(2006) 11 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Mutti Commission Agents APPELLANT

Vs

Shingara Singh and Others RESPONDENT

Date of Decision : 27-11-2006

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2007) 146 PLR 554 : (2007) 1 RCR(Civil) 831

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Judgement

Vinod K. Sharma, J.—This order will dispose of C.R. No. 3844 of 2004 titled Mutti Commission Agents v. Shingara Singh and Ors. C.R. No. 5444 of 2006 titled Shangara Singh v. Mutti Commission Agents as common question of law and facts arise in the these petitions. The facts are being taken from C.R. No. 3844 of 2006.

2. The petitioner filed a suit for the recovery of Rs. 14,72,087.62 along with interest against the respondents. Said suit was decreed on 22.4.199 and decree for a sum of Rs. 14,34,587.62 along with interest at the rate of 10 per cent per annum from 30.9.1998 till the date of decree and also future interest at the rate of 6 per cent per annum from the date of decree till actual realisation was passed in favour of the petitioner.

3. Respondent Nos. 1 to 3 filed R.F.A. No. 2609 of 2004 which was admitted by this Court. However, stay application was declined by this Court by passing the following order:

Mr. R.K. Joshi, Advocate, accepts notice on behalf of the caveator.

The learned Counsel for the appellants states that the appellants are ready to furnish security in respect of the decretal amount.

The appeal is against the money decree passed by the trial Court. However, the trial Court has granted the decree in the sum of Rs. 14,34,587/- including interest for the period prior to the filing of the suit amounting to Rs. 1,96,420/- at the rate of 2/-per mensem.

Since the money decree has been passed in favour of the respondent-plaintiffs. I do not think that the decree-holders should be deprived of the fruit of the decree merely for the reason that the defendants are in appeal.

After hearing the learned Counsel for the parties, it is ordered that the appellants shall deposit half of the interest pertaining to the period prior to the filing of the suit and the principal amount within a period of three months failing which the plaintiffs shall be entitled to execute the money decree in accordance with law. If the amount is deposited, the decree holders shall withdraw the amount of furnishing adequate security to the satisfaction of the Executing Court.

Civil Misc. stands disposed of in the above terms.

4. The respondents challenged that order before the Hon''ble Supreme Court and the Hon''ble Supreme Court was pleased to dismiss the SLP on 19.11.2004 by passing the following order:

Heard the petitioner''s counsel. We are not inclined to interfere with the impugned order. The SLP is dismissed accordingly. However, the petitioner is given four months'' time instead of three months'' to deposit the amount from the date of the impugned order.

Thereafter, an application was moved for modification of the order dated 23.9.2004 and the said application was disposed of by this Court by passing the following order:

The appellants have sought modification of the order passed by this Court on September 23, 2004 with a prayer that pre-suit interest has not been granted at the rate of 2% per month and that the reading of the order show that only half of the principal amount was required to be deposited. However, both the contentions are not correct.

The pre-suit interest has been granted as claimed by the plaintiff i.e. at the rate of 2% per month. Since the rate of interest was prima facie found to be excessive, therefore, half of the interest amount was stayed but the principal amount was to be deposited in its entirety.

The application is, thus, not tenable and is, therefore, dismissed.

5. In the execution of the said decree the property belonging to the Judgment Debtor i.e. respondent Nos. 1 to 3 was attached. In the execution application moved by the Decree Holder respondent Nos. 2 to 5 filed objections u/s 47 of the CPC (for short the Code). However, said objections were withdrawn on the basis of a compromise and accordingly, the learned Executing Court was pleased to pass the following order on 26.10.2005:

Stated that I withdraw my objections and as per compromise, we JDs will pay a total sum of Rs. 22,50,000/- to the decree-holder up to 7th November, 2005. In case of failure to make the payment till the said date, we will be liable to pay the entire decretal amount with interest and will have no objections if our property be sold for the recovery of the same.

6. Thereafter, dates were sought from time to time on the basis of alleged compromise executed between the parties. Thereafter, an application was made to challenge the alleged compromise being the outcome of fraud. Said application was also dismissed by the learned Additional Civil Judge (Senior Division) on 3.12.2005. Thereafter, the Judgment Debtors respondent Nos. 1 to 3 filed an application under Order 21 Rule 59 and 83 of the Code. Said objections were also dismissed on 19.12.2005. The decree-holders moved an application under Order 21 Rule 66 of the Code to recover an amount of Rs. 25,46,110/- by sale of attached property. The said execution was again contested by the Judgment Debtors primarily on the grounds that the Judgment-Debtors have filed an appeal against the judgment and decree and therefore, no sale could be ordered. Other objections were also taken. The objections filed by the Judgment Debtors were taken to be objections under Order 41 Rule 16 of the CPC and the learned Executing Court was pleased to direct the judgment Debtors to furnish security in the sum of Rs. 23 lacs with one surety in the like amount by the next date fixed. It was further ordered that on furnishing of the security the sale of attached land shall be stayed or else further proceedings as per the provisions of law would be taken. The judgment Debtors failed to furnish the security within the stipulated period. However, an application was thereafter moved seeking more time to furnish the surety. Said applications were disposed of by directing the Judgments Debtors to deposit a sum of Rs. 15 lacs and on doing so the sale of attached land was ordered to be stayed.

7. It is not in dispute that the Judgment Debtors have not deposited even a sum of Rs. 15 lacs as ordered by the Executing Court. M/s Mutti Commission Agents have challenged the impugned order vide which the Judgments Debtors have been directed to deposit a sum of Rs. 15 lacs.

8. In Shangara Singh v. Mutti Commission Agents and Ors. C.R. No. 5544 of 2006, the petitioner had also challenged this order vide which directions have been issued for part payment of Rs. 15 lacs primarily on the ground that the petitioner in this revision petition be permitted to give security.

9. In Shangara Singh v. Mutti Commission Agents, C.R. No. 2423 of 2006 the petitioner has challenged the order vide which the property of the petitioner was ordered to be auctioned on account of petitioner having failed to furnish security for a sum of Rs. 23 lacs in terms of the order dated 14.3.2006.

10. Mr. R.K. Joshi, Advocate with Mr. Rajesh Garg, Advocate, appearing for the petitioner in C.R. No. 3844 of 2006 for the decree-holder contended that once the petitioner was not granted stay against the execution of the decree by this Court and Hon''ble Supreme Court it was not open to the Executing Court to stay

the sale of attached property by directing the Judgment Debtors to deposit a sum of Rs. 15 lacs, whereas Shri O.P. Gupta, Advocate appearing for the Judgment Debtors vehemently contended that Executing Court was under a mandatory duty in view of the provisions of Order 41 Rule 6(2) of the Code to stay the sale of the property as the appeal against the judgment and decree ''sought to be executed was pending. The contention of the learned Counsel for the petitioner was that the application for furnishing security in terms of order dated 14.3.2006 should have been allowed and there was no occasion to pass an order directing the Judgment Debtors to deposit a sum of Rs. 15 lacs.

11. I have heard the learned Counsel for the parties.

It is not in dispute that the Executing Court is under a mandatory duty to stay the execution of the sale under Order 41 Rule 6(2) of the Code even if the Appellate Court has refused to grant stay in appeal. However, the Executing Court can stay the proceedings subject to certain terms and conditions which can be to deposit the entire or any part of the decretal amount, as held by this Court in the case of Krishan Kumar Vs. State Bank of Patiala and Others, .

12. Both the parties relied upon the judgments passed by the different Courts holding that the provisions of Order 41 Rule 6(2) are mandatory and once an application is made to the Executing Court to stay the sale of attached property it is incumbent upon the Executing Court to stay the same subject to certain terms and conditions. However, in the present case it would be seen that the Executing Court has exercised the powers under Order 41 Rule 6(2) of the Code by directing the Judgment Debtors to furnish security. However, the Judgment Debtors foiled to comply with the said terms. Thereafter, there was no occasion for the Executing Court to have ordered the petitioner to deposit a sum of Rs. 15 lacs towards the part payment. Be that as it may, it is conceded by the Judgment Debtors that even a sum of Rs. 15 lacs was not deposited for stay of execution and it cannot be said that there is any error in the order passed by the Executing Court ordering the sale of the attached property in the execution of the decree.

13. In view of the peculiar facts and circumstances of the case and keeping in view the fact that the Judgment Debtors have failed to furnish security or deposit the amount the Executing Court has to proceed with auction of the attached property.

14. In view of what has been stated above the revision Mutti Commission Agents v. Shingara Singh and Ors. Petition No. 3844 of 2006 is allowed and the Executing Court is directed to proceed with the sale of the land attached, whereas other Civil Revisions bearing C.R. No. 5444 of 2006 titled Shangara Singh v. Mutti Commission Agents and Ors. and CR No. 2423 of 2006 titled Shangara Singh v. Mutti Commission Agents are hereby dismissed.

