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

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**RSA No.2767 of 2010 (O&M)
Date of decision: 01.10.2018**

M/s Chandi Ram Chiman Lal ...... **Appellant**

Versus

Punjab & Sind Bank and others ...... **Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aakash Singla, Advocate for the appellant.

Mr. A.S. Kakkar, Advocate for respondent No.1-Bank.

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ANIL KSHETARPAL, J. (ORAL)

CM-8374-C-2010

Application is allowed and the delay is condoned.

Main Case

Contest in the present case is between an unsecured creditor and a secured creditor. The appellant before this Court is an unsecured creditor having a decree for recovery of money whereas respondent/plaintiff-Punjab & Sind Bank claims that it has a second charge on the property and therefore, excess amount lying with Punjab Financial Corporation, which was having first charge, is bound to transfer the amount to the bank.

This Court has heard learned counsel for the parties at length. It is undisputed that a separate appeal filed by the Punjab Financial Corporation has been withdrawn vide order dated 24.09.2018.

Learned counsel for the appellant has submitted that since there is no decree passed in favour of the bank, therefore, the bank cannot

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claim any amount in preference to the appellant. He further submitted that the appellant-firm is having a prior decree which has to be executed. He has further submitted that the aforesaid decree has not been set aside.

This Court has considered the submission, however, find no substance therein. It is the findings of the Courts below that a tripartite agreement was arrived at between Punjab Financial Corporation, judgment debtor and Punjab & Sind Bank i.e. the respondent. According to the aforesaid tripartite agreement, Punjab Financial Corporation had agreed to pass on the excess amount to the bank after adjusting its debt. The bank is a secured creditor. Once the bank is a secured creditor, as per tripartite agreement, the amount has to be paid to the secured creditor first of all and unsecured creditor would only get the amount if there is any surplus. The decree passed by the Court in favour of the unsecured creditor does not improve its status. It is not in dispute that no doubt in the Lok Adalat, there was a settlement between the parties, however, the bank was not party to the aforesaid settlement. In such circumstances, any settlement arrived at before the Lok Adalat would not be binding on the bank.

Last argument of learned counsel is that the decree has not been set aside is just to be noticed and rejected because the decree passed in favour of the unsecured creditor can only be put into execution once the claim of the secured creditor is satisfied.

In view thereof, there is no ground to interfere.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned Yes / No
Whether Reportable Yes / No

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