

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-2164-2025****Date of Decision: April 07, 2025****Jaswinder Singh****. . . . Petitioner**

Vs.

State Bank of India

**. . . . RESPONDENT****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Present:-** Mr. Deepak Gupta, Advocate for the petitioner.**DEEPAK GUPTA, J.**

In a suit for recovery of ₹5.7 lacs approximately filed by plaintiff-State Bank of India (respondents herein), the trial Court, while allowing an application under Section 151 CPC, moved by the plaintiff, directed the defendant (petitioner herein) to furnish security to the tune of ₹5,70,226/-, i.e. claimed amount in the shape of FDR of any Nationalized Bank and to place it on record, by way of the impugned order dated 21.11.2024. The said direction was given in view of the directions issued by Hon'ble Supreme Court in "**Rahul S. Shah v. Jinendra Kumar Gandhi & Ors.**", 2021(6) SCC 418. Since the petitioner-defendant failed to make compliance of the above-said order dated 21.11.2024, the trial Court by way of another impugned order dated 13.03.2025 (Annexure P-2) not only struck off the defence of the defendant, but further directed that he will not be entitled for any opportunity to even cross-examine the witnesses of the plaintiffs or to lead any evidence in defence.

2. Assailing the aforesaid orders, learned counsel for the petitioner-defendant submits that the land of the petitioner-defendant is already under mortgage with the plaintiffs-bank and so the interests of the bank are well protected. It is further pointed out that the directions issued by Hon'ble Supreme Court in **Rahul S. Shah's** case (*supra*) are directory in nature and not mandatory.

3. Notice of motion.

4. Mr. Anurag Jain, Advocate appears and accepts notice on behalf of respondents. Learned counsel by defending the impugned orders, has opposed the present petition.

5. Having considered submissions of both the sides, it is found that being cautious of huge pendency of execution matters, certain directions were issued by Hon'ble Supreme Court in **Rahul S. Shah's** case (*supra*), which are reproduced as under:-

“42. All Courts dealing with suits and execution proceedings shall mandatorily follow the blow mentioned directions:-

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third.

2. party interest and further exercise the power under Order 11, Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

3. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

4. After examination of parties under Order 10 or production of documents under Order 11 or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

5. Under Order 40, Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

6. The Court must, before passing the decree, pertaining to

7. delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

8. In a money suit, the Court must invariably resort to Order 21, Rule 11, ensuring immediate execution of decree for payment of money on oral application.

9. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under section 151 CPC, demand security to ensure satisfaction of any decree.

10. The Court exercising jurisdiction under Section 47 or under Order 21 of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

11. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

12. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 Order 21 as well as grant compensatory costs in accordance with Section 35A.

13. Under section 60 of CPC the term "in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

14. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

15. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

16. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.”

6. Although the opening words of para 42 reveal that the Courts have to mandatorily follow the aforesaid directions, but at the same time, direction No.9 would indicate that the Court in appropriate cases during pendency of the suit is required to use the power under Section 151 CPC so as to demand security to ensure satisfaction of any decree.

7. In the present case, since the land of the defendant-petitioner is already under mortgage, so there was no necessity for the trial Court concerned to ask for the security to be submitted by the defendant-petitioner. As such, both the impugned orders are hereby set aside. The matter is remitted back to the trial Court with the direction to grant opportunity to the defendant-petitioner to file his written statement and to proceed further in accordance with law.

8. It is informed by learned counsel for the respondents-plaintiffs that matter is more than 05 years old, so the trial Court will take effective steps for expeditious disposal of the case.

Disposed of.

**April 07, 2025**  
*Sarita*

**(DEEPAK GUPTA)**  
**JUDGE**

Whether speaking/reasoned? Yes/No  
Whether reportable? Yes/No