(1997) 07 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : F.A.O. No. 267 of 1995

Smt. Shanti Devi APPELLANT

Vs

H.P. Financial Corporation and Others RESPONDENT

Date of Decision : 29-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72, Order 21 Rule 85, Order 21 Rule 89, Order 21 Rule 90, Order 21 Rule 90

State Financial Corporations Act, 1951 — Section 31, 32, 32(8)

Citation : (1997) 3 ShimLC 256

Hon'ble Judges : M. Srinivasan, C.J;A.L. Vaidya, J

Bench : Division Bench

Advocate : Ankush Sood, for Anand Sharma and Tarlok Chauhan, for the Appellant; O.P. Sharma, for Respondent No. 1, Ajay Mohan Goel and Bhupender Gupta, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The first Respondent herein filed an application u/s 31 of the State Financial Corporations Act for an order of sale of the property, which was mortgaged in its favour The order was passed on 21 5-1983, which was subsequently modified by an order dated 23-4-1984 As the debtor did not comply with the terms of the compromise, the Corporation took steps to bring the property to sale and the property was sold on 11-3-1994 25 per cent of the purchase money was deposited in the Court within the time specified by law. The Appellant herein filed an application under Order 21, Rule 106 of the CPC on 24 3-1994. On the same day, the Appellant had also filed an application under Order 21, Rule 90 of the CPC for setting aside the auction sale on the grounds of fraud and irregularities. The application under Order 21, Rule 106 of the CPC was dismissed on 28-12-1994. The other application under Order 21, Rule 90 was dismissed on 22-5-1995 on merits. On the same day, the Additional District Judge passed a separate order confirming the sale and directing the auction purchaser to deposit the remaining sale amount within 30 days from that date. It is the said order, which is questioned in this appeal.

2. The maintainability of the appeal has been challenged in this Court. Learned Counsel for the Appellant contends that the matter falls within the scope of Order 43, Rule 1(j) of the CPC and, therefore, the appeal is maintainable, The said rule read as follows:

An appeal shall lie from the following orders under the provisions of Section 104, namely:

(j) an order under Rule 72 or Rule 92 or Order XXI setting aside or refusing to set aside a sale.

3. The language in the Rule 1(j) of Order 43, is very significant. The rule talks only of an order setting aside the sale or refusing to set aside the sale. In this case, the order refusing to set aside the sale was separately passed on the application filed by the Appellant under Order 21, Rule 90, Code of Civil Procedure, The order has become final as there is no appeal against the said order by the Appellant. The present appeal, which is now filed, is against an order confirming the sale. That is not mentioned in Rule 1(j), as set out above. This order cannot be called an order setting aside or refusing to set aside the sale. Hence, the appeal is not maintainable.

4. The matter is not res-intgra The question has been considered by the Punjab and Haryana High Court in Bakhsho Vs. Pakhar Singh and Another, In that case, no objection was filed under Rule 90 of Order 21, of the CPC The Court confirmed the sale and that order was sought to be appealed against The High Court held that it was not appealable order within the meaning of Rule 1(j) of Order 43

5. A similar view was expressed by the Madras High Court in L. Balu Vs. Periasami and Others, The Court observed after extracting Rule 1(j) of Order 43 of the Code of Civil Procedure, as follows:

A reading of the above sub-rule clearly indicates that an appeal would lie only against two categories of orders, viz., one setting aside the sale and the other refusing to set aside the sale. Either of the above two contingencies would arise only if an application is made to set aside the sale either under Rule 72 or under the rules covered by Rule 92 of Order 21, namely, Rules 89, 90 and 91.

6. Learned Counsel for the Appellant draws our attention to a judgment of the Supreme Court in Asnew Drums Private Ltd. and Others Vs. Maharashtra State Finance Corporation and Others, In that case an application was filed for setting aside a sale held under the provisions of Sections 31 and 32 of the State Financial Coroorations Act. That application was dismissed. An appeal was filed before the High Court. The said appeal was dismissed as not maintainable by the High Court. It was that order of the High Court, which was challenged before the Supreme Court. The Supreme Court held that the provisions of Section 32(8) of the State Financial Corporations Act made applicable the provisions of the CPC relating to appeal also under Order 43, Rule 1(j). Thus, the Supreme Court held

in that case that the order dismissing an application under Order 21, Rule 90 of the CPC was appealable under Order 43, Rule 1(i) and set aside the order of the High Court The matter was remanded for fresh disposal. That ruling will have no application in this case as it is not an appeal against an order dismissing the application under Order 21, Rule 90 of the Code of Civil Procedure.

7. Our attention is drawn by learned Counsel to the judgment of the Allahabad High Court in Nand Lal Vs. Mt. Siddiquan and Others, In that case, the purchase monsy was not deposited within the stipulated period of 15 days, as required under Order 21, Rule 85, CPC The sale was set aside as nullity and re-sale was prdered. The question was whether that order could be treated as one under Order 21, Rule 92 or one u/s 47 and whether the auction purchaser could go in appeal against that order and not in revision. The Court held that the sale having been set aside, there was an appeal available to the auction purchaser. That ruling has no applicability in the present case.

8. Learned Counsel for the Appellant places reliance on the judgment of Madras High Court in V.A. Narayana Raja v. O.R.M.M.S.V. Meyyappa Chettiar and Ors. AIR 1975 Mad 36. The Court had to consider the expression any person, whose interests are affected by the sale "occuring in Order 21, Rule 90 The Court held that the expression had wide connotation and significance and the application of those words cannot be restricted to persons who have direct and immediate right in the property sold in Court auction. It was held that a judgment-debtor who as adjudged insolvent is also a person whose interests are affected by the sale and that his adjudication was prior to or subsequent to the sale is not material. The Court also held that an order of dismissal of an application under Order 21, Rule 90 was appealable under Order 43, Rule 1(j) of the Code of Civil Procedure. That ruling will have no relevance in this case in view of the fact that the order, which is appealed against, is not one under Order 21, Rule 90 of the Code of Civil Procedure.

9. In such circumstances, we have no hesitation to hold that this appeal is not maintainable and it is dismissed as such. There will be no order as to costs Interim order is vacated.