

(2013) 08 P&H CK 0480
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2322 of 2013

M/s. Tea Brokers (Guwahati) Pvt. Ltd. and Others	APPELLANT
Vs	
M/s. Minakshi Khanna	RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58
Constitution of India, 1950 — Article 227

Citation : (2013) 08 P&H CK 0480

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Hittan Nehra, for the Appellant; Mukesh Bhatnagar, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Judgment debtors (JDs) have filed this revision petition under Article 227 of the Constitution of India impugning order dated 13.10.2012 passed by the executing court and order dated 15.12.2012 passed in Mega Lok Adalat. Respondent decree holder (DH) filed execution petition against JDs/petitioners. In execution proceedings, bank account of the JDs was attached. JDs filed objections dated 9.7.2012 Annexure P/5 under Order 21 Rule 58 of the CPC (in short, CPC) against attachment. Along with objection petition, JDs also tendered two demand drafts dated 4.7.2012 for Rs. 6,27,838/- and Rs. 34,650/- towards decretal amount including interest, as security to be kept with the executing court, to be released to either party on adjudication of the objection petition. The objection petition appears to have been presented in the executing court on 13.7.2012 during summer vacation before the Vacation Judge and was ordered to be put up on 16.7.2012 (on opening day of the court after vacation) before the concerned executing court. On 16.7.2012, the executing court directed the Ahlmad to keep the demand drafts in safe custody till further order and notice of the objection petition and stay application was issued to DH for 23.7.2012. The case was then adjourned to 3.8.2012, 28.8.2012 and 6.11.2012 for filing reply to

the objection petition.

2. Meanwhile, the DH filed application dated 13.10.2012 in the executing court for release of the demand drafts to her. The executing court vide impugned order dated 13.10.2012, passed on the said application without notice to the JDs/ objectors and in their absence, ordered that the bank drafts be handed over to DH against proper receipt. Thereafter the case was taken up in Mega Lok Adalat on 15.12.2012 in the absence of JDs and their counsel. On statement of counsel for DH, the execution petition was dismissed as withdrawn on 15.12.2012. Feeling aggrieved, JDs have filed this revision petition to assail orders dated 13.10.2012 and 15.12.2012.

3. I have heard counsel for the parties and perused the case file.

4. It is apparent from the aforesaid sequence of events that the DH has played fraud not only with JDs but also with the Court. DH kept on seeking adjournments for filing reply to the objection petition filed by the petitioners and after seeking three adjournments, while the case was fixed for 6.11.2012 for filing reply by DH to the objection petition of JDs, the DH moved application on 13.10.2012 and obtained impugned order regarding release of bank drafts to the DH without notice to the JDs and without opportunity of hearing to them and in their absence. Thereafter the DH in the absence of JDs withdrew the execution application. Thus, the objection petition filed by the JDs remained un-adjudicated and the bank drafts which were submitted by the JDs as security in the court were released to the DH without even affording opportunity of hearing to the JDs. In the aforesaid circumstances, it is apparent that both the impugned orders passed by the executing court and Lok Adalat are patently illegal and suffer from jurisdictional error. Resultantly, the instant revision petition is allowed. Both the impugned orders dated 13.10.2012 and 15.12.2012 are set aside. DH is directed to deposit back amounts of both bank drafts with the executing court within one month from today failing which the amount shall be recovered by the executing court in accordance with law for being paid to the JDs and in that event, the DH shall stand debarred from prosecuting the execution proceedings. On deposit of the amount by the DH as aforesaid, the executing court shall pass appropriate order in accordance with law on application dated 13.10.2012 filed by the DH for release of bank drafts after affording opportunity of hearing to both the parties. The executing court shall also proceed to adjudicate the objections Annexure P/5 filed by the JDs in accordance with law. Till decision of application dated 13.10.2012, the amount of bank drafts to be deposited by the DH may be invested by the executing court in fixed deposit. Execution petition is revived to the files of the executing court. Parties are directed to appear there on 3.9.2013.