[159] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

EFA-5-2023 (O&M)
Date of Decision : 12.10.2023

State Bank of India …Appellant

versus

Punjab State Civil Supplies Corporation Limited
(PUNSUP) through District Manager, PUNSUP,
Kapurthala and others ….Respondents

Coram : **HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present : Mr. Rakesh Gupta, Advocate for the appellant.
Mr. Deepak Gupta, Advocate for respondent No.1.

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ANIL KSHETARPAL, J. (ORAL)

[1] The competing claims of the secured creditor and unsecured creditor have come up for adjudication. On the one hand, the appellant before this Court is the State Bank of India constituted under the State Bank of India Act, 1955. It claims that the property was mortgaged by M/s R.R. Agro Mills in favour of the Bank on 16.10.2008. Subsequently, a fresh mortgage deed was executed as the amount of loan was enhanced on 11.12.2009. On the other hand, the Punjab State Civil Supplies Corporation Limited (in short 'PUNSUP'), a company owned by the State Government claims that M/s R.R. Agro Mills has embezzled the paddy/rice allotted to the mills for the year 2010-2011 and 2011-2012. The PUNSUP by the virtue of an interim order passed under Section 9 of the Arbitration and Conciliation Act, 1996, claims the property. It is also stated that in the arbitration proceedings, the Arbitrator passed an award in favour of the PUNSUP on 18.02.2013, permitting PUNSUP to recover more than Rs.3 crores. The objection petition under Section 34 of the

Arbitration and Conciliation Act, 1996 is stated to have been dismissed by the District Court on 07.02.2015. PUNSUP is seeking to recover the amount in the execution petition.

[2] On the one hand, the learned counsel representing the Bank submits that the Bank has a prior right to recover the amount because it is the secured creditor. On the other hand, learned counsel representing the respondent-PUNSUP submits that the PUNSUP is entitled to the amount that remains after the claim of the Bank is settled. It has also been stated that the Bank would take time in auctioning the property under the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) and at present in the execution petition, auction of the property has already been ordered by the Court and the Bank can be permitted to join the auction proceedings and secure its payment.

[3] Keeping in view the fair stand taken by the learned counsel representing the PUNSUP, the execution first appeal is disposed of by permitting the appellant-Bank to jointly auction the mortgaged property by bringing the interested purchasers. At the first stage, the Bank shall be entitled to adjust its dues being the secured and preferential creditor from the auction proceeds. The remaining amount shall be deposited in the executing Court for the appropriate distribution.

[4] However, if the Court auction fixed for 13.10.2023 fails, the Bank shall have liberty to file an application before the Executing Court for fixing a fresh schedule for the auction of the property.

[5] With these observations, the appeal is *disposed of*. The order passed by the Additional District Judge, Kapurthala on 02.03.2023 shall stand modified.

(ANIL KSHETARPAL)
JUDGE

12.10.2023
'Rajneesh'

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