
(2021) 01 SHI CK 0138
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 468 Of 2020

Shyam Singh

APPELLANT

Vs

HDB Finance Services India Pvt. Ltd. And Anr

RESPONDENT

Date of Decision : 08-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 7 Rule 9

Citation : (2021) 01 SHI CK 0138

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : R. S. Chandel

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. As per report of the Registry, dasti notice issued to the respondent No.2 is awaited. However, having perused record of the court below and nature

of order proposed to be passed in the instant petition, this Court sees no reason to wait for the service of the notice.

2. Instant petition filed under Article 227 of the Constitution of India, lays challenge to order dated 10.11.2020 passed in Execution Petition No. 1209

of 2018, whereby warrant of sale has been ordered to be issued in the following manner:

Publication on 26.12.2021,

Sale on 08.01.2021,

Report on 13.01.2021.

3. Having heard learned counsel for the parties and perused record of the court

below, this Court finds that execution petition was filed by the respondents/DH in the month of May, 2018. More than 2½ years have passed, but till date respondents/DH have not been able to get the decree executed and implemented. Zimini orders passed by the courts below in the aforesaid proceedings clearly reveal that repeatedly, matter came to be adjourned at the behest of the counsel representing the petitioner/JD. Numerous opportunities were given to the petitioner/JD to file objections, if any, to the execution petition filed by the respondents/DH, but petitioner/JD, instead of filing objections to the execution petition, kept on filing frivolous applications, which were also dismissed. Record of the court below reveals that on three occasions, petitioner/JD was proceeded ex-parte but every time, court below taking lenient view set-aside ex-parte order and afforded opportunity to the petitioner/JD to either file objections or supply list of properties.

4. On 14.9.2019, National Lok Adalat while setting aside ex-parte order dated 20.7.2019, permitted the petitioner/JD to join the proceedings, but interestingly, even after passing of aforesaid order, petitioner /JD bothered not to join the proceedings and as such, was again proceeded ex-parte. On 24.2.2020, again application under Order 7 Rule 9 CPC came to be filed on behalf of the petitioner/JD for setting aside ex-parte order. On 14.3.2020, National Lok Adalat again allowed the application for setting aside the ex-parte order and listed the matter for conciliation. However, after 12.6.2020, none came present on behalf of the petitioner/JD and as such, court below was left with no option, but to proceed in accordance with law and accordingly on 10.11.2020, court below issued warrant of sale.

5. Though having taken note of the zimini orders passed by the court below, this Court is convinced and satisfied that the petitioner /JD has been quite negligent while prosecuting his case before the court below and as such, does not deserve any leniency, but for the explanation rendered in the present petition coupled with the statement made by the learned counsel for the petitioner that the petitioner was not aware about the orders passed by the court below, this Court deems it fit to grant one last opportunity of four weeks to the petitioner /JD to make complete payment in terms of judgment sought to be executed in the execution petition No. 1209 of 2018.

6. Consequently, in view of the above, present petition is disposed of with

direction to the petitioner/JD to deposit entire amount in terms of judgment

sought to be executed within a period of four weeks and till then, order dated 10.11.2020, passed by the executing court below shall not be given

effect to, if not already given. Needless to say, in case amount as has been undertaken to be deposited within a period four weeks is not deposited by

the petitioner/ JD, order dated 10.11.2020, passed by the executing court would revive and no more opportunity would be granted to the petitioner /JD.

Records of the case be sent back forthwith. Pending application(s), if any, also stand disposed of.