

Mahender Kumar Vs Mangal Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 19, 2013

Citation: (2013) 2 PLR 678

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Sanjiv Gupta, for the Appellant; Jatin Hans and Vaibhav Sehgal, for the Respondent

Judgement

K. Kannan, J.

The revision petition is directed against the proceedings for attachment and sale of the property, which is admittedly residential house of the judgment debtor. The defence by the judgment debtor is that in terms of Section 60(1)(ccc) of the CPC by the Punjab

Amendment, one main residential house and other buildings attached to it belonging to a judgment debtor other than an agriculturist and occupied

by him, shall be protected from attachment. The contention is that since the property sought to be attached is a residential house, protection of the

State amendment avails to a judgment debtor. This objection was accepted and the attachment sought by the decree holder was denied. It is

against this order of the Executing Court that the revision has been filed. The decree, which is sought to be executed was the compromise decree in

a specific performance suit. The suit for specific performance at the instance of the decree holder was in relation to the residential house agreed to

be sold by the defendant to the plaintiff. The parties entered into a compromise on 07.01.2004 allowing for the defendant to pay Rs. 66,000/- to

the plaintiff in instalment of Rs. 2000/- per month and the compromise specifically recites, ""till then the defendant will not sale, mortgage the house

in question to anybody and the charge shall remain created on the house and if the defendant failed to pay the instalment in time then the plaintiff

has right to file the execution application before the Court for recovery of the balance amount....."" Towards the end the document also reads that

the plaintiff will have also the right to recover the balance amount by way of auction of the house in question. When there is a reference specifically

made in the compromise that a charge was being created on the property for the liability, which the defendant had undertaken then it is to be seen

whether it falls within the proviso mentioned u/s 61(1)(ccc). The proviso would require to be reproduced which reads as follows:-

Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered.

In my view, the recital extracted from the compromise decree squarely falls within the proviso and the protection which the defendant was asking

was simply not available to him.

2. A faint argument is made on behalf of the judgment debtor that the compromise is required to be registered and it was not so registered. Section

17(2)(vi) of the Registration Act, 1908 reads as follows:-

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other

than which is the subject matter of the suit or proceeding].

This Section requires only a registration of compromise, which is not the subject matter in respect of which a right is created for the first time

through the decree. In a suit for specific performance where the immovable property in dispute was ultimately allowed to be retained by the

judgment debtor with a charge created thereon, it cannot be said to be a property which is not the subject matter to which the above provision of

the Registration Act is applicable. The plea therefore that the decree was required to be registered is erroneous and rejected.

3. Learned counsel appearing for the respondent also argues that when the decree was passed it was merely a decree for money and the charge

which existed prior to the decree was no longer available under the decree. It is clear misreading of the terms of compromise on the basis of which

a decree also came to be passed. A decree that forms the compromise must be understood as providing for everything that the compromise itself

provides for unless the compromise terms are unworkable or against public policy. The parties were bargaining for a compromise with their eyes

open and when the judgment debtor had provided that he will not mortgage or sell the property and that a charge was being created and if any

money was not paid the property could be sold, the party definitely understood that the charge was being created on the property. Even otherwise

a charge on the property, which is agreed to be sold that ultimately does not go through to allow for the vendor to secure the money back obtains

to him also a statutory charge u/s 55(4)(b) of the Transfer of Property Act. The charge which the statute recognizes becomes also a charge under

the decree when vendor was bargaining for return of the money which he had advanced.

4. In this case when the decree holder was enforcing a charge all that was necessary was to seek for a final decree and for the sale of the property.

It was not even necessary that fresh proceedings for attachment was to be made. It was a surplus-age and if the party was executing to the same,

the judgment debtor does not obtain a right to contend that the property could not be sold.

5. There is yet another argument that the defendant has made namely that some payments to the plaintiff under the decree have not been given

credit. The compromise terms themselves specify that payment shall be duly receipted. If there is any payment pursuant to the decree, it shall be a

payment in the manner contemplated under Order 21 Rule 1 and they have to be duly certified in the manner contemplated by law. If proof of

payment exists but they are uncertified, it will give an independent right to judgment debtor to seek for recovery and it cannot be made a subject of

discharge or set off for the judgment debtor against the decree holder.

6. Learned counsel also contends that Section 60(3) protects a judgment debtor from waiving any of the rights which were guaranteed under this

provision. The waiver which law contemplates is waiver which has nothing to do with the section itself. If the Section admits of a proviso and

excepts a charge which is created on a property, the statutory exception does not require any waiver. The enforcement obtained through a right

which the decree holder has, does not depend on the alleged waiver of the judgment debtor. The plea that he cannot be permitted to waive is

equally without merit and it is also rejected. The impugned order is set aside. The civil revision is allowed and the property shall be directed to be

sold for recovery of the money which is still payable.