

(1991) 08 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 40 of 1991

Satendra Prakash Agarwal

APPELLANT

Vs

State Bank of Indore and another

RESPONDENT

Date of Decision : 28-08-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 10, Order 39 Rule 6, Order 39 Rule 7

Citation : (1991) 2 MPJR 263 : (1991) MPLJ 951

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Advocate : Anoop Choudhary, for the Appellant; J.P. Sanghi for Respondent No. 1 and Ashok Lalwani, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Shukla, J.

This appeal is directed against the judgment and order dated 27-1-1989 of District Judge, Bhopal passed in Civil Suit No. 109-A/87, whereby in an application of the Plaintiff under Order 39, Rules 6, 7 and 10, CPC Code, the learned Judge has directed seizure of the truck and sale by the Plaintiff through Court for recovery of the amount outstanding against the Defendant/Appellant, Satendra Prakash Agarwal.

This is undisputed that a sum of Rs. 1,50,000/- was advanced to this Satendra Prakash Agarwal Defendant for purchase of the truck. Defendant/Respondent No. 2 Suhagmal stood as a guarantor for due repayment of the said loan. The truck was purchased with that amount so received. This transaction had taken place somewhere in the year 1982. It is further asserted, though disputed by the Defendant/Appellant, that the truck was hypothecated with the Plaintiff/Respondent No. 1 i.e. the State Bank of Indore.

During pendency of the suit Plaintiff filed an application under Order 39, Rules 6,

7 and 10, CPC for seizure of the Truck and sale of it for recovery of the loan amount. Learned District Judge has passed the impugned order. It appears that earlier revision against the said order was filed, but subsequently, the same was amended and converted into Misc. Appeal.

Counsel for the Appellant submitted that the two conditions of Order 39, Rule 6, CPC (i) that the movable property involved in the suit is subject to speedy and natural decay, or (ii) that there is just and sufficient cause; are not satisfied. The fact of hypothecation also was disputed. However, that is a matter of ultimate decision of the suit. At the outset, it can very well be assumed that the truck was hypothecated with the Plaintiff/Respondent No. 1.

Though it is true that the truck is not a property subject to speedy and natural decay, but while appreciating the fact as to just and sufficient cause, it will have to be looked into whether the borrower/Appellant has shown his bona fide by way of repayment.

Learned Counsel for the Appellant Shri Anoop Choudhary submitted that certain payments were made by the borrower prior to the date of the suit, however, as per plaint allegations the Defendant/Appellant failed to make regular payment of instalments. This order of the learned District Judge was stayed by this Court and on enquiry from the Court, counsel for Plaintiff/Respondent No. 1 Shri Sanghi made a statement at the bar that nothing has been paid by the borrower/Appellant during pendency of the suit and this appeal.

While assessing just and sufficient cause, Courts are required to look into the bona fide of the borrower as well. If a borrower enters into an agreement of hypothecation of movable property and fails to make payment of instalments due and further fails to show his bona fide by making payments according to his own estimate and capacity, provisions of Order 39, Rules 6, 7 and 10, CPC can well be applied and may be deemed to be a just and sufficient cause for initiating action under Rule 6 of Order 39, CPC Code.

In this case, the Appellant has earlier failed to make payment. He has not shown his bona fide during pendency of the suit and the appeal by making payment of instalments due. In such a situation it can very well be accepted that it is a just and sufficient cause to get the property seized and sold.

From the discussion aforesaid, in the opinion of this Court, the impugned order does not suffer from any illegality or irregularity. In result this appeal fails and is hereby dismissed with costs. Counsel's fee as per schedule, if certified.