

CR-9-2016(O&M)

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-9-2016(O&M)

Date of decision : 07.01.2016

Union of India and another

... Petitioners

Versus

Food Corporation of India and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Pankaj Jain, Advocate
for the petitioners.

REKHA MITTAL. J.

The petitioners have invoked jurisdiction of this Court under Article 227 of the Constitution of India to lay challenge to the orders dated 20.08.2015 (Annexure P11) and 07.11.2015 (Annexure P12) passed by the Additional Civil Judge (Senior Division), Faridkot whereby the objections against attachment and application for dismissal of execution petition filed by the petitioner have been dismissed and precept has been issued to the Court at Ludhiana for attachment of bank account of the petitioner.

The Food Corporation of India (in short 'FCI') filed an application for execution of award passed against V.K. Construction Works(P) Ltd. The said award was made rule of the Court by the Supreme Court vide order dated 28.04.1997 in IA No.1 in Special Leave

Petition (Civil) No.12320 of 1986. The decree for execution of award was transferred to the Court of Civil Judge (Senior Division), Faridkot by the Apex Court vide order dated 13.10.2006 in IA No.2 in the aforesaid Special Leave Petition (civil).

The petitioners CPWD/ Union of India through its Executive Engineer filed objections Annexure P7 inter alia alleging that the judgment debtor has not explained as to how the amount has been calculated and V.K. Construction Works(P) Ltd. has not come to the Court with clean hands. It is averred that the decree holder has not given his correct address. The claim of V.K. Construction Works(P) Ltd. against Union of India / CPWD is false.

The decree holder filed reply to these objections denying all the allegations set up in the objection petition. Later, an application was filed by the petitioner for dismissal of the execution petition on the ground that the judgment dated 16.05.2005 passed by the Court of learned Additional District Judge, Muktsar upholding the award passed in favour of M/s V.K. Construction Works(P) Ltd is without jurisdiction.

The decree holder filed reply to this application challenging its maintainability and denying the grounds on which the petitioners had laid challenge to the execution proceedings.

The Civil Judge (Senior Division), Faridkot disposed of the application for dismissal of execution petition as well as objections by a common order dated 20.08.2015 which is under challenge in the present

proceedings.

Counsel for the petitioners would contend that the FCI executed construction work at two places. At one place, the FCI directly got executed the work from V.K. Construction Works(P) Ltd. and the dispute qua the said work culminated in an award passed in favour of FCI by the arbitrator which is subject matter of execution filed by FCI against V.K. Construction Works(P) Ltd. In regard to work at Kotkapura, FCI got the work executed through Central Public Works Department (in short 'CPWD') but the CPWD also engaged V.K. Construction Works(P) Ltd for execution of work at Kotkapura. In view of the arbitration clause in the agreement between the parties, V.K. Construction Works(P) Ltd took recourse to arbitration proceedings and an award dated 02.06.1999 was passed in favour of V.K. Construction Works(P) Ltd. The CPWD filed objections under Section 34 of the Arbitration Act against the award but the same were dismissed by the Additional District Judge, Muktsar on 21.08.2000. V.K. Construction Works(P) Ltd filed an application for execution of the award against CPWD and the said decree in favour of V.K. Construction Works(P) Ltd has been attached for realisation of the amount awarded in favour of the FCI.

The learned executing Court has dealt with all the issues raised by the petitioners by way of objection petition as well as application for dismissal of the execution petition. The learned counsel for the petitioners is not in a position to point out any error much less

perversity committed by the executing Court while disposing of the objections as well as application for dismissal of the execution petition. On a pointed query raised by the Court as to maintainability of the application for dismissal of execution petition, counsel could not give any satisfactory reply nor could refer to any provisions relevant in the context. This apart, counsel has fairly conceded that the petitioners have already instituted a suit for recovery of the amount from FCI in terms of the agreement purported to be executed between the petitioners and FCI in regard to liability, if any, qua V.K. Construction Works(P) Ltd. A perusal of the objections petition as well as application for dismissal of the execution petition does not indicate that the petitioners had raised any substantial question with particulars for adjudication by a court of law.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed in limine. However, nothing stated in this order shall prejudice the rights of the petitioners in the pending civil suit. No order as to costs.

(REKHA MITTAL)
JUDGE

January 07, 2016.
Davinder Kumar