

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-8489-2018

Date of decision : 22.01.2021

Sharmilee Furnishing Pvt. Ltd.

... Petitioner

Versus

S.N.Bhargava and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present: Mr.Aashish Chopra, Advocate
for the petitioner.

Mr.Tajender K.Joshi, Advocate
for the respondents.

*[The aforesaid presence is being recorded through video conferencing since
the proceedings are being conducted in virtual court]*

GIRISH AGNIHOTRI, J.

Sharmilee Furnishing Pvt. Ltd. has filed the present revision
petition *inter alia* with a prayer to set aside the order dated November 20,
2018 (Annexure P-6) passed by the learned Civil Judge (Jr.Div.),
Gurugram.

Records of the case show that this Court on 21.08.2019 passed
the following order:-

*“Vide order dated 08.05.2019, status of first
execution which was adjourned sine die was sought to
be placed on record.*

*It appears from the record that an application
under Order 9 Rule 13 CPC was dismissed on
20.04.2018 and the said order was sought to be executed
by way of application dated 24.04.2018.*

*Learned counsel contends that order dated
20.04.2018 was not executable in nature and precisely*

for that reason amongst others, objections were filed in the second execution.

The present revision petition has arisen from order dated 20.11.2018 vide which objections filed by the petitioner in second execution were dismissed.

A report has been received from Civil Judge (Junior Division)-cum-JMIC, Gurugram.

Perusal of the report would show that there is no reference in respect of first execution statedly to be numbered as 1124/2013 which was adjourned sine die.

In view of above, I deem it appropriate to direct the Civil Judge (Junior Division)-cum-JMIC, Gurugram to comply with order dated 08.05.2019 afresh by detailing the status of first execution numbered 1124/2013 within three weeks from today.

Adjourned to 30.09.2019.”

Thereafter on 31.10.2019, another direction was issued by this Court. Ultimately on 21.11.2019 while issuing notice of motion, following order was passed:-

“Perusal of reports dated 20.08.2019 and 20.09.2019 submitted by Civil Judge (Junior Division)-cum-JMIC, Gurugram would bring out the following factual matrix:

“First execution No.1124 of 2013 was filed on 09.04.2010 for execution of exparte judgment and decree dated 27.02.2010. In an application under Order 9 Rule 13 CPC filed for setting aside exparte judgment and decree dated 27.02.2010, operation of the decree was stayed by Additional Civil Judge (Junior Division), Gurugram vide order dated 23.01.2013 till decision of application under Order 9 Rule 13 CPC. In view of aforesaid factual position, the Executing Court adjourned the case sine die vide order dated 17.12.2013. Thereafter, an application for revival of execution was

filed by the decree holder on 17.04.2014. The said application was filed at the stage when the application under Order 9 Rule 13 CPC was pending before the trial Court. Notice of the application was issued. Judgment debtor appeared but decree holder absented from the Court. Resultantly, the application for revival of execution filed by the decree holder was dismissed in default vide order dated 10.12.2015. With the dismissal of the application, first execution remained pending. Thereafter, second execution was filed on 27.04.2018.”

Whether the second execution was filed for execution of exparte judgment and decree dated 27.02.2010 or order dated 20.04.2018 would remain debatable as to the executory mechanism attached to order dated 20.04.2018.

Objections filed by the judgment debtor in second execution were dismissed on 20.11.2018.

According to learned counsel for the petitioner, the appeal filed before the First Appellate Court was against the order dated 20.04.2018 vide which the application under Order 9 Rule 13 CPC was dismissed and not against the order dated 20.11.2018 vide which objections filed in second execution were dismissed.

Learned counsel for the petitioner makes the aforesaid submission on the strength of an e-mail received from the trial Court lawyer.

Perusal of the first report submitted by Civil Judge (Junior Division)-cum-JMIC, Gurugram does not confirm the aforesaid fact.

For all abundant caution, let photostat copy of record of second execution pending before the Executing Court be requisitioned by the adjourned date.

In the meanwhile, First Appellate Court is also directed to confirm the aforesaid fact and submit a report to this effect.

Adjourned to 21.11.2019.”

Mr.Joshi, learned counsel for the respondents has put in appearance thereafter.

Today on the resumed hearing of the case, learned counsel for the respondents inform the Court that the appeal pending (against the order dated 20.04.2018) before the Additional District Judge, Gurugram, has been decided vide order dated 07.01.2020, during the pendency of the present petition.

Both the parties are *ad idem* that the present petition can be disposed of by issuing following directions:-

- i) As observed by this Court in the order dated 21.11.2019, first execution which was stated to be still lying pending and had not been revived, may if so advised, an application be moved by the respondents for revival of the same.
- ii) The impugned order dated 20.11.2018 passed in the second execution, accordingly, is set aside.
- iii) As prayed for by learned counsel for the respondents, he is at liberty to revive the earlier execution, which may be decided, in accordance with law.
- iv) Needless to mention that the petitioner would be at liberty to avail remedies available to it, in accordance with law.

The revision petition is disposed of accordingly.

(GIRISH AGNIHOTRI)
JUDGE

January 22, 2021.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No