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Court : Punjab and Haryana

Decided On : May-27-2003

Reported in : III(2004)BC113; (2004)136PLR203a

Judge : M.M. Kumar, J.

Acts : Punjab Debtor Protection Act, 1936 - Sections 2(6) and 11B

Appeal No. : Civil Revision No. 2616 of 2003

Appellant : Tota Singh

Respondent : Manjit Singh

Advocate for Pet/Ap. : H.S. Gill, Senior Adv. and; H.C. Rahi, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. This petition filed under Section 115 of the Code of Civil Procedure, 1908 challenges order dated 21.4.2003 passed by the Civil Judge (Junior Division), Faridkot, rejecting the prayer of the judgment-debtor-petitioner (for brevity, 'JD-petitioner') for payment of decretal amount payable under the decree dated 19.9.2000 in instalments. The prayer was made by the setting up the ground that it

is a loan within the meaning of Sub-section (6) of Section 2 read with Section 11-B of the Punjab Debtor Protection Act, 1936 (for brevity, 'the Act'). It is admitted position that earnest money of Rs. 72,000/- was paid in pursuance of agreement to sell dated 16.7.1997 executed by the JD-petitioner in favour of the decree-holder-respondent. The Court passing the decree also came to the conclusion that the earnest money is liable to be refunded with interest. The aforementioned prayer for the JD-petitioner has been rejected by the executing Court by holding as under:-

'4. After hearing the arguments and after going through the entire material on record, I have observed that the JD has requested for allowing him to make the payment of decretal amount by instalments and he has got support from the provisions of Section 11-B of the Debtor Protection Act, 1936. As per provisions of Section 11-B, the Court may at any time, on the application of JD, direct that amount of any decree passed against him in respect of loan shall be paid in instalments. I have carefully gone through the provisions of Section 11-B as well as Section 2(6) of this Act and have come to the conclusion that the present case is not covered under the provisions of Punjab Debtors Protection Act, 1936 on the ground that the decretal amount was not a loan given to the JD by the decree holder, rather an agreement to sell some property was executed by the JD and a sum of Rs. 72,000/- were paid as earnest money by the decree holder to the JD at the time of execution of an agreement. As per judgment passed in this case dated 19.9.2000, the suit of the plaintiff was decreed to the effect that the plaintiff was entitled to Rs. 72,000-alongwith interest. Thus, the principal amount was given by the plaintiff to the defendants as an earnest money as a part consideration for the purpose of purchasing the property of the JD, therefore, this amount of Rs. 72,000/- cannot be treated as a loan as defined in Section 2(6) of the Punjab Debtors Protection Act, 1936. Accordingly, I hold that provisions of Punjab Debtors Protection Act, 1936 are not applicable to the present case.

5. Learned counsel for the decree-holder has brought the intention (attention?) of the Court to the provisions of Order 20 Rule 11 CPC where it has been provided that the payment of decretal amount can only be made by instalments, if the Court incorporates such facts in the decree/judgment and at this stage, no such request

can be entertained.'

2. Mr. H.S. Gill, learned Senior counsel for the JD-petitioner has argued that the amount recoverable from the JD-petitioner is covered by the expression 'debts' used in Section 2(c) of the Interest Act, 1978 (for brevity, '1978 Act') and, therefore, the amount should be realised from the JD-petitioner in instalments. For the afore-mentioned proposition, the learned counsel has placed reliance on a judgment of this Court in *Guljinder Singh v. Hari Singh*, (2000-2) 125 P.L.R. 153.

3. I have thoughtfully considered the submissions made by the learned counsel for the JD-petitioner and regret my inability to accept the same. Section 2-C of the 1978 Act does not contain any provision which may show that the amount of decree has to be treated as a debt. Section 2(c) of 1978 Act reads as under:-

'2. Definitions.- In this Act, unless the context otherwise requires, -

(a) and (b) xx xx xx

(c) 'debt' means any liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt.'

The aforementioned definition would in fact highlight that the judgment debt is not covered by the expression 'debt' used in 1978 Act.

4. It is further appropriate to refer to the provisions of Section 2(6) of the Act, defining the expression 'loan' which reads as under:-

(6) 'Loan' means an advance whether of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but it shall not include -

(i) a deposit of money or other property in a Post Office Savings Bank or any other Bank, or in a company or with a co-operative society;

(ii) a loan to or by, or a deposit with any society or association registered under the Societies Registration Act, 1860 (XXI of 1860) or under any other enactment for the time being in force;

- (iii) a loan advanced by the (State) Government or by any local body authorized by the (State) Government;
- (iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Indian Companies Act, 1913 (VII of 1913);
- (v) a loan advanced to a trader;
- (vi) an advance made on basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (XXXVI) of 1981), other than a promissory note;
- (vii) a transaction which is, in substance, a mortgage or a sale of immovable property.'

The definition expressly excludes a transaction which in substance a mortgage or sale of a property which in other words would mean that a sum given as payment in advance for property to be sold would not be covered by the expression 'loan'. Moreover, under Rule 11 of Order XX of the Code, specific provision has been made for the Court passing the decree to incorporate in the decree an order that payment of the amount decreed shall be made by instalments with or without interest. Such an order could be passed even after passing of the decree under Sub-rule (2) of Rule 11 of Order XX of the Code. However, the executing Court has not been given any power to order payment by instalments presumably for the reason that it would amount to allowing the executing Court to go behind the decree particularly when such a power has been vested with the Court passing the decree which could be exercised by it even after the decree is passed. The provisions of Rule 11 of Order XX of the Code read as under:-

ORDER