

(2011) 09 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3541 of 2011 (O&M)

Megh Raj

APPELLANT

Vs

Ambala Kurukshetra Gramin Bank & Ors.

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2012) 2 Law Herald 1043 : (2012) 2 RCR(Civil) 149

Hon'ble Judges : Vijender Singh Malik, J

Advocate : Mr. G.S. Sandhu, Advocate, For Respondents No. 1-Bank: Mr. Jitender S. Chahal, Advocate, For Respondent No.3: Ms. Priyanka Sud, Advocate., Advocates for appearing Parties

Judgement

Mr. Vijender Singh Malik, J.—This is a revision petition brought under the provisions of Article 227 of the Constitution of India for setting aside the order dated 27.9.2010 (Annexure P1) passed by Sub Divisional Officer (Civil)cumCollector, Jagadhari. The facts necessary to be noticed here are available in the impugned order itself.

2. Megh Raj petitioner did not repay the loan availed by him from Ambala Kurukshetra Gramin Bank (for short, ?the Gramin Bank?) regarding which, the Gramin Bank had filed suit for recovery under the provisions of section 8(1) of Haryana Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1973 (for short, ?the Act?). The proceedings were initiated against Sahib Singh along with Megh Raj. Smt. Renu Phulia, Sub Divisional Officer (Civil), Jagadhri passed an order dated 8.7.2003 against Megh Raj as he had not shown his readiness to pay the loan amount. It was noticed by her that with a view to avoid payment of the dues and delay the court proceedings, he had not cared to appear in the proceedings and had been proceeded against exparte. Vide order dated 8.7.2003, the petitioner was directed to make payment of the balance loan amount within a period of one month. It was also ordered that on his failure to pay the balance loan amount within the time given, the amount was to be recovered as arrears of land revenue. The petitioner and Sahib Singh failed to

comply with the aforesaid order and, therefore, the Gramin Bank got the land of the petitioner attached, which was consequently sold.

3. Sale certificate was to be issued with regard to the said auction, but the petitioner Megh Raj filed objections on 13.3.2008 with an application for condonation of delay. He claimed that the order passed by Smt. Renu Phullia on 8.7.2003 was not legally tenable because for getting the loan amount declared as land revenue, the same was to be sent to the Collector, Yamuna Nagar but Smt. Renu Phullia, without any intimation to the petitioner, directed Naib Tehsildar, Jagadhri to auction the land of the petitioner. He has claimed that his land measuring 2 kanals 13 marlas was sold for a total sum of Rs.1,10,000/ and, thus, loss has been caused to him. He has claimed that he had paid a sum of Rs. 63,000/ to the Gramin Bank and the Bank was not entitled to charge interest at a rate more than 6 per cent per annum. The auction conducted was, therefore, challenged as baseless and unjustified. He prayed for setting aside the sale and has prayed for withdrawal of the sale certificate.

4. The application was opposed by the Gramin Bank. It had claimed that execution proceedings were already complete because the auction sale has been approved by the executing officer in favour of the highest bidder and only sale certificate is left to be issued. It was also claimed that the petitioner failed to file objections during the course of execution proceedings and now the objections are not maintainable.

5. The auction purchaser had also opposed the application claiming that he had purchased the property by giving highest bid and the petitioner has no right to file objections under section 47 CPC. It is claimed that the petitioner is left with no concern with the land in question.

6. Hearing learned counsel for the parties, learned Collector, Yamuna Nagar passed the impugned order dated 27.9.2010, vide which the objections of the petitioner have been dismissed and issuance of sale certificate has been ordered.

7. Aggrieved by the aforesaid order, Megh Raj has brought this revision petition.

8. I have heard Shri G.S.Sandhu, learned counsel for the petitioner, Shri Jitender S. Chahal, learned counsel for respondents No. 1 Gramin Bank and Ms. Priyanka Sud, learned for respondent No.3 and have perused the written submissions filed on behalf of respondent No.3, taken on record at the time of hearing.

9. Learned counsel for the petitioner has failed to put on record a copy of the objections/application alleged to have been filed before Sub Divisional Officer (Civil)cumCollector, Jagadhri under the provisions of section 47 CPC. The proceedings commenced against the petitioner under the provisions of section 8(1) of the Act earlier to 8.7.2003. Vide order dated 8.7.2003, the S.D.O. (Civil), Jagadhri noticed the conduct of the petitioner while defending the proceedings under the Act and has further noticed that he wanted to prolong the matter. Conditional order was made on 8.7.2003 directing the petitioner to pay an over

due installment within a period of one month, failing which the same should be recovered under the Punjab Land Revenue Act. The proceedings of this case, noticed in the written submissions filed by respondent No.3, show that in pursuance of this order, order of attachment was made qua the property in question on 20.2.2004. This order was challenged by the petitioner by way of Civil Writ Petition No. 14257 of 2003 on the ground of jurisdiction and the same was dismissed by this court on 12.3.2004. In place of approaching the Gramin Bank for one time settlement, for which permission was granted by this court vide order dated 12.3.2004, the petitioner filed a suit for declaration challenging the recovery proceedings. His application for adinterim injunction was dismissed on 4.1.2005. His appeal against the order dated 4.1.2005 was also dismissed by learned District Judge, Yamuna Nagar. The date of auction was published and no application for postponement of the auction sale was made by the petitioner. The petitioner filed another suit challenging the notice of auction as illegal, null and void etc. The said suit was dismissed for default of appearance. The property was put to open auction and was purchased by respondent No. 3, the highest bidder, on 20.9.2007. The petitioner preferred Civil Revision No. 5121 of 2007 challenging the orders dated 17.9.2007 and 26.9.2007. He expressed his desire to sell the land by private negotiation. The revision petition was dismissed as withdrawn with liberty to approach the courts below for appropriate directions. Third suit was filed on 5.12.2007 challenging the auction proceedings. On 18.12.2007, the sale was confirmed in favour of respondent No.3. The application under Order 39 Rules 1 and 2 CPC filed in the suit dated 5.12.2007 had been dismissed on 19.2.2008. Thereafter, this application under section 47 CPC was filed, which has been dismissed by the executing court and, consequently, this revision petition was filed.

10. Learned counsel for the petitioner has submitted that the petitioner is ready to make the payment of the dues of the Gramin Bank. According to him, for a petty sum, his land measuring 2 kanals 13 marlas has been sold. He has submitted that the petitioner would be highly prejudiced if the sale is not set aside and he is not permitted to pay the amount.

11. It is argued on the other side that the application under section 47 CPC is not maintainable. It is submitted that application/objections under section 47 CPC could lie if the decree is claimed to be void ab initio and a nullity, as also on the ground that the decree is incapable of execution, having been passed in ignorance of a provision of law or that a law was promulgated after its passing making it inexecutable. In support of this submission, a decision of Hon'ble Supreme Court of India in Dhurandhar Prasad Singh Vs. Jai Prakash University and others (2001) 6 SCC 534 has been cited. It is submitted that no effort at all was made during the proceedings to deposit the dues and no prayer for setting aside the sale under the provisions of Order 21 Rule 79 CPC was made. It is further argued that no application was made for setting aside the sale on the ground of irregularity or fraud under the provisions of Order 21 Rule 90 CPC. It is, therefore, submitted that the application under section 47 CPC had not been

maintainable and, therefore, the same has been rightly dismissed.

12. No irregularity or illegality in conduct of the auction has been pointed to me. The exact nature of the claim made in the application is not revealed by the record because a copy of the said application has not been placed on the file. Merely saying that the S.D.O. (Civil), Jagadhri had not sent the case for declaring the dues recoverable as land revenue carry no weight because S.D.O. (Civil), Jagadhri was herself exercising the powers of Collector and had ordered the dues to be recovered under the Punjab Land Revenue Act. Inadequacy of the amount, for which the land was sold, can also be not made a grouse against the auction sale. The proceedings were well within the knowledge of the petitioner. This fact is evident from the above mentioned history of the proceedings brought by the petitioner against the execution proceedings.

13. Since no case against executability of the decree on the grounds available under the provisions of section 47 CPC, as laid down in Dhurandhar Prasad Singh's case (supra), is made out, the application under section 47 CPC has not been maintainable. Moreover, the petitioner is not entitled to any relief in the case, where the auction itself has been confirmed and sale certificate alone is left to be issued.

14. In these circumstances, I find no ground to interfere with the impugned order. Finding no merit in the revision petition, I dismiss the same.