

Civil Revision No. 1625 of 2016
Date of Decision: 8.4.2016

Hussan Lal through his attorney

---Petitioner

versus

Anmol Ram

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. A.P.Kaushal, Advocate
for the petitioner**

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

Rekha Mittal, J.

The present petition has been directed against the order dated 8.01.2016 passed by the Civil Judge,(Junior Division), Ludhiana, dismissing application of the petitioner under Section 151 of the Code of Civil Procedure (for short 'CPC') for dismissal of the execution proceedings.

Counsel for the petitioner would submit that the petitioner filed a suit for permanent injunction against the respondent/decreed holder but the suit was later withdrawn as the matter was resolved by way of settlement. The respondent, in absence of the petitioner filed a written statement and counter claim. The counter claim preferred by the respondent was allowed ex parte vide judgment and decree dated 12.05.2012 without any notice to the petitioner. It is further submitted that the respondent played a fraud

with the Court and petitioner by obtaining an ex parte judgment and decree, therefore, the order impugned is liable to be set aside.

I have heard counsel for the petitioner, perused the records but find no merit in the petition.

It is an admitted position of the case that in the counter claim preferred by the respondent, the petitioner was proceeded against ex parte and the proceedings ultimately culminated in the ex parte judgment and decree dated 12.05.2012. The application filed by the petitioner for setting aside the ex parte judgment and decree by invoking the provisions of Order 9 Rule 13 CPC did not find favour with the trial Court and has been dismissed. Counsel has submitted that an appeal against the said order is pending before the Court of District Judge, Ludhiana. As the petitioner has already availed of appropriate remedy in accordance with law to get the ex parte judgment and decree set aside, he cannot be allowed to agitate the same matter by filing an application under Section 151 CPC in the pending execution proceedings. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition is disposed of. However, the petitioner shall be at liberty to file an appropriate application in the pending appeal.

(Rekha Mittal)
Judge

8.4.2016
PARAMJIT