

Pradeep Kumar Singhi v. The Haryana Financial Corporation
Chandigarh and another (S. P. Goyal, J.)

H.S.B.

Before S. P. Goyal, J.

PRADEEP KUMAR SINGHI,—Petitioner.

versus

THE HARYANA FINANCIAL CORPORATION CHANDIGARH
AND ANOTHER,—Respondents.

Civil Revision No. 2461 of 1983

February 27, 1984.

*Haryana Public Money (Recovery of Dues) Act (XXIV of 1979)—
Sections 3 and 4(2)—Property mortgaged with a Financial Corpora-
tion as security for loan—Guarantor also standing surety for such
loan—Corporation—Whether entitled to recover loan from the
guarantor before attempting to recover the same by sale of mort-
gaged property of the defaulter.*

Held, that from a bare perusal of section 4(2) of the Haryana Public Money (Recovery of Dues) Act, 1979 it is evident that if the property of any person referred to in section 3 is hypothecated or mortgaged it has first to be sold before proceedings can be taken against other property of the defaulter. The persons referred to in section 3 are both the principal as well as the surety. Consequently, if the property of any one of them is under mortgage, the same has to be sold and its sale proceeds appropriated first before taking action against the other property of the defaulter.

(Para 2).

Petition under Section 115 CPC for revision of the Order of the Court of Shri Raj Kumar Gupta, District Judge, Faridabad, dated 10th September, 1983 revising that of the Order of the Court of Shri Raj Kumar, Subordinate Judge IInd Class, Faridabad, dated 19th March, 1983 accepting the appeal and setting aside the order of the trial Court, and dismissing the application of the plaintiff-respondent for the grant of an ad-interim injunction and directing the parties to appear in the trial Court on 17th September, 1983.

R. S. Mittal Sr. Advocate with Harish Kumar Advocate and N. K. Khosla, Advocate, for the Petitioner.

K. L. Kapoor, Advocate, for the Respondent.

JUDGMENT

S. P. Goyal, J. (Oral)

(1) This petition is directed against the order of the learned District Judge, Faridabad, reversing the order of the trial Court whereby ad-interim injunction was granted in favour of the plaintiff restraining the respondents from taking proceedings against him under the Haryana Public Money (Recovery of Dues) Act, 1979 (hereinafter called the Act).

(2) The sole argument raised by the petitioner before the authorities below as well as before me was that no proceedings could be taken against the petitioner who stood as guarantor for the payment of the amount in dispute till the property of the principal debtor under mortgage with the respondents was sold and sale proceeds appropriated towards the amount due. The merit of the contention depends on the provisions of section 4(2) of the Act

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which reads as under:—

“Where the property of any person referred to in Section 3 is subject to any mortgage, charge, pledge or other encumbrance in favour of the State Government, a Corporation or a Government Company, then in every case of a pledge or hypothecation of goods, or a mortgage, charge or other encumbrance on immovable property, such property or, as the case may be, the interest of the defaulter therein, shall first be sold in proceedings for recovery of the sum due from that person, and if the proceeds of the sale of the aforesaid property are less than the sum due, proceedings may be taken against the other property of the defaulter.

Provided that where the State Government is of the opinion that it is necessary so to do for safeguarding the recovery of the sum due to it or to the Corporation or Government company, as the case may be, it may, for reasons to be recorded, direct proceedings to be taken simultaneously for the recovery of the sum due in respect of the goods pledged or hypothecated, the immovable property mortgaged, charged or encumbered and other property of the defaulter.”

From a bare perusal of the said provision it is evident that if the property of any person referred to in section 3 is hypothecated or mortgaged it has first to be sold before proceedings can be taken against other property of the defaulter. The persons referred to in section 3 are both the principal as well as the surety. Consequently, if the property of any one of them is under mortgage, the same has to be sold and its sale proceeds appropriated first before taking action against the other property of the defaulter. So the lower appellate Court on a wrong interpretation of the said provisions has illegally reversed the order of the trial Court. This petition is, therefore, allowed, the impugned order set aside and that of the trial Court restored. No costs.

N. K. S.