

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

114

2023:PHHC:145732

**CR-8764-2017(O&M)
Date of decision: 16.11.2023**

M/S ELITE ENTERPRISES AND ANOTHER **..Petitioners**

Versus

MPM (P) LTD **..Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Bhatia, Advocate
for the petitioner.

Ms. Sukhan Rangi, Advocate
for Mr. Satinder Dhaliwal, Advocate
for respondent No.2.

ANIL KSHETARPAL, J(Oral)

1. The petitioners herein are judgment debtor No.1 and judgment debtor No.4. A decree for recovery of Rs.4,85,282/- was passed by the Court of 7th Joint Civil Judge, Junior Division, Nagpur on 03.03.2014. For the purpose of the execution of the aforesaid decree, the proceedings were transferred to the Court situated at Ludhiana. In the execution petition, notice was issued to the judgment debtors. On 04.10.2017, judgment debtors No.1, 2 and 4 neither appeared nor were represented by any counsel. They were proceeded against the ex parte. An application for setting aside the ex parte proceedings was filed, which is pending. In the meantime, the executing Court has directed the implementation of warrants of attachment as it was reported by the Court official that the same cannot be executed without the police help. The correctness of such order is challenged before this Court.

2. The learned counsel representing the petitioner submits that judgment debtor No. 4 is not a partner in the judgment debtor No.1-

partnership firm. He further submits that without deciding the application for setting aside ex parte proceedings, the Court could not issue the warrants of attachment through police help.

3. This Court has considered the submissions of the learned counsel representing the parties.

4. The petitioners were proceeded against ex parte on 04.10.2017. They can join the proceedings on the next date of hearing. Order IX of the Code of Civil Procedure, 1908, permits a party, who has been proceeded against ex parte to apply for setting aside such order, if he wants to be restituted to the same position on the day he was proceeded against ex parte. In other case, the party who has been proceeded against ex parte can join the proceedings on any future date of hearing.

5. As regards the argument of the learned counsel representing the petitioners that judgment debtor No.4 is not a partner, the Executing Court cannot go behind the decree.

6. The next submission of the learned counsel representing the petitioners also does not have substance because through attachment, the Court is only trying to secure the amount payable under the decree.

7. In view of the aforesaid facts and discussion, no ground to interfere is made out.

8. Dismissed accordingly.

9. All the pending miscellaneous applications, if any, are also disposed of.

November 16th, 2023

(ANIL KSHETARPAL)
JUDGE

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