(2014) 06 SHI CK 0110

In the High Court Of Himachal Pradesh

Case No : CMPMO No. 4159 of 2013

Vipin Kumar APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2014) 06 SHI CK 0110

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : R.K. Gautam, Senior Advocate and Mr. Mehar Chand, Advocate for the Appellant; Devyani Sharma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Dharam Chand Chaudhary, J.—Challenge herein is to the order passed by learned Additional District Judge (I), Kangra at Dharamshala, in Civil Misc. Appeal No. 9-D/2011, dismissing thereby the appeal preferred against the order dated 18.7.2011, passed by learned Civil Judge (Junior Division)-I, Dharamshala, in an application under Order 39 Rules 1 and 2 CPC registered as CMA (Civil Suit No. 112 of 2011) No. 156 of 2011

2. Both the Courts below have declined the relief of temporary injunction sought to be granted by the petitioner-plaintiff.

3. The subject matter of dispute is the land entered in Khata No. 233, Khatauni No. 288 min, bearing Khasra Nos. 820/2 and 928/823 Kita 2, measuring 0-37-68 hectares, situated in Mohal Metti, Mouza Gharoh, Tehsil Dharamshala, District Kangra, H.P. The petitioner-plaintiff claims the same having been acquired by way of sale from its previous owner Ghungar Ram on payment of consideration. According to him, he purchased the land in dispute after obtaining ''No Due Certificate'' from the revenue staff. Therefore, he being a bonafide purchaser on payment of consideration is stated to be owner in possession thereof. Now, the

respondent-defendant bank has served the petitioner-plaintiff with a notice u/s 13(2) of the Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as "the SARFAESI Act", to take over the possession of the property in dispute.

4. The stand of the respondent-bank to the contrary is that consequent upon the service of notice on the loanee, i.e. Shri Ghungar, the possession of the property in dispute stands taken over. Annexure R-1 to the reply has been pressed into service in this regard.

5. Both the Courts below on appreciation of the respective pleadings and also the documents placed on record on both sides as well as the provisions contained under the SARFAESI Act have, however, concluded that no case for the grant of interim injunction is made out and consequently dismissed the application under Order 39 Rules 1 and 2 CPC filed for the purpose and also the civil miscellaneous appeal.

6. The legality and validity of the impugned order has been questioned on the grounds that the same is not legally sustainable, as both the Courts below have allegedly failed to appreciate the pleadings of the parties and also the provisions of the Act.

7. Shri R.K. Gautam, learned Senior Advocate, has vehemently argued that the petitioner-plaintiff being a bonafide purchaser on payment of consideration cannot be ousted from the suit property, that too on the pretext of the loan, if any, raised by his predecessor-in-interest Shri Ghungar Ram. It has, therefore, been urged that till the suit is decided, his possession over the property in dispute deserves to be protected.

8. Ms. Devyani Sharma, learned counsel, representing the respondent-bank, while repelling the contentions so raised, has urged that the suit is not at all maintainable nor could the petitioner-plaintiff have maintained any application for the grant of interim injunction. It has, therefore, been urged that the impugned order being absolutely legal needs no interference.

9. On analyzing the rival contentions and also on appreciation of the material available on record, I find the present a case where both the Courts below have not committed any illegality or irregularity in declining the prayer of the petitioner-plaintiff with regard to the grant of temporary injunction. Whether the petitioner-plaintiff is a bonafide purchaser or not, nothing at this stage in this regard is made out from the record as even the so called "No Objection Certificate" has also not been produced. On the other hand, the petitioner-plaintiff having stepped into the shoes of the previous owner of the land Shri Ghungar aforesaid cannot be said to have better title therein to that of said Shri Ghungar, the previous owner of the suit land. The material produced on record by the respondent-bank prima-facie demonstrates that the suit land was pledged by said Shri Ghungar Ram by creating an equitable mortgage in favour of the respondent-bank at the time of raising the loan, initially to the tune of Rs. 2 lacs

and subsequently Rs. 20,000/-. Said Shri Ghunhgar made default so far as the repayment of the loan is concerned. The respondent-bank has resorted to the remedy available to it under the SARFAESI Act. The Act, as a matter of fact, is a special enactment having been enacted to protect the interests of the banks and other money lending agencies in the matter of recovery of loan amount from the borrowers. The petitioner-plaintiff may not be a party in the proceedings initiated under the SARFAESI Act, as he was nowhere in the picture and the loan against the suit property was obtained by Shri Ghungar. He, however, is at liberty to seek remedy, if any, available to him under the Act and so far as his prayer with regard to the grant of interim injunction is concerned, the same being not genuine cannot be granted particularly when neither the balance of convenience nor the equity leans in his favour.

10. The present, therefore, is not a case where the impugned order calls for any interference by this Court. The petition, therefore, deserves dismissal and the same is accordingly dismissed. Pending application(s), if any, shall also stand disposed of.

