

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

C.R. No.6006 of 2016

Date of Decision.15.12.2016

Ram Dev Ji son of Sh. Khyali Ram

.....Petitioner

Vs

Parul Gupta

.....Respondent

Present: Mr. Satyaveer Singh, Advocate
for the petitioner.

Mr. Sandeep Jasuja, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner-defendant is aggrieved of the impugned order whereby the trial Court while deciding the ad interim application along with application seeking setting aside of the ex parte judgment and decree dated 01.11.2014, has imposed the condition of deposit of entire decretal amount.

Learned counsel appearing for the petitioner-judgment debtor submits that along with the application seeking setting aside the ex parte judgment and decree, an application for staying the execution proceedings regarding the ex parte order dated 19.07.2014 had been filed, issues framed and the parties have also led evidence to some extent. The respondent-decree holder was seeking the execution of the decree and in this backdrop of the matter, the stay was sought.

In this connection, he has drawn attention of this Court to the plain and simple provisions of Order 9 Rule 13 CPC, which reads as under, to submit that the expression “terms” is only as to costs and not to the decretal amount and therefore, the order is erroneous and perverse:-

“13. Setting aside decree Ex parte against defendant— In any case in which a decree is passed ex parte against a defendant, he may apply to

the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim

Explanation.—Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.”

Per contra, Mr. Sandeep Jasuja, learned counsel appearing for the respondent-decree holder submits that the application has not been filed in the same court but filed before the Executing Court. Even the setting aside application is not accompanied by stay application. The word “terms” can be stretched and interpreted as per the ratio decidendi culled out by Madhya Pradesh High Court in **Mohan Vs. Matadin 2015 ILR (MP) 3384**, thus, this Court can always put the party seeking setting aside on terms including the decretal amount and therefore, the order under challenge is perfectly legal and justified.

He further submits that the petitioner is unnecessarily delaying the application under the garb of interim order and causing undue harassment to the decree holder. In fact, the petitioner had intentionally been proceeded ex parte and the application for setting aside the ex parte

judgment and decree is nothing but adoption of dilatory tactics, thus, urges this Court for upholding the order under challenge with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jasuja to support the order as the application for setting aside the judgment and decree and the application for staying the execution proceedings are of the same date i.e. 09.10.2015. It is a conceded position on record that the issues in the aforementioned applications have been framed and parties are leading evidence. The trial Court has imposed the condition directing the judgment debtor to deposit the entire decretal amount of ₹2,65,000/- along with interest @9% per annum. I am afraid the aforementioned direction is not in consonance with the provisions of Order 9 Rule 13 CPC as the expression used is “costs”. At the best, the decree holder is entitled to costs but not the entire decretal amount as the whole purpose would be defeated in case the Court found the merit in the application and set aside the ex parte judgment. It would tantamount to de novo trial and the plaintiff would be subjected to cross-examination and therefore, Court would decide the case on preponderance of evidence.

Accordingly, the impugned order is set aside. However, the execution proceedings shall remain stayed till the adjudication of application filed under Order 9 Rule 13 CPC, subject to payment of costs of ₹20,000/- to be paid to the counsel appearing for the respondent-decree holder in the High Court. The revision petition is allowed.

(AMIT RAWAL)
JUDGE

December 15, 2016
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No