

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

**Civil Revision No. 5531 of 2015  
DATE OF DECISION : November 20, 2019**

**Food Corporation of India**

**..... PETITIONER(S)**

**VERSUS**

**M/s Aggarwal Rice Mills and others**

**.... RESPONDENT(S)**

**CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR**

Present: Mr. Ish Puneet Singh, Advocate, for the petitioner.  
None for the respondents.

...

**Sanjay Kumar, J.**

This Civil Revision, under Article 227 of the Constitution, is taken up for rehearing as the earlier order dated 10.03.2016, whereby it was disposed of with observations, stood recalled when Review Application No.148-CII of 2016 was allowed on 01.06.2016.

Heard Mr.Ish Puneet Singh, learned counsel for the petitioner. Despite service of notice, the respondents did not choose to enter appearance before this Court either in person or through counsel.

Food Corporation of India, the petitioner herein, is the decree-holder in the civil suit bearing Case No.115-1 of 01.06.1987 on the file of the learned Additional Civil Judge (Senior Division), Ferozepur, which was filed for recovery of a sum of ₹1,77,088-60. The said suit was decreed in part on

08.08.1994 to the extent of ₹1,37,861-50 with interest thereon at 6% per

annum. Civil Appeal No.57 of 1994 filed by the defendants against the said judgment and decree was dismissed by the learned Additional District Judge, Ferozepur, on 06.06.1997. The petitioner then filed an execution petition to realize the fruits of the decree. Thereupon, the property of the judgment debtors/defendants was attached for recovery of the decretal amount but the same could not be sold in the first instance. While so, the petitioner-decree holder filed an application under Order 21 Rule 72 CPC seeking the leave of the Court to participate in the auction sale. The said application was allowed by the executing Court of the learned Additional Civil Judge (Senior Division), Faridkot (upon transfer), on 25.05.2013.

The auction sale was scheduled to be held on 25.01.2014. However, when the matter was taken up for consideration on 07.02.2014, the executing Court observed that the petitioner-decree holder had moved an application under Order 21 Rule 72 CPC which was allowed but the sale warrants were received back with the report that nobody had participated in the auction proceedings. The executing Court thereupon concluded that the petitioner-decree holder was taking the proceedings in a casual manner and as the subject execution petition was one of the oldest pending cases, the executing Court dismissed it for default due to non-compliance by the petitioner-decree holder, for having failed to participate in the auction proceedings.

The petitioner-decree holder then filed a review application before the executing Court in Case No.6 dated 22.03.2014. However, by order dated 06.05.2015, the executing Court dismissed the said review application. Aggrieved thereby, the petitioner-decree holder filed the present revision.

Mr. Ish Puneet Singh, learned counsel, would assert that the executing Court lost sight of the fact that the petitioner-decree holder had appointed a committee of officials to participate in the auction proceedings, but when they visited the site of the auction on 25.01.2014, no revenue officer was available there and they had to come back without submitting a bid. He would point out that the executing Court completely misdirected itself while dealing with the review application, inasmuch as it noted in the order dated 06.05.2015 that the petitioner-decree holder had failed to file an application under Order 21 Rule 72 CPC and consequently, the order dated 07.02.2014 had been passed, dismissing the execution petition for default. Learned counsel would assert that this factual error on the part of the executing Court demonstrated total non-application of mind, warranting interference by this Court.

Perusal of the review application filed by the petitioner-decree holder manifests that specific reference was made therein to the appointment of a committee of officials by it to participate in the auction proceedings and their claim that, when they visited the site of the auction on 25.01.2014, no revenue officer was available there and they had to come back without submitting a bid.

Surprisingly, the executing Court adverted to this aspect in its order dated 06.05.2015, but thereafter observed that the petitioner-decree holder had not even filed an application under Order 21 Rule 72 CPC leading to the dismissal of the execution petition on that ground. If the petitioner-decree holder had not filed such an application and if the same had not been allowed, the question of the petitioner-decree holder participating in the auction proceedings on 25.01.2014 did not arise at all. The executing Court,

therefore, clearly did not apply its mind to the record. Further, the executing Court's observation that the petitioner-decree holder had failed to point out any illegality or defect in the order dated 07.02.2014 cannot be countenanced, as it was the specific case of the petitioner-decree holder that its duly constituted committee of officials went to the auction site on 25.01.2014 but could not submit their bid as no revenue officer was present there. If that averment was factually true, the finding recorded in the earlier order dated 07.02.2014, to the effect that the petitioner-decree holder had failed to participate in the auction proceedings on 25.01.2014, constituted a patent factual error apparent on the face of the record, warranting review thereof.

Significantly, the office order dated 02.09.2013 passed by the petitioner-decree holder, through its Manager (Proc.), District Office, Ferozepur, evidencing the constitution of a committee comprising three officials, and the letter dated 18.11.2013 addressed by the petitioner-decree holder, through the said Manager (Proc.), requesting the committee members to participate in the auction proceedings on 25.01.2014, were available. That apart, the report dated 25.01.2014 submitted by the said officials stating that when they visited the site of the auction on 25.01.2014 to participate in the auction proceedings, no revenue officer/official came and as such, they returned without giving any bid, was also produced. These documents were part of the record before the executing Court.

Viewed thus, as the respondent-judgment debtors did not even choose to come before this Court to contest this revision and there is sufficient material to accept the claim of the petitioner-decree holder, a Government of India undertaking, that it had constituted a committee of officials to participate in the auction proceedings on 25.01.2014 and that the

failure on their part to submit a bid was due to the lapse on the part of the revenue officials, this Court holds that the executing Court was neither correct nor justified in dismissing the execution petition and the subsequent review application filed by the petitioner-decree holder.

The revision is accordingly allowed setting aside the orders dated 06.05.2015 and 07.02.2014 passed by the learned Additional Civil Judge (Senior Division), Faridkot. The execution petition in Case No. 36 of 26.09.2009/07.06.2012 is restored to the file of the learned Additional Civil Judge (Senior Division), Faridkot, for consideration afresh on merits and in accordance with law. In the light of the delay in its disposal, which is squarely attributable to the executing Court itself, there shall be a direction to the learned Additional Civil Judge (Senior Division), Faridkot, to dispose of the execution petition expeditiously and in any event, not later than four months from the date of receipt of a copy of this order.

There shall be no order as to costs.

November 20, 2019  
Kang

( Sanjay Kumar )  
Judge

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether reportable        | No  |