

2024:PHHC:130186



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

129

CR-5753-2024 (O&M)
Date of decision: 01.10.2024

M/s Ganpat Rai Kewal Ram Trading Company Pvt. Ltd. and another

...Petitioners

Versus

M/s Abhey Goal Traders Mansa

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Ms. Nidhi Mehrotra, Advocate for the petitioners.

VIKAS SURI, J. (Oral)

1. Prayer made in this petition under Article 227 of the Constitution of India is for setting aside order dated 10.03.2023 (Annexure P-3) and order dated 21.08.2023 (Annexure P-8) passed by the Executing Court whereby bank account of the petitioner was ordered to be attached and thereafter, the concerned branch manager was directed to effect the attachment.

2. The facts in brief relevant for the present petition are that suit for recovery of Rs.10,39,435.80/- along with interest was decreed against the petitioners vide judgment and decree dated 26.11.2021. The petitioners have preferred an appeal there against, which is pending before the first appellate Court. Along with appeal, the petitioners moved an application under Order 41 Rule 5(1) read with Section 151 CPC seeking stay of operation of the impugned judgment and decree. In



the meanwhile, the executing Court vide order dated 10.03.2023 (Annexure P-3) ordered attachment of the accounts of the JD/petitioners. On 19.07.2023, a statement was suffered on behalf of the petitioners before the first appellate Court undertaking to deposit the principal amount by way of FDR and prayed that the proceedings before the Executing Court be stayed. The aforesaid application was allowed vide order dated 9.07.2023 (Annexure P-5), whereby the petitioners were granted time to deposit the FDR by 26.07.2023 and the proceedings before the Executing Court were stayed till the disposal of the appeal subject to deposit of the FDR. In compliance with the aforesaid order, FDR was deposited on 26.07.2023, as noticed in order dated 26.07.2023 (Annexure P-6). The petitioners moved an application under Order 21 Rule 55 CPC seeking removal of attachment of cash credit limit/loan account in view of deposit of FDR to secure the interest of the respondent-decree holder. The said application was dismissed vide order dated 21.08.2023 (Annexure P-8).

3. Aggrieved by the aforesaid orders dated 10.03.2023 and 21.08.2023, petitioners have impugned them through the present petition.

4. Learned counsel for the petitioners submits that in the meanwhile, the petitioners had also moved an application before the first appellate Court seeking directions for removal of the attachment in the light of stay order dated 19.07.2023 passed by first appellate Court. The said application is now pending for 16.10.2024. It is further submitted



that the first appeal is mature for arguments since January 2024 but the same is not being disposed of. Reference is made to the *zimni* orders appended with the petition for the period from 03.01.2024 to 10.04.2024. It is submitted that though the said orders record 'arguments not advanced' but the petitioners' counsel has all along been ready with the arguments on each and every date and has been pressing for disposal of application dated 14.09.2023, seeking issue of directions to the Executing Court, which is also being adjourned in a routine manner.

5. After arguing for some time, learned counsel for the petitioners states that the petitioners would be satisfied at this stage, if a direction is issued to the first appellate Court to dispose of the main appeal pending before the lower appellate Court, expeditiously in a time bound manner or in the alternative, the application dated 14.09.2023 be disposed of on the date already fixed or within some reasonable time thereafter.

6. I have heard learned counsel for the petitioners and perused the paper book.

7. It is not disputed that petitioners have preferred an appeal against the money decree and on compliance with the conditional deposit, proceedings before the Executing Court have been stayed vide order dated 19.07.2023. In terms of the said order, FDR for the principal amount stands deposited with the Executing Court on 26.07.2023. On account of the hardship being faced by the judgment debtor due to attachment of loan account, an application was moved before the



Executing Court, which stands dismissed vide order dated 21.08.2023 (Annexure P-8), observing as under:-

“After going through the record produced on case file as well as contentions of both the parties, it comes to the considered opinion of this Court that here the applicant/JD wants to get release the property which being attached i.e. the accounts of JD from this court. It is pertinent to mention here that the applicant has relied upon the order dated 19.7.2023 passed by the learned District Judge, Jind. When the order is further being scrutinized, then it can be seen that the Appellate Court has stayed the proceedings being pending before this Executing Court, subject to deposit of FDR before the Executing Court. On the basis of this JD deposited the required FDR in compliance of order dated 19.7.2023, but nowhere the Appellate Court has ordered to vacate the stay order now and has also not directed the present executing court to release the property of JD which is being attached in pursuance of order dated 10.3.2023. In fact, when the proceeding of this case is already stayed, then this court has no right to proceed in any manner. Moreover, no other cogent and relevant reason is available on the case file. Therefore, the present application filed on behalf of JD/applicant is hereby dismissed and disposed of accordingly.”

8. Faced with the above situation, petitioners seeking interim relief had approached the lower appellate Court by way of application dated 14.09.2023 and the said application is still pending.

9. In view of the aforesaid and on consideration of the factual matrix in its entirety, I deem it appropriate to dispose of this petition by



granting the restricted prayer made during the course of hearing and accordingly, directing the lower appellate Court to dispose of the application dated 14.09.2023 (Annexure P-9) expeditiously, preferably on the date already fixed or within a period of six weeks thereafter. It shall be open to the said Court to hear arguments on main appeal as well and dispose of the same simultaneously within the aforesaid period.

10. The revision petition is disposed of in the aforesaid terms.

October 01, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No