

(1996) 08 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : O.M.P. No. 139 of 1996 in Ex. Petition No. 10 of 1979

State Bank of Patiala

APPELLANT

Vs

M/s. Chohan Huhtamaki (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 19-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 64, Order 21 Rule 72A, Order 21 Rule 72A(2), 114, 144

Citation : (1997) 1 ShimLC 289

Hon'ble Judges : Surinder Sarup, J

Bench : Single Bench

Advocate : Ravi Verma, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Sarup, J.—This order will dispose of an application u/s 144 read with Sections 47 and 151, Code of Civil Procedure, which has been filed by the J. Ds/ applicants seeking restitution of the properties.

2. Civil Suit No. 2 of 1976 was decreed by this Court on 30th April, 1970 in favour of the decree-holder, i.e., State Bank of Patiala for the recovery of Rs. 33,53,007.35 Paise. In consequence of that decree it filed an Execution Petition No. 10 of 1979 seeking of the mortgaged property of the judgment-debtors, the description of the said property has been given in detail in para 2 of this application. During the pendency of the Execution Petition afore-mentioned, O.M.P. No. 5 of 1981 was filed by the decree-holder, and in pursuance of the order dated 2-1-1981 passed by this Court on the said application, the properties of the applicants were auctioned and sold on 10-5-1981. It is the case of the applicants that the decree-holder did not disclose the factum to this Court that it was duly appointed Receiver and mortgagee of the properties in question, and thus committed fraud. Due to the successful manipulation and manoeuvre of the entire proceedings by the decree-holder, it was successful in purchasing the land of the factory and fittings and fixtures of the applicants at a throw away price of

Rs. 6,75,000. The other properties of the applicants including machinery etc. installed and fixed in the factory premises, were sold to other bidders.

3. The objections of the applicants against the aforesaid sale of their immovable properties were rejected by this Court on 25-6-1981, while disposing of O.M.P. No. 93 of 1981. Against that order of confirmation of the sale, the applicants filed an appeal bearing F.A.O. No. 79 of 1981. This appeal alongwith Anr. appeal, namely, F.A.O. No. 92 of 1981, both filed by the applicants, were dismissed by a Division Bench by its order dated 9-3-1995, The applicants filed SLP (Civil) Nos. 16077 and 16078 of 1995 in the apex Court, thereby challenging the aforesaid judgment of the Division Bench dated 9-3-1995. As per the case of the applicants, by its order dated 26-4-1996, after granting Special Leave, the apex Court allowed their appeals and set aside not only the judgment of the Division Bench, but also the order passed by the Single Judge in the proceedings between the parties. It is in consequence of this order of the apex Court dated 26-4-1996 that the present application has been filed.

4. In the reply filed on behalf of the decree-holder, the material allegations contained in the application have been denied. It has been stated that the property of the applicants was purchased by the decree-holder and it was not acting as a receiver, although the Court was aware of the fact that the Bank had been appointed Receiver in this case. It is further submitted that permission to bid and purchase the property had also been applied for which was allowed to the decree-holder. It has been denied that the decree-holder played any fraud on the judgment-debtor or on this Court either in purchasing the property or in seeking a direction that reserve price should not be fixed as the property could not be sold earlier. In fact, according to the stand of the decree-holder, the J.D. applicant had not objected to the sale, rather it consented to the same as is clear from the record. The property was sold at the appropriate price and the judgment debtor had not objected to the sale, rather it had consented to the same. It has been denied that the property was sold for a song.

5. It is the stand of the decree-holder in its reply that the property cannot be put back in possession of the judgment-debtor, as prayed for in the present application. It has been pleaded that it was not in his possession even before the sale. It has been denied that the judgment-debtor is entitled to any mesne profits, interest, damages, compensation or any other usufruct, as alleged. According to the decree-bolder, the sale having been set aside by the apex Court, the property has to be auctioned afresh, and the judgment-debtor is not entitled to be restored possession of the same.

6. The learned Counsel for the parties have been heard at length. What is required to be determined in the present application is the implication of the order of the apex Court, while allowing the appeals of the judgment-debtors applicants. There is no dispute that in the execution proceedings, it was decided to sell the properties in question in two lots, i.e., movable in one lot and immovable in the other. Fresh auction was held for movable and immovable

properties separately. In so far as the sale of movable property is concerned, the sale has been confirmed and no appeal was filed against the said sale. Consequently, that sale has become final and cannot be reopened. In so far as the sale of immovable property is concerned, in pursuance of the order dated 2-1-1981, the decree-holder participated in the auction and his bid for Rs. 6,75,000 was accepted. Objections to the acceptance of the said bid were filed by the applicants on the ground that there was non-compliance of the mandatory provisions of Order 21, Rule 72-A, Code of Civil Procedure. These objections were rejected by this Court (Single Judge) and the appeal against the said order was also dismissed by a Division Bench of this Court.

7. A perusal of the order of the apex Court dated 26-4-1996 shows that it has been held therein that in view of the specific requirement contained in Sub-rule (2) of Rule 72-A of Order 21 *ibid*, in cases where leave to bid is granted to the mortgagees (as in the present case), the Court shall fix a reserve price as regards the mortgage, and it was incumbent for the Court to do so, which has not been done in the instant case, inasmuch in the order dated 2-1-1981, this Court, while permitting the decree-holder to make the bid did not give any direction regarding fixing the reserve price. It is in these circumstances that the apex Court has held that the sale in favour of the decree-holder having been made in violation of the mandatory provisions of Order 21, Rule 72-A (2), CPC cannot be upheld and has to be set aside. Consequently, the appeals of the applicants have been allowed. The judgment of both the Division Bench as also the order passed by the learned Single Judge, have been set aside. A direction has further been given that the execution proceedings will be taken up and proceeded with by sale of the immovable property in accordance with law.

8. It is the argument on behalf of the applicants that in consequence of the order of the apex Court referred to above, they are entitled to the restoration of the land and factory building which was sold to the decree-holder, being the highest bidder. The precise argument is that the sale having been set aside, the applicants are entitled to restitution of the said immovable property in terms of Section 114, Code of Civil Procedure. In support of this argument, the learned Counsel has cited *Ambati Narasayya Vs. M. Subba Rao* and another,

9. After careful consideration of the matter in issue, as canvassed through the respective arguments advanced by the learned Counsel for the parties, and after bestowing considerable thought on the same, this Court is of the view that in the absence of any specific direction by the Hon^{ble} apex Court, the applicants are not entitled to be put back in possession of their immovable property. All that has been done by the Hon^{ble} apex Court, while setting aside the sale in consequence of reversing the judgments of this Court rendered by the Division Bench as well as by the learned Single Judge, is to direct this Court to take up the execution proceedings and proceed with the sale of the immovable property in accordance with law. This does not tantamount, by any stretch of imagination, so as to mean that the applicants are to be restored possession of the immovable

property which had been sold earlier. In this connection it is relevant to refer to the specific averment in para 12 of the reply filed by the decree-holder to the effect that the immovable property was not in possession of the judgment-debtor even before the impugned sale. No rejoinder having been filed, this specific assertion remains uncontroverted. The decision of the apex Court relied upon on behalf of the judgment-debtor applicants is distinguishable on facts. The question that arose for consideration in that case was whether in view of Order 21, Rule 64, Code of Civil Procedure, an auction sale could take place of the entire property or not and it was held that only such portion as would satisfy the decree should be sold. It was further held that this is obligatory on Court and not just discretion and the tendency to blindfold sell the property was deprecated. This is not the position in the present case, as it is not the stand of the applicants anywhere that the entire property should not have been sold and only that part of it should have been sold as would satisfy the decree against them. Therefore, the applicants cannot derive any benefit from the said decision of the apex Court.

10. In consequence of the reasons advanced hereabove, there is no merit in this application, and the same is dismissed, but without any order as to costs.