



CR-1722-2019

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

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CR-1722-2019 (O&M)
Date of Decision: 06.08.2024

STATE BANK OF INDIA

... Petitioner

Vs.

**PUNJAB AGRO FOODGRAINS
CORPORATION LIMITED AND ANOTHER**

.... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Kapil Kakkar, Advocate and
Mr. Adarsh Jain, Advocate for the petitioner.

Mr. Anupam Singla, Advocate and
Mr. Lalit Goyal, Advocate for respondent No.1.

None for respondent No.2.

SUVIR SEHGAL, J. (ORAL)

1. Instant revision petition has been filed by the judgment debtor under Article 227 of the Constitution of India for setting aside order dated 01.02.2019 passed by the learned Additional District Judge, Moga, whereby the Executing Court has confirmed the sale in favour of the decree-holder and the execution petition was ordered to be dismissed as withdrawn.

2. Counsel for the petitioner submits that the land located in village Dharamkot, Janubi, Tehsil Dharampur, District Moga, was mortgaged in favour of the petitioner by respondent No.2 vide deed dated 06.09.2007, Annexure P-1 and credit facility was extended to respondent No.2. After its account was classified as NPA, proceedings were initiated

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under the SARFAESI Act. He submits that in the meanwhile an award dated 23.06.2016, Annexure P-5, was passed in favour of respondent No.1, who filed an execution petition, Annexure P-6 and warrants of attachment were issued on 12.01.2017, Annexure P-7. Upon coming to know of the same, petitioner preferred objections under Order 21 Rule 58 CPC on 18.10.2018, Annexure P-8 and by order dated 12.11.2018, Annexure P-9, the Executing Court ordered that the objections would be considered at a later stage. Counsel asserts that without adjudicating the objections, by the impugned order, the Executing Court proceeded ex-parte against the petitioner. It is his argument that the petitioner, who was an objector could not be proceeded against ex-parte. He has made a reference to Order 21 Rule 105 of CPC to buttress his submission.

3. Counsel for respondent No.1 has however, opposed the petitioner and has submitted that after filing the objections, petitioner did not pursue them and has repeatedly been absent from the proceedings, which resulted in the passing of the ex-parte order. Despite service, there is no representation on behalf of respondent No.2.

4. I have heard counsel for the parties and considered their respective submissions.

5. Order 21 Rule 105 CPC provides thus:-

“105. Hearing of application- (1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.



(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit.”

6. A perusal of the above reproduced provision shows that the objector cannot be proceeded against ex-parte. At best, his objections could have been dismissed on account of default in appearance. It is therefore, evident that order passed by the Executing Court is against the statutory provision and cannot be sustained.

7. Accordingly, revision petition is allowed. Impugned order is set aside. Matter is remitted to the Executing Court, who will first decide the objections, Annexure P-8, filed by the petitioner before proceeding further in accordance with law.

8. Parties are directed to appear before the Executing Court on 04.10.2024 for further proceedings.

06.08.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No