

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.4375 of 2015

Date of Decision.21.07.2015

Prabhjot Singh and another

.....Petitioners

Versus

Nishan Singh and others

.....Respondents

Present: Mr. Param Preet Singh Brar, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The revision petition is against an order declining to stay the ex parte decree passed. An application under Order 9 Rule 13 CPC is pending. The application is brought by the son of a defendant, who had died prior to the passing of the decree and the Court still proceeded to grant a decree for money against a dead person. The plaintiff had originally filed a suit for specific performance and had sought for an alternative relief of recovery of advance money with interest. The Court while granting an ex parte decree in the year 2003 appears to have granted only the alternative relief.

2. The plaintiff had preferred an appeal against the ex parte decree and at that stage, the present petitioners had been impleaded as legal representatives of the deceased-defendant. The petitioners, therefore, had means to contest the decree which had been granted and the Appellate Court disposed of the case on merits confirming the ex

parte decree. After the Appellate Court had disposed of the case, the petitioners have filed an application to set aside the ex parte decree passed in September, 2013 before the trial Court. At that stage, they also filed an application to stay the execution and the Court has declined the same.

3. I must observe that an application to set aside the ex parte decree itself is not competent. Once the ex parte decree was brought in challenge to an appellate court and the petitioners had been served with notice by the Appellate Court and the Appellate Court confirmed the ex parte decree, the decree passed by the Appellate Court completely supplants the ex parte decree and the trial Court had no further power to modify the decision which was already taken. It ceases to be an ex parte decree merely by a party to apply for setting aside the same. On the other hand, it must be taken to have merged with an Appellate Court decree that was decided on contest and on merits. If the petitioners, who were legal representatives of the defendant in suit, were aggrieved about the decree passed by the Appellate Court, their remedy was only to challenge the same by means of second appeal before this Court and cannot approach the trial Court for setting aside the ex parte decree. In such an application, if the Court has declined to grant stay, it was perfectly justified. It is only erroneous for Judge to keep the petition pending without noticing the fact that the petition itself is not competent. While disposing of the petition, I direct the trial Court before which an application under Order 9 Rule 13 is pending to dismiss the petition without any further ado, for, such a petition is not competent.

4. The revision petition is dismissed. This order is directed to be sent to the trial Court for taking appropriate steps to dismiss the petition summarily in terms of the direction given by this Court.

(K. KANNAN)
JUDGE

July 21, 2015
Pankaj*