

**235-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.8708 of 2015 (O&M)
Date of decision : March 23, 2018**

Vijay Kumar

..... Petitioner

Versus

Nuchem Ltd., MDF Division and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

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

Mr. Sachin Jain, Advocate for the respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Heard.

For the execution of the Award dated 03.08.2013 passed by the Presiding Officer, Lok Adalat-cum-Sub Divisional Judicial Magistrate, Tohana, the execution petition was filed by the present petitioner. In the said execution, earlier the objections were filed by the J.D. that the property is lying under mortgage. The said objections were dismissed. However, when moved this Court, this court vide order dated 03.08.2015 directed the executing Court to decide the execution on 19.08.2015 or maximum by 15.09.2015. Now, again when the execution was taken up before the Executing Court, the execution has been dismissed by the Executing Court on the ground that the property disclosed by the J.D. is already lying under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') and the J.D. cannot be sent to the civil prison. Therefore, the execution was ordered to be consigned to the record room with liberty to proceed further as and when the decree holder comes to know about any other property of J.D. in future.

Learned counsel for the petitioner has argued that no details of charge of the property have been mentioned by the J.D. and there is no document on file to show that the property is already lying attached. It is the J.D. who disclosed that the property is already lying attached under the SARFAESI Act, 2002. No document to the said fact has been filed.

In these circumstances, the execution cannot be disposed of as done by the Executing Court. If the some earlier charge is found on the property of the J.D., the subsequent attachment is subject to the earlier charge and property of the J.D. is to first satisfy the charge. It is not the law that the property once attached or mortgaged with the previous debtor, cannot be attached with the second debtor.

In view of the above, the impugned order is set aside. The Executing Court is directed to proceed with the matter in accordance with law and examine the J.D. on oath regarding his property and then ask him to furnish the documents regarding charge on the said properties and thereafter, proceed against the said property, subject to the charge created earlier, if any.

As such, the present revision petition is allowed. Since the main revision petition is allowed, therefore, the pending application, if any, also stands disposed of.

Both the parties are directed to appear before the Executing Court on 18.04.2018 at 10.00 a.m.

(KULDIP SINGH)
JUDGE

March 23, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No