
(2001) 10 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 293 of 2001

Ghansham Dass

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 15-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 30

Citation : (2002) 1 RCR(Civil) 488

Hon'ble Judges : Bakshish Kaur, J

Bench : Single Bench

Advocate : Padam Jain, for the Appellant; S.S. Aulakh, for the Respondent

Final Decision : Dismissed

Judgement

Bakhshish Kaur, J.—A suit for recovery of Rs. 1,65,543/-along with interest was decreed in favour of the plaintiff respondent No. 1, on July 21, 1987. The petitioner was one of the defendants No. 2 before the trial Court. He being defendants No. 2 before the trial Court, the decree was passed ex pane qua him whereas the suit was contested by the other defendants.

2. For the execution of the decree, the decree-holder filed execution application. The petitioner filed objections that the property owned by him is not "iable to attachment. He has also averred that the truck which was hypothecated with the decree holder should be sold for the realisation of the decretal amount. The learned Executing Court did not accept the objections preferred by him on the ground that the truck is not available.

3. Considering that the petitioner had 1/2th share in the property sought to be attached, as per revenue record, it was ordered that the decretal amount be realised by putting the property to auction.

4. I have heard Shri Padam Jain, learned counsel for the petitioner and Shri S.S. Au-lakh, learned counsel for the respondent No. 1.

5. Shri Padam Jain, learned counsel contents that the trial Court should adopt the mode of putting to sale the hypothecated property for realisation of the decretal amount and then to realise the remaining amount, if any, the property of the petitioner, who was a mere guarantor on behalf of defendant No. 1 may be auctioned.

6. To meet this argument, Mr. S.S. Aulakh, learned counsel for the respondent No. 1 has place reliance on *Rajinder Singh v. Punjab and Sind Bank* 1994 ISJ 123 whereih a somewhat similar plea was taken that until the goods hypothecated against the loan raised were put to auction and sale proceeds thereof were adjusted against the decretal amount, the property of the petitioner could not be attached and sold in execution of the decree and no steps could be taken to recover amount in execution of the said decree passed against him till such time. This argument was not accepted. While following the ratio of the law laid down by the Supreme Court in *State of Bank of India v. In-dexport Registered and Ors.* 1992 ISJ 507, it was observed in para 4 of *Rajinder Singh's* case.(supra) that in the face of the decrees passed herein, it cannot be said that the decree holder must realise a part or whole of the decretal amount first by sale of hypothecated goods and then proceed against the guarantor.

7. The petitioner against whom the decree was passed had not taken any steps for getting the decree set aside as the same was passed ex parte qua him nor an appeal was filed. Now, therefore, he cannot challenge the same in execution proceedings.

In view of the aforesaid, there is no merit in this revision petition. The same is dismissed.