IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3553 of 2019 (O&M)
Date of Decision: July 01, 2019

Punjab Agro Foodgrains Corporation

...Appellant

Versus

M/s Sardar Rice Industries and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. B.R. Bansal, Advocate
for the appellant.

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JAISHREE THAKUR, J. (Oral)

1. The instant appeal has been filed by the appellant seeking to challenge the order dated 26.02.2019 passed by the Addl. District Judge, Sangrur whereby, the application filed by respondents No.3 and 4 herein to recall the order dated 01.07.2017 and to issue directions to the concerned revenue authorities to delete report No.144 from jamabandi of Village Ladbanjara Khurd has been allowed.

2. In short, the facts of the case are that the appellant-Punjab Agro and respondent No.1 M/s Sardar Rice Industries through respondent No.2-Sukhdev Singh entered into an agreement dated 22.11.1997 to mill the paddy, however, later on a dispute arose between the parties and the matter was referred to the Arbitrator, who passed the award dated 15.05.2000. Thereafter, the appellant filed an execution application for the recovery of the award amount, which application was pending. In the meantime, the

appellant also moved an application under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') seeking a restraint order against the respondents from alienating, raising construction and changing nature of their share in the land situated in the revenue estate of village Ladbanjara Khurd, Tehsil Sunam, District Sangrur to secure the awarded amount. Vide order dated 01.07.2017, the court below issued the warrants of attachment regarding the property in question. Subsequently, respondents No.3 and 4 filed an application for recalling the order dated 01.07.2017 on the ground that the property so attached did not belong to the judgment debtor, since the same already stood transferred to their name in the year 1996. This application was allowed by the impugned order dated 26.02.2019, which order has been assailed in this appeal by the appellant.

3. Learned counsel for the appellant herein contends that the court below failed to appreciate the fact that there was a collusive decree, which had been suffered in order to avoid liability under any decrees and in such a situation, the collusive decree has to be ignored. It is argued that the property transferred by the respondents No.1 and 2 in favour of respondents No.3 and 4 can still be attached and sold to satisfy the claim of the appellant on the basis of award, as such, the impugned order is liable to be set aside.

4. I have heard learned counsel for the appellant and gone through the case file.

5. The lower court, while passing the impugned order, has observed as under;

> *"5. Perusal of the file reveals that alleged milling agreement is dated 22.11.1997, executed between the petitioner and respondents No.1 and 2 and the award is*

> *dated 15.05.2000. The applicants are family members of Sukhdev Singh. Perusal of the file reveals that the property, which has been attached was transferred by Sukhdev Singh to Gagandeep Singh and Sandeep Singh by way of collusive decree dated 10.06.1996 passed by Shri S.P. Bangarh, the then learned Additional Civil Judge (Senior Division), Sunam. Therefore, the property, which has been attached, already stood transferred to the objector/respondents No.3 and 4 in the year 1996. The agreement dated 22.11.1997 was between the petitioner and respondents No.1 and 2. Respondents No.3 and 4 were not party to the proceedings, so the property in question could not be attached to this execution. Therefore, the undersigned is of the view that the property attached vide ordered dated 01.07.2017 is liable to be released on the grounds mentioned in the application. Accordingly, the application dated 08.05.2018 filed by the objector/respondents No.3 and 4 is allowed and the property attached vide order dated 01.07.2017 is ordered to be released."*

6. The property in question had already been transferred in favour of respondents No.3 and 4 in the year 1996 i.e. prior to the execution of the milling agreement dated 22.11.1997 between the appellant and respondents No.1 and 2. Since, respondents No.3 and 4 herein were neither party to the agreement entered into between the appellant and respondents No.1 and 2 nor were they party to the arbitration proceedings, their property could not be attached. This court finds no illegality or infirmity in the impugned order so passed by the court below.

7. In view of the above, the appeal in hand is hereby dismissed, being devoid of any merits.

(JAISHREE THAKUR)
JUDGE

July 01, 2019
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No