

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 765 of 2015

Date of Decision: July 6 2015

Punjab National Bank

.....Petitioner

Vs.

Subegh Singh th. LRs Jasbir Kaur and ors.

.....Respondents

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

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Present:- Mr.A.S. Gagrha, Advocate
for the petitioner.

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

The Executing Court in the present case has adopted a novel device to reduce the arrears by dismissing the application of execution of decree of the year 1995 on absolutely absurd ground. The impugned order reads as follows:-

“Present: Mr. Manav Bansal, Adv. counsel for the DH
Counsel for the DH has stated at bar that DH has not filed any transfer application. Sale warrant issued earlier, received back un-executed with report that nobody is ready to give bid. Perusal of file shows that

sale warrant was issued for first time for 23.2.2008 but same received back time and again with report of unserved as well as nobody is ready to give bid on 21.9.2013. DH was directed to arrange bidder and fresh sale warrant was issued. Thereafter, sale warrant again received back with report that nobody is ready to give bid. DH himself has not made any effort to arrange the bidder. DH was granted permission to give the bid in auction. Even then, he himself has not given the bid and sale warrant received back unexecuted with report that nobody is ready to give bid. On the last date of hearing, DH sought adjournment on the ground that he wanted to move transfer application, but said application is also not filed. It appears that he has taken this plea for seeking adjournment. As, DH has failed to arrange the bidder and sale warrant received back with report that nobody is ready to give bid and even DH has not participate in bid despite permission. It shows that DH is not interested to pursue the execution. So, execution stands dismissed. File be consigned to the record room.”

A perusal of the above said order indicates that the order has been passed in presence of counsel for the decree holder solely on the ground that the decree holder has not been able to arrange bidders for

participating in the bid for sale of the property which stood mortgaged with the Bank. Another reason mentioned in the order is that decree holder had not filed any application for transfer as the counsel for the petitioner decree holder had informed the Court that he wanted to move a transfer application. It is surprising as to how the Executing Court formed an opinion that decree holder is not interested to pursue the application.

All the three reasons mentioned in the order are not sustainable in the eyes of law as such the impugned order is hereby set aside.

Since this order was passed in absence of the judgment debtor or his heirs, this petition is disposed of in limine. The trial Court is directed to take up the execution application. The order dated September 26, 2014 is hereby set aside. Executing Court is directed to proceed in the execution application in accordance with law from the stage where it was dismissed on the presumption that decree holder was not interested.

July 6 2015
sanjay

(M.M.S.BEDI)
JUDGE