

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3880 of 2015

Date of Decision : 19.10.2019

State Bank of India

.....Petitioner

Versus

M/s Kavita Exports (India) and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Rajnish Kumar Jindal, Advocate for the petitioner.

ARUN PALLI, J. (Oral)

The petitioner-decree holder is in revision before this Court.

Facts that are required to be noticed are limited.

The petitioner-bank filed a suit for recovery of Rs. 4,35,094/- against the respondents which was decreed *ex parte* vide judgment and decree dated 20.04.2000, for, despite service the respondents did not chose to appear. The execution application No.11 dated 05.10.2001, was filed by the petitioner which was dismissed by the Executing Court, for, neither the list of properties was furnished nor counsel for the petitioner appeared on the date fixed i.e. 16.11.2007. For, even the application seeking restoration of the execution application was dismissed by the Executing Court vide impugned order dated 05.02.2015, thus this revision.

I have heard learned counsel for the petitioner and perused the records.

In context of the issue that arises for consideration it indeed would be expedient to refer to the conclusion recorded by the Executing

Court to dismiss the application moved by the petitioner-decree holder:

“Perusal of the summoned file shows that the case i.e. Execution No.11 dated 05.10.2001 was dismissed by my Predecessor Court on 16.11.2007 for the reason that none appeared on the said date for filing list of property and neither the counsel for DH appeared on the abovesaid date. And the case was fixed for filing list of property since 18.01.2006. Learned counsel for the applicant argued that there are sufficient ground for restoration of the present execution application, respondent had been proceeded against ex parte. After hearing his submissions this Court is of the opinion that the applicant had failed to give reason for his non-appearance on the said date, as such the present application is dismissed. File be consigned to the record room after due compliance.”

Ex facie, the execution application was dismissed on 16.11.2007, for non furnishing of list of properties and owing to the absence of the counsel for the decree holder. However, it is equally true that an application seeking restoration of the execution application was moved the same day i.e. 16.11.2007. And, an analysis thereof, which is appended as Annexure P-4, reveals that for, the counsel for the decree holder was seriously ill, he could not attend the Court. Thus, in the given situation the observation of the Executing Court that petitioner-decree holder failed to assign reasons for its non-appearance on the date fixed is apparently erroneous. Further, there was no occasion of any prejudice being caused to the respondents, for, neither did they chose to appear before the trial Court nor before the Executing Court. The position is not any

different even in these proceedings, for, they were served through publication, in terms of the order of this Court, but none has caused appearance on their behalf. The petitioner-decree holder is a nationalized bank and had succeeded to obtain a decree for recovery of Rs.4,35,094/- against the respondents. The said decree has even attained finality. Thus, it indeed would cause immense prejudice to the interest and rights of the petitioner-decree holder, if it is not provided another opportunity to furnish the list of properties and pursue the execution application.

Accordingly, the revision petition is allowed and the impugned order dated 05.02.2015, is set aside. The execution application No.11 dated 05.10.2001, is restored to its original number. The petitioner-decree holder shall appear before the Executing Court on 21.11.2019. Needless to assert that Executing Court shall proceed thereafter to decide the execution application, in accordance with law.

19.10.2019

*Manoj Bhutani***(ARUN PALLI)
JUDGE**

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