

SUPREME COURT OF INDIA

Ram Ji Dass (D) By Lrs.

Vs.

Indian Overseas Bank

C.A.No.7090 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

28.11.2008

ORDER

1. Leave granted.

2. This appeal is directed against the judgment and order dated 21.7.2005 passed by a learned Single Judge of the Punjab and Haryana High Court in Civil Revision No. 3694 of 2005 whereby and whereunder the objection petition filed by the appellant herein under Section 47 of the Code of Civil Procedure was dismissed.

3. The basic fact of the matter is not in dispute.

4. A decree for recovery of money was passed against the appellant and in favour of the decree holder-respondent on 5.9.1987. An application for execution of the said decree was filed on 10.4.1997. On the respondent's failure to take steps, the said Execution Petition was dismissed for default on 11.3.2000. Respondent herein filed a second execution application on 27.4.2000 but together therewith it also filed an application for summoning of the original file as also the execution file for the purpose of directing recovery of the amount by sale of the mortgaged land, inter alia, stating:

“3. That the execution petition was fixed for the report of the Tehsildar after sale of the mortgaged land.

4. That the absence of the counsel for the petitioner/decreed holder was not intentional. It is therefore, prayed that this Ld. Court be pleased to summon the previous file and the proceedings from the stage it was dismissed be started i.e. the property mortgaged be put to sale and the amount standing due from the JDs be recovered in accordance with the decree.”

5. By reason of an order dated 6.10.2001, the learned executing Court allowed the said application opining:

“By filing the present application, it is prayed that the proceedings from this stage be taken where it was dismissed i.e. property mortgaged be put to sale and the amount standing due from the J.Ds. is recovered. I have heard the arguments advanced by the counsel for the decree holder and perused the case file very carefully.

From the perusal of the file, it is observed that the execution petition was dismissed on 11.3.2000 and the application was moved on 7.4.2000. In the interest of justice, the application in question stands allowed and proceedings be taken from the stage where it was dismissed i.e. the property be mortgaged be put to sale and the amount standing due to the J.Ds. be recovered.”

6. As noticed hereinbefore, the revision application filed thereagainst was dismissed.

7. Learned counsel appearing on behalf of the appellants would urge that the second execution application was not maintainable being barred by limitation. Although, the learned counsel is right that the second execution application of its own would not have been maintainable being barred by limitation as the decree was passed on 5.9.1987 and the said application was filed on 27.4.2000, but as it is evident that the respondent had also for all intent and purport filed an application for recalling of the said order dated 11.3.2000 and the learned executing Court having allowed the same, we are of the opinion that the first execution application having been revived, the execution case must proceed in accordance with law. With the aforesaid observations, the appeal is dismissed. No costs.