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

**EFA-4-2019(O&M)
Reserved on 27.02.2025
Date of decision: 19.03.2025**

Punjab State Civil Supplies Corporation Limited (PUNSUP)

..Appellant

Versus

M/s Julka Rice and General Mills and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Sharma, Advocate
Mr. Chirag Suri, Advocate
for the appellant.

Mr. Bhrigu Dutt Sharma, Advocate
for respondents No. 5 to 7.

Mr. Naresh Prabhakar, Advocate
for respondent No. 8.

ANIL KSHETARPAL, J.

I. Brief facts:-

1. In this Execution First Appeal, Punjab State Civil Supplies Corporation Limited (hereinafter referred to as 'PUNSUP') which is an instrumentality of the State of Punjab, assails the correctness of order passed on 13.12.2018 by the Additional District Judge, Jalandhar as an Executing Court. It has been held that the jurisdiction of the civil court is excluded under Section 34 of Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as '2002 Act').

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. PUNSUP purchases paddy from the farmers and the job of dehusking the paddy is assigned to various privately owned/operated rice mills. Ultimately, the rice is contributed to the central pool. On 19.10.2009 respondent no.1 to 7, who were running M/s Julka Rice and General Mills, entered into an agreement for dehusking the paddy. After allocation of the paddy, the rice mill defaulted in returning the rice, which resulted in the Arbitrator's award, for recovery of Rs.1,92,31,238/- alongwith interest at the rate of 12% per annum on 03.03.2011. In accordance with the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '1996 Act'), execution petition was filed to execute the Arbitrator's award which is deemed to be a decree. On 26.04.2011, the Executing Court ordered attachment of the property of respondent no.1 to 7 measuring 37 kanals 4 marlas which was ultimately attached and vide report dated 23.08.2011, the court was informed of the compliance. However, execution petition was disposed of while keeping the order of attachment intact.

4. The order passed on 03.09.2011 reads as under:-

> *"Warrant of attachment received back executed. Let notice under Order 21 Rule 66 CPC be issued for 23.09.2011."*

5. On 07.09.2011, the attached property was privately sold by respondent no. 1 to 7 in favour of M/s Sai Ram Rice and General Mills. Naveen Kumar was partner in M/s Sai Ram Rice and General Mills, who was son of Lakhpat Rai, the partner of M/s Julka Rice & General Mills and

one of the judgment debtors. Arbitration award was passed against Julka Rice & General Mills, Lakhpat Rai and others.

6. Subsequently, M/s Sai Ram and General Rice Mills also availed credit facility from the State Bank of India while mortgaging the sale property. There was a default in repayment of the debt by M/s Sai Ram and General Rice Mills and proceedings under '2002 Act' were initiated and property was sought to be sold in auction. PUNSUP filed an application under Section 17 before the Debt Recovery Tribunal (hereinafter referred to as 'DRT'). PUNSUP on 19.12.2013 filed an application under Section 17 of the 2002 Act in the DRT with a prayer to stay the sale, which was declined by the Tribunal on 26.03.2014 while directing the Bank to go ahead with the sale, however, on a condition that the auction amount shall not be appropriated**.** On 20.05.2014 PUNSUP filed the execution petition. M/s Friends Traders filed objections claiming to be highest bidder of the property. PUNSUP filed its reply. Issues were framed and the parties were permitted to lead evidence. The objections have been allowed on the following grounds:-

i.The sale of the property by the Bank cannot be set aside in view of the order passed by DRT protecting PUNSUP's interest.

ii. PUNSUP has already received a sum of Rs.68,50,000/- from M/s Sai Ram and General Rice Mills on behalf of M/s Julka Rice Mills namely respondents no.1.

iii. PUNSUP can recover the amount from the sale proceeds which are available with the Bank.

iv.The civil court has no jurisdiction to enter and decide the execution petition.

II. Analysis and Discussion:-

7. Learned counsel representing the parties apart from oral evidence, have also forwarded their respective synopsis, which have been considered.

8. In the considered opinion of this Court, the Executing Court while passing the impugned order has committed multiple errors.

9. As per Section 36 of 1996 Act, the award passed by the Arbitrator is to be enforced in accordance with the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') in the same manner as a decree of the civil court is executed. In accordance with the aforesaid provision, execution petition was filed by PUNSUP on 16.04.2008 wherein warrants of attachment were ordered to be issued on 26.04.2011 for 14.06.2011. Vide report dated 23.08.2011, the Executing Court was informed that the land measuring 37 kanals 4 marlas comprised in Rect. No.55 Khasra no.23/2 (6-0), 24(8-0), 25 (7-4) and 4 (8-0) was attached. As per Section 64 CPC, private alienation of property after attachment is void which is extracted as under:-

> ***64. Private alienation of property after attachment to be void.*** *—(1) Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.*
> *(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment."*

10. Thus, the private alienation of property on 07.04.2011, in favour M/s Sai Ram Rice and General Mills was void. The language of Section 64 (1) is specific and categoric declaring such private alienation of property shall be void if executed after the attachment. Moreover, there appears to be apparent collusion in private alienation between M/s Julka Rice & General Mills and M/s Sai Ram Rice and General Mills. Lakhpat Rai is a partner in M/s Julka Rice & General Mills whereas his son Naveen is partner in M/s Sai Ram Rice and General Mills. Thereafter, M/s Sai Ram Rice and General Mills borrowed loan. By virtue of a void sale deed, M/s Sai Ram Rice and General Mills claim to be owner of the property. Hence, it could not mortgage the same in favour of State Bank of India.

11. The court has erred in observing that the jurisdiction of the civil court is excluded under Section 34 of 2002 Act which reads as under:-

> "*34. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).*"

12. It is evident that the jurisdiction of the civil court is excluded with respect to any matter which a DRT or appellate Tribunal is empowered under 'the 2002 Act' to determine. In this case, DRT does neither have the jurisdiction to decide the validity of the attachment ordered by the Executing Court on 26.04.2011 nor it has jurisdiction to opine about the validity of the sale, private alienation by M/s Julka Rice & General Mills in favour of M/s

Sai Ram Rice and General Mills. Thus, the Executing Court has erred while observing that the jurisdiction of the civil court stands excluded.

13. Reliance placed by the executing Court on the judgment passed in **Jagdish Singh vs. Heera Lal and others (Civil Appeal no.9771 of 2013 decided on 30.10.2013)** by the Supreme Court and **Canara Bank through its authorized signatory vs. Palco Recycle Industries Ltd. through its Director, 2013 AIR (Guj) 50** is misplaced because both the judgments have not laid down that the Executing Court has no jurisdiction to execute the decree passed by the Arbitrator. Learned counsel representing the respondents also relies upon the judgment passed in **Sanjay Sharma vs. Kotak Mahindra Bank Ltd. and others 2024 SCC(Online SC) 4589** which is also not applicable because in this case there was no attachment of property under the orders of the Court. The law is to be applied to the facts of the case. The ratio decidendi of the judgment is binding between the parties. The court is required to read the binding judgments thoroughly in order to decide the applicability of the law laid down i.e ratio decidendi with respect to the facts of a particular case.

14. Moreover, it has been wrongly held that the court has been called upon in the execution to set aside the auction conducted by the Bank. In this execution petition, the court is required to decide "whether the private alienation of the property by M/s Julka Rice & General Mills and others in favour of M/s Sai Ram Rice and General Mills is valid?" which cannot be decided by the DRT. The court has also erred in observing that interest of the PUNSUP is adequately protected. The question that arises here is "how the PUNSUP's interest is protected?" Apart from payment of

Rs.68,50,000/- the payment has not been made to the appellant despite a passage of more than 14 years from the date the award was passed for recovery of Rs.1,92,32,238 /-alongwith interest at the rate of 12% per annum.

15. Similarly, the Executing Court has erred in observing that PUNSUP can recover the amount from the Bank. It may be noted here that the validity of mortgage of the property in favour of the Bank itself is in question, particularly when the sale in favour of the mortgagor is void in terms of Section 64 of the CPC.

16. Though learned counsel representing respondent no.8 has made an attempt to submit that attachment of the property was not made in accordance with law, however, this Court declines to go into the aforesaid issue because it was never pressed before the Executing Court.

III. Decision:-

17. Keeping in view the aforesaid facts and discussion, the impugned order passed by the Executing Court is set aside. The appeal stands allowed. The Executing Court is requested to proceed with the execution petition in accordance with law. The parties through their learned counsels are directed to appear before the Executing Court on 22.04.2025.

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

(ANIL KSHETARPAL)
JUDGE

19.03.2025
rekha
Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*