to pay Rs. 10,000 per month towards the payment of

the principal and the interest, but he did not pay the amount as per the agreement, the truck is hypothecated with the bank in question. Therefore, the bank has a right to get the relief by way of attachment and sale of the truck.

4. Learned counsel for the applicant, Shri Agarwal, strenuously argues that, when the fact of pledge itself was disputed by the present applicant, no order could have been passed without holding an enquiry about the factum of pledge. Therefore, the order without an enquiry passed by the lower court cannot be held to be legal.

5. On the other hand, learned counsel for the non-applicant, Shri Jindal, argues that the position of law is well-settled that when a vehicle is hypothecated with the bank, the court can pass an order for the attachment and sale of the truck. On perusing the record of the lower court, I find that the bank has filed a copy of the loan agreement and hypothecation of the vehicle along with the plaint before the lower court and, therefore, prima facie, it was a case wherein the court, on the basis of the documents, could hold that the truck in the possession of the applicant was hypothecated with the non-applicant bank-As regards the right of the court to pass an order even without an affidavit being filed by the bank in Sewakram v. State Bank of India [1989] 2 MPWN 186, this court has held that an application under Order 39. rule 6 of the Civil Procedure Code, can be allowed even without an affidavit. The movable property can be ordered to be sold for just and sufficient cause. It has also been held that the hypothecatee is supposed to be in legal possession though the debtor remains in physical possession. In the aforesaid judgment, the court has taken into consideration the earlier decisions of this court and has refused to interfere in revision in an order passed by the lower court directing the sale of the movable property.

6. In Krishna Gopal Dube v. Punjab National Bank [1985] MPWN 366 also, this court has taken a view that, if the goods are hypothecated and the bulk of the loan remains unpaid, then the property can be attached and sold. In Jimmy Restaurant v. Punjab Sind Bank Ltd. [1980] 1 MPWN 11; this court has held that the creditor can take possession of the hypothecated goods directly without the court''s intervention and the possession of a debtor of the goods so hypothecated is always on behalf of, or in trust for, the creditor. In an identical case in Jagdishlal Sidana v. United Commercial Bank [1973] 2 MPWN 210, this court has held that, where the loans were advanced by the bank for purchase of trucks and the trucks were purchased and hypothecated with the bank and after payment of a few instalments when the borrower stopped the payments, then, in a suit for recovery of the loan amount, an interim other can be passed in favour of the bank for sale of the hypothecated trucks because the hypothecate is supposed to be in legal possession and custody of the property though the physical possession is with the borrower. The hypothecatee can exercise his right of sale either privately or through the court. Therefore, the order of the court calling upon the owner to deliver the trucks to the bank was held to be proper.

7. In view of the aforesaid consistent view taken by this court and in the facts

and circumstances of the case, I am of the view that the lower court has not erred in any way in passing the impugned order. Therefore, there is no ground for interfering with the order passed by the lower court. The revision petition is, accordingly, dismissed, being without any merit, with costs. Counsel''s fee as per schedule.

