

Gobind Rice Mills Vs Punjab State Civil Supplies Corporation Ltd.and another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 21, 2005

Citation: (2005) 3 LJR 850 : (2005) 3 RCR(Civil) 174

Hon'ble Judges: M.M.Kumar, J

Advocate: Mr. Jai Bhagwan, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

In this petition filed under Article 227 of the Constitution of India, the judgmentdebtor petitioner prays for settingaside the

order dated 17.4.2004 passed by the learned District Judge, Patiala, directing the deposit of decretal amount in the Court within a period of 15

days from the date of the order. Subject to the aforementioned condition, the execution of the ex parte award dated 10.1.1998 was to remain

stayed. The argument raised by the J.D.petitioner that he may be permitted to furnish surety, which had already been furnished in pursuance to the

order dated 6.3.2003 and the same be accepted as sufficient compliance, was specifically rejected by the learned District Judge.

2. Brief facts of the case are that an ex parte award was passed against the JD petitioner on 10.1.1998, which is subject matter of challenge in

F.A.O. No. 5065 of 2003 pending in this Court where no stay has been granted. In the meanwhile, the decree holderrespondents initiated

execution proceedings against the JDpetitioner. An application under Order 41 Rule 6(2) of the Code of Civil Procedure, 1908 was filed for

staying the execution by urging that during the pendency of the appeal, no auction proceedings in respect of immovable property of the

JDpetitioner could be initiated. After thorough consideration of the arguments raised by both the parties, the learned District Judge has passed the

conditional order on 17.4.2004. The operative part of the order reads as under :

From the perusal of the main file, it reveals that the stay application is misconceived. From the zimni dated 25.2.2003, it transpires that the

execution of the decree was stayed during the pendency of the objection petition subject to furnishing of surety bond by the JD to the tune of Rs.

two lacs. However, when the objection petition was dismissed, then my predecessor vide order dated 12.5.2003 reopened the execution. The JD

has failed to produce any order of stay of execution in this Court, yet this Court vide a detailed order dated 21.2.2004 passed a conditional order

staying sale of the property, if the JD deposits the decretal amount within 15 days from the date of the order. However, if the amount is deposited

by the JD, then the same will not be disbursed to the DH, but the applicant has not complied with the order of this Court. The applicant is moving

the applications time and again just to delay the execution of the award and as such, the same being misconceived is hereby dismissed.

3. Mr. Jai Bhagwan, learned counsel for JDpetitioner, has vehemently argued that it is mandatory for the executing Court to stay the auction

proceedings in respect of immovable property by virtue of the provisions of Order 41 Rule 6(2). According to the learned counsel, the executing

Court cannot proceed to auction the immovable property of the JDpetitioner. In support of his submission, the learned counsel has placed reliance

on a judgment of the Karnataka High Court in the case of Shivaji Yallappa Wagmode and another v. Smt. Gangabai and others, 1999(2)

RCR(Civil) 603 (Karnataka) : 1999(1) CCC 676 and argued that the facts of the present case are identical to the one which were before the

Karnataka High Court.

4. After hearing learned counsel at a considerable length, I am of the view that no illegality has been committed by the learned District Judge

because the execution proceedings which might have resulted into auction of the immovable property of the JDpetitioner have been stayed by

imposing the condition that the JDpetitioner would deposit the whole decretal amount in the executing Court within 15 days of the order and the

same is not to be disbursed to the DHrespondent. Such a conditional order is envisaged by the provisions of Order 41 Rule 6(2). A perusal of

Order 41 Rule 6(2) makes it abundantly clear that the stay order in respect of auction of immovable property is to be passed on such terms with

regard to security or otherwise as the Court thinks fit during the pendency of the appeal. The provisions of Order 41 Rule 6(2) are reproduced

herein for facility of reference :

Order 41

Rule 6. Security in case of order for execution of decree appealed from

(1) xx xx xx xx xx

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the

sale shall, on the application of the judgmentdebtor to the Court which made the order, be stayed on such terms as to giving security or otherwise

as the Court thinks fit until the appeal is disposed of.

There is nothing in the aforementioned provision, which may deter the Court from imposing a condition while staying the sale of immovable

property. Even the judgment of Karnataka High Court in Shivaji Yallappa Wagmode"s case (supra) does not deviate from the aforementioned

view. The provisions are mandatory with regard to stay of sale of immovable property subject to the conditions. Therefore, the learned District

Judge has not committed any legal infirmity warranting interference of this Court in the impugned order. The petition is wholly without merit.

Dismissed.