

(2022) 11 UK CK 0091

In the Uttarakhand High Court

Case No : Appeal From Order No. 387 Of 2022

MDDA Ramky ISBT Ltd

APPELLANT

Vs

Aash Muhammad & Another

RESPONDENT

Date of Decision : 30-11-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 64, 151
Arbitration And Conciliation Act, 1996 — Section 34
Code Of Civil Procedure, 1908 — Order 21 Rule 58

Citation : (2022) 11 UK CK 0091

Hon'ble Judges : Vipin Sanghi, CJ;Manoj Kumar Tiwari, J

Bench : Division Bench

Advocate : L.B. Rai, Neeraj Garg

Final Decision : Dismissed

Judgement

Vipin Sanghi, CJ

1. The present Appeal is directed against the judgment dated 31.08.2022 passed by the Commercial Court, Dehradun in Misc. Case No. 72 of 2021 preferred by respondent-Aash Mohammed under Order 21 Rule 58 C.P.C. read with Section 151 C.P.C. The Commercial Court considered the objections of the respondent no. 1 and held that the attachment of the property purchased by the said respondent could not be sustained, and consequently, the same could not be sold for execution of the money decree obtained by the appellant herein against respondent no. 2.

2. In brief, relevant facts are that the appellant, being the landlord of the premises wherein one Mr. Ombeer Singh Tomar was the tenant who is impleaded as respondent no. 2, initiated arbitration against the respondent no. 2-the tenant for non-payment of rent and obtained an arbitral award in its favour. The money award stood confirmed, inasmuch as, the objections of respondent no. 2 under Section 34 of the Arbitration and Conciliation Act were rejected. The appellant then initiated execution proceedings. In those execution proceedings, the

property in question was attached by the Executing Court. The wife of respondent no. 2 preferred objections to the said attachment, on the ground, that she was the owner of the attached property, having purchased the same in the year 2013. The objections were, however, rejected on a technical ground, namely, that she was no longer the owner of the property- having sold the same to respondent no. 1 herein, within a matter of a few days of the attachment order being passed. Thus, the issue whether the property, which did not belong to the judgment-debtor, and which was not mortgaged or pledged by the owner at the instance of the judgment-debtor, could be attached, was not gone into by the Executing Court. Subsequently, the respondent no. 1 herein preferred objections, which have been allowed by the Commercial Court/Executing Court by the impugned judgment.

3. The submission of the learned counsel for the appellant is that since the objection preferred by the predecessor-in-interest of the respondent no. 1 had been dismissed, he could not have maintained the same. The order passed in the objections preferred by the wife of Mr. Ombeer Singh Tomar, i.e., Smt. Sushma Tomar having attained finality, subsequent objections could not be maintained by her transferee in interest.

4. We do not find any merit in this submission, for the reason, that the objections preferred by Smt. Sushma Tomar were rejected not on merits, but on the ground of her not having the locus standi to file the same.

5. The further submission of the learned counsel for the appellant is that the transfer of the attached property by Smt. Sushma Tomar in favour of respondent no. 1 was hit by Section 64 of the Civil Procedure Code, 1908 and, therefore, even respondent no. 1 could not maintain the objections.

6. In our view, the appellant cannot have it both ways. The objections of Smt. Sushma Tomar were rejected on the ground that she was no longer the owner- thereby recognizing that the property had passed on to the respondent no. 1 herein. It is, therefore, not open to the appellant to now contend that the transfer of the property, after attachment in favour of respondent no. 1, was bad.

7. Either Smt. Sushma Tomar, or respondent no. 1 were entitled to maintain their objections under Order 21 Rule 58 C.P.C. Pertinently, there is no answer available with the appellant to the question, as to how, the property of the wife of the judgment-debtor – respondent no. 2, could be attached in respect of debts of the husband, particularly when the appellant had not shown that the property was acquired by the wife after initiation of the arbitration proceedings for recovery by the appellant. As noticed herein above, the acquisition of the property by Sushma Tomar relates back to the year 2013, which is much before the initiation of the arbitral proceedings by the appellant.

8. We are therefore, not inclined to interfere with the impugned judgment.

9. The appeal is, accordingly, dismissed. We, however, make it clear that it shall

be open to the appellant to execute the decree in all other ways, permissible under the law.