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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

HEERA SINGH — Appellant

Vs.

AMAR JEET SINGH AND OTHERS — Respondent

(Before : S.N.Shukla, J)

Writ Petition No. 2398 of 2004 (M/S)

Decided on : 07-01-2010

- Civil Procedure Code, 1908 (CPC) - Section 47

A. Contract Act, 1872 — Sections 16, 23, 24, 25 — Undue Influence — Unconscionable Contracts — Public Policy — Where there is a significant disparity in bargaining power between contracting parties, and the terms of a contract are found to be unconscionable or unfair, such a contract can be deemed void as being opposed to public policy — This principle is particularly relevant where one party is in a disadvantageous position and is compelled to enter into an agreement for a meager consideration, causing injury — The courts have a duty to strike down such contracts to ensure social and economic justice and to uphold Article 14 of the Constitution (equality before the law). (Paras 12, 13, 14, 15)

B. Transfer of Property Act, 1882 — Mortgage — Priority of Charge — Where a property is already mortgaged to a bank (U.P. Cooperative Land Development Bank, State Bank of India) and the bank holds a first charge on the property, the mortgagor cannot be compelled to execute a sale deed to a private person to satisfy an agreement between private parties — The bank's loan must be satisfied before any private sale can proceed. (Para 16)

C. Civil Procedure Code, 1908 — Section 47 — Execution of Decree —

Objection to Execution — Where a contract for specific performance involves an unconscionable agreement, undue influence, or is otherwise found to be unlawful and void (due to inadequacy of consideration for a large property, or existing mortgages), the execution of a decree based on such a contract can be challenged and subsequently quashed — While quashing the execution orders, the petitioner is directed to refund the balance amount taken from the opposite party with simple interest. (Paras 15, 17, 18)

JUDGMENT

Shri Narayan Shukla, J.

Heard Mr.R.C.Saxena, learned, learned counsel for the petitioner and Mr.R.K.Jaiswal, learned counsel for the opposite party No.1.

The petitioner has challenged the order dated 20th of November, 2000, passed by the Additional Civil Judge (Senior Division), Lakhimpur Kheri in execution case No.36 of 2000, whereby the petitioner's application moved under Section 47 of the Code of Civil Procedure has been rejected as also the order dated 8th of April, 2004, passed by the Additional District & Sessions Judge, Lakhimpur Kheri in revision No.2 of 2001.

Briefly the facts of the case are that the petitioner entered into an agreement on 8th of November, 1988 with the opposite party No.1 for sale of his entire agricultural plot No.758, bearing area 7.35 acres, situate at village Bhira, Pargan Bhoodh, district Lakhimpur Kheri, against a sum of Rs.1,47,000/. Under the terms of agreement it was stipulated that if the aforesaid amount is refunded within a period of ten months, the agreement in question would not be enforced. Under the term of agreement the petitioner refunded Rs.82,000/ against the principal amount and Rs.9,900/ against the interest to the opposite party No.1, but without notice to the petitioner the opposite party No.1 instituted a suit, which was registered as suit No.20 of 1990 in the court of Civil Judge, Lakhimpur Kheri for specific performance of contract.

The petitioner contested the suit, but the suit was decreed in favour of the opposite party No.1/plaintiff and a direction was issued to execute the sale deed after receiving balance amount of Rs.22,000/. Being aggrieved with which the petitioner preferred an appeal before the District Judge, Lakhimpur Kheri, which was registered as Civil Appeal No.155 of 1995. The appeal was heard by Vth Additional District Judge, Lakhimpur Kheri and was rejected by means of order dated 20th of November, 1998. Then the opposite party No.1 initiated the proceeding for execution of decree, in which the petitioner filed objection, which has been rejected and the order passed by the execution court has been upheld by the revisional court.

Through the objection raised in the execution proceeding the petitioner took a plea that the

land in dispute is already mortgaged with the U.P. Cooperative Land Development Bank as well as State Bank of India, therefore, the contract cannot be performed. He further submitted that at that very time itself the value of the land was more than 10 lakhs, whereas the opposite party No.1 being in a dominating position and by taking benefit of the disadvantageous position of the petitioner entered into the agreement to sell the land against a meager amount. The petitioner entered into the agreement only under the compelling circumstances. He also refunded Rs.82,000/-. The area of the land is 7.35 acres. The petitioner has claimed that such type of contract is void as it was entered into under undue influence, thus he claims the violation of Sections 16, 23, 24 and 25 of the Indian Contract Act, 1987. On the test of reasonableness and fairness of a clause in a contract, where there is an inequality of bargaining power Mr.Saxena, learned counsel for the petitioner cited a case i.e. Central Inland Water Transport Corporation Limited and another versus Brojo Nath Ganguly and another, reported in 1986 Supreme Court Cases (L & S) 429. In the aforesaid case two questions were framed for determination, 2nd of which was:

"(2) Whether an unconscionable term in a contract of employment is void under Section 23 of the Indian Contract Act, 1872, as being opposed to public policy and, when such a term is contained in a contract of employment entered into with a government company, is also void as infringing Article 14 of the Constitution in case a government company is "the State" under Article 12 of the Constitution?"

Considering the principles as discussed in several cases, the Hon'ble Supreme Court answered the said question in the following manner:

"89.Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies ? Should we not adjust our thinking caps to match the fashion of the day ? Should all jurisprudential development pass us by, leaving us foundering in the sloughs of 19th century theories ? Should the strong be permitted to push the weak to the wall ? Should they be allowed to ride roughshod over the weak ? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak ? We have a Constitution for our country. Our judges are bound by their oath to "unhold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great

disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonably and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

Upon perusal of record I find that the suit for specific performance of contract filed by the opposite party No.1 has been decreed and the same has been upheld by the court of appeal also. The execution court has also rejected the petitioner's objection, but I find that the agreement for sale of such a huge land i.e. about 7.35 acres only against the consideration of Rs.1,47,000/ is highly unreasonable. Therefore, it is established that the contract has been entered into under undue influence, which is absolutely immoral and also it causes injury to the petitioner. The object of the agreement has also not been lawful, thus it becomes unlawful, therefore, I am of the view that the agreement entered into between the petitioner as well as opposite party No.1 is void and the same cannot be executed.

This fact is not disputed that the property is mortgaged with the U.P. Cooperative Land Development Bank as well as State Bank of India and it is settled view that the Bank has first charge upon the property, therefore, before execution of the agreement, the loan of the Bank should be paid. Once the property is mortgaged with the Bank which has first charge upon the property, mortgager cannot be forced to execute the sale deed to a private persons just to satisfy the agreement entered into between two private parties. Through the counter affidavit the opposite party No.1 has admitted that the petitioner has mortgaged the land with the Bank, but after entering into the agreement. It is not in dispute that till date the sale deed has not been executed, therefore, until and unless the loan of the Bank is satisfied the petitioner cannot be compelled to perform the contract.

Keeping in view the amount of contract for execution of sale of such a huge property, the contract appears to be unconscionable. After considering the facts and circumstances of the case, I am of the view that the contract is unlawful and void, therefore, the petitioner cannot be compelled to perform the contract. Therefore, I hereby quash the orders impugned dated 20.11.2000, passed by the Additional Civil Judge (Senior Division),

Lakhimpur Kheri as well as the order dated 8.4.2004, passed by the Additional District Judge, Lakhimpur Kheri. However, the petitioner is directed to refund the balance amount taken from the opposite party No.1 under the terms of the contract alongwith simple interest prevalent on date within three months.

In the result the writ petition is allowed.