

CR-2425-2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-2425-2015 (O&M).
Decided on: April 10, 2015.**

M/s Durga Industry and another

..... Petitioners

Versus

Punjab State Civil Supplies Corporation Ltd. and another.

..... Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Sandeep Jasuja, Advocate,
for the petitioners.**

M.M.S. BEDI, J (ORAL).

The petitioners are judgment debtors. Punjab State Civil Supplies Corporation Limited (PUNSUP), decree holder-respondent filed its execution application for execution of Award. The said application was dismissed in default on 12.3.2013. Though the decree holder- respondent was entitled to file a fresh petition for execution as the principle of resjudicata is not generally applicable to execution applications not decided on merits after contest yet decree holder- respondent filed an application for restoration of the execution application.

Notice of the application for restoration of the execution application was given to the petitioners- judgment debtors.

A perusal of interim orders w.e.f. 3.9.2013 till 11.2.2015 indicate that the executing Court is proceeding with the application for restoration of execution application and

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simultaneously taking steps to execute the decree. Order dated 5.4.2014, indicates that a representation was made before the executing Court on behalf of the petitioners who by appointing Mr.Shallinder Bhalla, Advocate, filed objections on 21.4.2014. On 17.5.2014, the reply to the objections was filed by the decree holder. The objections on merits seem to have been taken into consideration by the executing Court vide order dated 2.5.2015. Sale warrants have not been executed. The execution proceedings are being adjourned on different dates.

The main contention of the counsel for the petitioners is that there is no formal order on file restoring the execution application but in the absence of any restoration order the executing Court is proceeding with the execution which is not permissible under law. Through the instant petition under Article 227 of the Constitution of India, setting aside of proceedings subsequent to 12.3.2013, has been prayed for, claiming that all the proceedings would be deemed to be illegal, null and void.

The petitioners by their conduct seem to be estopped from questioning the existence of the execution application on account of having appeared and filed objections. Counsel for the petitioners claims that the act and conduct of petitioners before the executing Court is a bona fide error as petitioners were not aware that the execution had not been restored. Since the executing Court has proceeded in the execution petition to the extent of having

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passed attachment orders, it will not be prudent for this Court to nullify the entire proceedings taken up by the executing Court in presence of both the parties. The error pointed out by the petitioners seems to have not been pointed out to the executing Court while raising objections to the continuity of execution proceedings in view of the pendency of application for restoration of execution dismissed in default on 12.3.2013. The proceedings continued by a Court of competent jurisdiction in presence of the parties with their consent prima facie cannot be nullified in the exercise of powers under Article 227 of the Constitution of India.

This petition is disposed of as not maintainable with liberty to the petitioners to approach the executing Court raising all the pleas taken up in this petition in order to apprise the executing Court of the alleged illegality. It will be open to the executing Court to consider the objections and pass an appropriate order regarding proceedings which should have been taken up after 12.3.2013.

April 10, 2015.
rka

(M.M.S. BEDI)
JUDGE