

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

**CR No.4071 of 2014
Decided on: 17.11.2016**

Food Corporation of India and others

....Petitioners

Versus

Ramesh Lal

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Ms. Jatinderjit Kaur, Advocate
for the petitioners.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against orders dated 16.09.2009 (Annexure P3) and dated 28.02.2014 (Annexure P8) passed by the Additional Civil Judge (Sr. Division), Batala whereby application for execution of money decree was dismissed on 16.09.2009 and the application for restoration of execution petition was dismissed, respectively.

Counsel for the petitioners has submitted that the Food Corporation of India and others filed a suit for recovery of Rs.9,26,678.58 *paise* against Ramesh Lal – respondent in the year 1988 that culminated in the *ex parte* judgment and decree dated 27.09.1991 (Annexure P1). An application for execution of the said decree was filed wherein the respondent – JD filed objections and the objections were dismissed by the Executing Court on 01.09.2009 (Annexure P2) and warrant of attachment was ordered to be issued for 16.09.2009 subject to filing of list of property. On the adjourned date i.e. 16.09.2009 the petition was dismissed in default. Within a period of 30

days i.e. on 09.10.2009, the instant application was filed seeking restoration of execution proceedings but the same has been dismissed by the Executing Court without appreciating that in case the proceedings are not taken to its logical end entire effort of the Corporation of the Central Government in getting a decree and thereafter pursuing the execution proceedings would be rendered nugatory and the JD would escape his liability despite the fact that he did not contest the proceedings in the suit and his objection petition was dismissed. It is further submitted that even if there was some remiss on the part of counsel representing the Corporation or official of the Corporation pursuing the proceedings in filing the list of property, the same should not be allowed to enure to the benefit of JD at the cost of loss of public money.

The respondent failed to appear despite service, as such, there is no contest to the submissions made by counsel for the petitioners.

I have heard counsel for the petitioners and perused the paperbook particularly the orders impugned.

The Executing Court dismissed the objection petition preferred by the JD on 01.09.2009 and warrants of attachment were ordered to be issued on filing of list of property returnable for 16.09.2009 and there was gap of 15 days in between. The order dated 16.09.2009 dismissing the execution petition makes reference that the case in question falls in the category of 200 cases, may be, listed for Samadhan/Action Plan. It appears that the Executing Court dismissed the execution petition in an effort to dispose of one of the cases out of

the targeted ones little realising that disposal of a case at the cost of injustice cannot pay in the long run. The Court that decided the application for restoration did not bother about the serious consequence likely to ensue in case the execution process is not revived for realization of decretal amount running into several lacs of rupees. In view of the scenario demonstrated from the aforesaid discussion, the impugned order dated 28.02.2014 cannot be allowed to sustain and liable to be set-aside.

For the foregoing reasons, the petition is partly allowed, impugned order dated 28.02.2014 is set-aside and the application filed by the petitioners for restoration of execution proceedings dismissed on 16.09.2009 is allowed. As a natural consequence, execution petition dismissed on 16.09.2009 is ordered to be restored at the board of the Executing Court for initiating requisite process, in accordance with law.

The petitioners shall ensure that list of property of the JD is submitted within a period of 15 days from the date fixed for appearance before the Executing Court. The petitioners through counsel are directed to appear before the Executing Court on 15.12.2016.

17.11.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No