
(1988) 05 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 861 of 1987

M/s Parkash Traders and others

APPELLANT

Vs

New Bank of India and another

RESPONDENT

Date of Decision : 27-05-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1988) 05 P&H CK 0006

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : S.C. Kapur, for the Appellant; R.K. Aggarwal, for the Respondent

Judgement

G.R. Majithia, J.—The respondent bank filed a suit for the recovery of loan amount against the petitioners on November 19, 1977 which was decreed by the learned Sub Judge Ist Class, Karnal, on March 3, 1982, against the present petitioners/judgment-debtors. The operative part of the judgment reads as under:-

In consequence of discussion made above and findings arrived at the issues, a decree in the sum of Rs. 15,244.73 paise with proportionate costs is hereby passed in favour of the plaintiff Bank and against the defendants jointly as well as severally. Provided always that the defendant No. 4 Siri Krishan shall be liable to the extent of Rs. 8266.63 paise only as guarantor. Further that the plaintiff bank shall sell or cause to sell the pledged goods of the defendant Nos. 1 to 3 lying under the control of the plaintiff-Bank as entered in the stock register maintained by the plaintiff-Bank regarding account No. 195 less the shortage of goods reported by the Bank. Thereafter, the balance, if due, shall be realised by the plaintiff-Bank from the defendants in the manner mentioned above. Prayer for grant of future interest is declined.

2. The respondent-Bank without first realising the decretal amount by sale of the pledged goods, as ordered, proceeded against the petitioners. The petitioners

filed an objection petition u/s 47 of the Code of Civil Procedure. The same was rejected by the learned Sub Judge vide his order dated February 10, 1987. This order has been challenged in the revision petition filed by the judgment-debtors.

3. The sole submission made by the learned counsel for the petitioners is that the respondent-bank should, in the first instance, realise the decretal amount by way of sale of the pledged goods, and if the decree is not wholly satisfied out of the sale proceeds of the pledged goods, the plaintiff may proceed against the petitioners. I find force in the submission. The judgment referred to above, in terms, has also directed that the decretal amount should be realised in the first instance out of the sale proceeds of the pledged goods.

4. The order passed by the learned executing court is, consequently, set aside. The respondent-bank is directed to realise the decretal amount by way of the sale of the pledged goods, and in case the decree is not fully satisfied in that manner, it shall proceed against the judgment-debtors in accordance with law.

5. The parties will bear their own costs of this revision.