
(2010) 02 P&H CK 0220
In the Punjab And Haryana At Chandigarh

Santosh Herb Centre	Vs	APPELLANT
Punjab National Bank and Others		RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 02 P&H CK 0220

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Suit filed by respondent No. 1 Punjab National Bank against respondent Nos. 2 to 5 was decreed for recovery of money by sale of mortgaged property. In execution proceedings mortgaged property was put to auction on 11.1.1999. Petitioner herein is the auction purchaser being highest bidder for Rs. 5,65,000/-. Petitioner's bid was accepted. The petitioner deposited Rs. 1,41,250/- as 25% of the bid amount on 12.1.1999. The petitioner then moved application on 27.2.1999 for confirmation of the sale. On the other hand, respondent No. 6 M/s Clear Ion Experts Private Limited (a third party) filed objections alleging that it had offered Rs. 9,50,000/- but its offer was ignored.

2. Learned executing court i.e. learned Civil Judge (Senior Division), Faridabad vide impugned order dated 15.2.2001, Annexure P/3, dismissed the objections filed by respondent No. 6 but the executing court also set aside the auction sale of the property in favour of the petitioner. The petitioner was allowed to receive refund of his amount. Petitioner's application for confirmation of sale was dismissed. Appeal preferred by the petitioner has also been dismissed by learned Additional District Judge (Adhoc) Faridabad vide impugned judgment dated 10.12.2005, Annexure P/1. Feeling aggrieved, the petitioner has filed instant revision petition under Article 227 of the Constitution of India challenging order Annexure P/3 of the executing court and judgment Annexure P/1 of the appellate court.

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

4. Learned Counsel for respondent No. 1-decree holder as well as respondent Nos. 2 to 5 judgment debtors have stated that the execution petition has since been satisfied by the judgment debtors by paying the decretal amount and therefore, auction sale of the property in favour of petitioner cannot be confirmed. Reliance in support of this contention has been placed on a judgment of the Hon''ble Apex Court in the case of Kharaiti Lal v. Raminder Kaur and Ors. 2000(1) RCR (Rent) 360. In that case also, there was auction sale of mortgaged property on 25.8.1976. The auction sale was challenged by filing application under Order 21 Rule 90 of CPC (in short, CPC). The objections were rejected on 28.11.1977 and the auction sale was confirmed on 29.11.1977. However, the objector filed two appeals against rejection of objections and against confirmation of sale. During the pendency of the appeals, the judgment debtor-appellant deposited the decretal amount. Accordingly, both the appeals were allowed by learned Single Judge of the High Court on 30.8.1985 and auction sale as well as its confirmation was set aside. The amount deposited by the appellant-judgment debtor was ordered to be paid to the heirs of the auction purchaser who had died in the meanwhile. Letters Patent Appeal preferred by legal representatives of the auction purchaser was allowed by the Division Bench of the High Court. However, the Hon''ble Apex Court in the aforesaid judgment set aside the judgment of the Division Bench and restored the judgment passed by the Single Judge. It was held that if the decretal amount is deposited during the pendency of the appeal against confirmation of sale, it would amount to invoking of Order 34 Rule 5 CPC and the judgment debtor would be entitled to save his property by making necessary deposit or by payment to the decree holder. In the case of Kharaiti Lal (supra), the auction sale had even been confirmed by the executing court and the amount was deposited by judgment debtor during the pendency of the appeal in the High Court. Still auction sale was set aside. In the instant case, the judgment debtors paid the decretal amount on 24.10.1999 i.e. long before the petitioner's application for confirmation of sale was dismissed by the executing court vide impugned order dated 15.2.2001, Annexure P/3. Consequently, in view of judgment of Hon''ble Apex Court in the case of Kharaiti Lal (supra), auction sale in favour of the petitioner auction purchaser cannot be confirmed. No judgment to the contrary has been cited by learned Counsel for the petitioner. Consequently, there is no illegality in the impugned order passed by the courts below so as to warrant interference by this Court in exercise of powers of superintendence under Article 227 of the Constitution of India. The case is squarely covered against the petitioner by the judgment of the Hon''ble Apex Court in the case of Kharaiti Lal (supra).

5. For the reasons recorded hereinabove, the instant revision petition is dismissed being without any merit.

6. However, the amount deposited by the auction purchaser- petitioner shall be refunded to him.