

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**CM(M) 144/2025
CM (2009/2025)**

Ghulam Nabi Sofi.

...Petitioner(s)

Through: Mr. A. M. Dar, Senior Advocate with
Ms. Mahjabeen, Advocate.

Vs.

Abdul Rasheed Dar & Anr.

...Respondent(s)

Through:

CORAM:

Hon'ble Mr. Justice Mohd. Yousuf Wani, Judge.

ORDER

11.04.2025

1. The case of the petitioner is that the respondent- Abdul Rashid Dar has obtained an ex-parte judgment and decree dated 7th April, 2023 from the court of learned Principal District Judge, Baramulla, in a summary suit bearing No. 7/2022 filed under the provisions of Order 37 of Civil Procedure Code; That the judgment and decree was passed within one or two hearings after presentation of the said suit, on the main ground that the petitioner (Defendant No.1 in the suit) failed to enter his appearance within the stipulated period; That after passing of the judgment and decree, the present petitioner (Defendant No. 1) filed an application under Ordre 9 Rule 13 of CPC for setting aside of the ex-parte judgment and decree, which is still pending disposal before the same court; That the respondent No. 1 (plaintiff in the suit)

has also preferred an execution petition, seeking implementation of the ex-parte judgment and decree dated 7th April, 2023 and the learned Executing Court despite being seized of the application preferred for setting aside of the ex-parte judgment and decree, has been resorting to coercive measures by issuing warrants of arrest to compel the petitioner (Defendant No. 1) to make the payment of the decretal amount;

2. It is submitted by Mr. A. M. Dar, learned Senior Counsel for the petitioner that in case the petitioner is compelled under coercive measures to make the payment of the decretal amount, his application pending before the same court under the provisions of Order 9 Rule 13 CPC, shall become infructuous, which shall result in miscarriage of justice.

3. Under these facts and circumstances of the case, this Court is of the opinion that the matter can be disposed of even at this stage by directing the learned Executing Court also seized of the application filed under the provisions of Order 9 Rule 13 CPC, to defer the proceedings on the execution petition, pending disposal of the application for setting aside the ex-parte judgment and decree.

4. This Court is in agreement with the contention of the learned Senior Counsel for the petitioner (defendant No. 1 in the suit) that in case the petitioner is compelled to make the payment of the decretal amount pending disposal of the

application filed by him, the later shall become infructuous and the petitioner shall be in-justified.

5. The instant petition is accordingly disposed of with the direction to the learned Executing Court to defer the proceedings on the execution petition pending disposal of the application filed by the petitioner (defendant No. 1 in the suit) for setting aside of the ex-parte judgment and decree dated 7th April, 2023. It is expected that the learned Executing Court shall make an endeavor to dispose of the pending application for setting aside the ex-parte judgment and decree filed by the petitioner, in an expeditious manner.

6. Needless to mention that the basic judgment and decree has been authored by myself as the then Principal District Judge, Baramulla, but the same is not impugned in the present petition.

7. ***Disposed*** of.

(Mohd. Yousuf Wani)
Judge

SRINAGAR:

11.04.2025

"HAMID"