(1993) 08 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2902 of 1992

Gulshan APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 06-08-1993

Acts Referred:

Haryana Relief of Agricultural Indebtedness Act, 1989 — Section 3

Citation : (1996) 85 CompCas 728 : (1994) 106 PLR 373

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : Jatindra Sharma, for the Appellant; Ashok Gupta, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Garg, J.—This order will dispose of this revision petition filed under Article 227 of the Constitution of India. The facts giving rise to this petition may be noticed thus :

Mehar Chand and his three sons, namely, Sarvshri Sher Singh, Hira Lal and Gulshan, took a loan from the respondent-bank for the purchase of a tractor. In the process, they mortgaged two parcels of land. One parcel of land measuring 58 bighas 4 biswas is owned by Sarvsliri Sher Singh, Hira Lal and Gulshan, sons of Mehar Chand, whereas the other parcel measuring 51 bighas 4 biswas was owned by Mehar Chand since deceased. Since the loan was not repaid, the bank filed a suit for the recovery of Rs. 70,050.09. The bank also claimed interest, a preliminary decree was passed for the recovery of Rs. 70,050.09 with interest at 11 per cent. per annum. The amount was not paid within a period of six months, the bank consequently moved the court for passing a final decree. The final decree was consequently passed on July 22, 1989, for the recovery of Rs. 70,050.09 with interest at 11 per cent. per annum by sale of the mortgaged property. As already observed, the amount was still not paid. The bank consequently took execution and the mortgaged properties were ordered to be sold on October 1, 1992, for the recovery of the decretal amount. Prior to this, all the four judgment-debtors filed an objection petition, which was dismissed by the executing court. When the properties were ordered to be sold, Gulshan, one of the sons of Mehar Chand, filed the present petition calling in question the order dated September 3, 1992, of the executing court whereby the hypothecated goods, namely, tractor and land, were ordered to be sold as per the schedule given therein.

2. The objections as now raised in the revision petition under Article 227 of the Constitution of India may also be noticed ;

(i) The court wrongly awarded interest at 11 per cent. per annum from the date of institution of the suit till realisation.

(ii) The judgment-debtors being agricultural labourers and their income being less than Rs. 2,400 per annum, their property cannot be sold in view of the provisions of Section 3(c) of the Haryana Relief of Indebtedness Act, 1989.

(iii) The loan was not taken for agricultural purpose and in any case they had already paid a sum of Rs. 37,000.

(iv) Mehar Chand having died on September 16, 1992, the mortgaged property could not be sold till such time as his heirs are brought on record.

3. After hearing learned counsel for the parties, I find no merit in this revision petition and the same deserves to be dismissed.

4. Suffice it to say as regards the first objection that interest at 11 per cent. per annum was granted by the court while decreeing the suit, the executing court cannot go behind the decree in view of the judgment of the Supreme Court in State Bank of India v. Indexport Registered [1992] 75 Comp Cas 1 : 3 SCC 159.

5. Regarding the second and third objections, it may be noticed that the loan was taken for the purchase of tractor, which on the face of it shows that the judgment-debtors were and are agriculturists. They own land as already noticed in the earlier part of this order. It is not even stated in the petition that their main source of livelihood is from a source other than the income from agriculture. In view of the pleadings, it has to be held that the only source of livelihood of the judgment-debtors is from agriculture. The provisions of Section 3(c) of the Haryana Relief of Indebtedness Act, 1989, are as such not applicable to the facts of the present case. Even otherwise, learned counsel for the respondent has brought to my notice that an amendment has been brought in in this very Act specifically stating that the provisions of this Act will not apply in respect of the loans taken from the State Bank of India and other nationalised banks. In these circumstances, it cannot be said that the property is not liable to be sold for the recovery of the amount decreed; Almost all the objections now taken were earlier taken by the judgment-debtors before the executing court and the same were overruled, vide order dated February 28, 1992. As regards the second part of objection No. 3, suffice it to say that if any amount has already been paid towards the loan, the same would be adjusted and the petitioner is at

liberty to have a look at the account books of the bank in this regard. All errors and omissions in this behalf can be set right at any point of time if pointed out by the petitioner.

6. The mortgaged property was ordered to be sold, vide order dated September 3, 1992. The death of Mehar Chand thereafter cannot have any effect on the order passed by the executing court for sale of the mortgaged property for the recovery of the decretal amount. In any case it was open to the heirs of Mehar Chand to move the executing court if they had any . objection in that behalf. Three out of five heirs of Mehar Chand are already on record as judgment-debtors. Even one heir can represent the estate of the deceased.

7. In view of what has been discussed above, I find no merit in this revision petition and the same is dismissed. No costs.

8. It, however, deserves notice that the entire land of the judgment-debtors measuring about 110 bighas has been ordered to be sold besides the tractor. According to learned counsel for the respondent-bank, total amount payable by the judgment-debtors as per the decree works out to about Rs. 2,00,000 as on day, because the amount due as on November 13, 1990, was Rs. 1,48,488.55. However, Mr. Sharma points out that some amount had been paid thereafter. For the recovery of a sum of about Rs. 2,00,000, I feel that it would not be necessary to sell the entire land of the judgment-debtors. In these circumstances, I direct the executing court to initially effect the sale of 50 bighas and 4 biswas land owned by Sarvshri Sher Singh, Hira Lal and Gulshan and if the sale proceeds thereof fell short of the amount due to the decree-holder, steps would be taken to sell the other properties of the judgment-debtors.