IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8635 of 2016
Date of decision: 04.04.2018

State Bank of India ... Petitioner

versus

Punjab State Warehousing Corporation & ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rakesh Gupta, Advocate
for the petitioner.

Mr. Nitin Kaushal, Advocate
for respondent No.1.

*****

<u>Amit Rawal, J(Oral)</u>

The present revision petition is directed against the order dated 04.11.2016 (Annexure P-1) passed by learned Addl. District Judge, Gurdaspur vide which the auction sale fixed by the petitioner – State Bank of India, secured creditor, in the execution application filed by respondent No.1, in pursuance to the arbitration award dated 02.01.2014 has been stayed.

Mr. Rakesh Gupta, learned counsel appearing for the petitioner submitted that the borrower M/s Hargobind Rice Mills, Batala Road, Gurdaspur through its partner had taken a loan facility to the tune of Rs.2.31 crore from the State Bank of India by mortgaging the plant and machinery including the land and building vide mortgage deed dated 27.06.2011. The account of the borrower had become non-performing asset on 21.08.2012. The bank has to recover approximately an amount of Rs.4 crores. In the meantime, arbitration proceedings between the Punjab State Warehousing Corporation and the miller were culminated, whereby an amount of Rupees

18 crore an odd amount, indicated in the impugned order was required to be recovered from the miller. The paddy lying in the premises had been sold and the balance amount alleged to be recovered by respondent No.1 – Punjab State Warehousing Corporation is Rupees 4,10,00,467/-. In the execution proceedings, vide attachment order dated 02.01.2014 the trial Court attached the property. Bank on accruing knowledge filed, for, had already taken the possession in the proceedings initiated under the SARFAESI Act, 2002 as amended, an application for removal of the attachment order being a first charge holder and as maintenance expenses are recurring. The said application has erroneously been rejected though , objection petition, on the same line is pending adjudication. In support of the contention, reliance was placed upon the judgment of Hon'ble Supreme Court in ***Dena Bank vs. Bhikhabhai Prabhudas Parekh and Co. and ors., AIR 2000 Supreme Court 3654*** holding therein priority/precedence to prevail.

Per contra Mr. Nitin Kaushal, learned counsel appearing on behalf of the Punjab State Warehousing Corporation submitted that the application was not maintainable as the objection petition of the State Bank of India is pending, respondent No.1 has no objection if the appropriate direction is given to the trial Court for adjudication of the same within a time bound manner, but the attachment order cannot be ordered to be vacated in a slip shod manner and prayed for dismissal of this petition.

During the course of the hearing, this Court orally sought the information with regard to the value of the building and the property underneath which as per Mr. Nitin Kaushal would fetch approximately Rs.6-7 crores in the auction.

Mr. Rakesh Gupta, submitted that the bank is incurring very heavy expenses in maintaining the premises owing to the possession having taken under the aforementioned provisions of the Act and being a first creditor have a right to realize the auctioned amount and whatever would be the balance amount, the same shall/may be appropriated and deposited in the Executing Court subject to any terms and conditions, this Court may deem appropriate. Even otherwise, the Punjab State Warehousing Corporation in order to realize the amount has no other option but to get the property sold in the public auction. They cannot be permitted in view of the fact that the bank has the right of first charge holder. By noticing the aforementioned position and ratio in judgment cited in *Dena Bank's case (supra)* by applying principles of priority, the order of the trial court causing attachment of mortgage property is not sustainable in the eyes of law as as it is bereft of any reasoning and is hereby set aside.

As the bank has a right of first charge, it should have been granted liberty for releasing the attachment order so that it can go ahead with the auction proceedings. The apprehension of the Punjab State Warehousing Corporation for fetching a lesser price can always be taken care of by permitting them to join the auction proceedings by bringing the best/better buyer in order to recover the maximum amount so that outstanding dues of both the creditors are satisfied.

The outstanding dues of the bank as well as the company/corporation/ government cannot be allowed to be kept in abeyance in the manner and the mode particularly when two instrumentalities of the Centre and State are at the loggerheads.

Mr. Gupta, learned counsel for the petitioner has undertaken that the auction proceedings shall be conducted as early as possible with prior information to the Punjab State Warehousing Corporation for joining the same for the purposes of fetching the maximum price.

The revision petition is allowed with the following directions:

1. The Bank being a first charge holder owing to mortgage of the property vide mortgage deed dated 27th June, 2011 and being in possession of the property shall be at liberty to sell the property in public auction in accordance with law.
2. The auction proceedings shall also be joined by the Punjab State Warehousing Corporation for the purpose of realizing dues.
3. However, the auction, if any, takes place that shall be subject to the decision by the Executing Court whereby execution application is pending for the purposes of apportionment and realisation of the respective dues.
4. The proceeds of the auction money is directed to be deposited in a non-lien account till the proceedings of apportionment are finalised.

The revision petition is disposed of with aforesaid directions.

04.04.2018 **(AMIT RAWAL)**
sonia **JUDGE**

Whether speaking/non-speaking? Yes/No
Whether reportable? Yes/No