

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

ESA No.186 of 2016(O&M)

Date of decision:12.5.2016

Sunil Kumar Sharma

....Appellant

VERSUS

Palwinder Pal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. Anupam Bhardwaj, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against the consistent findings recorded by the Courts below whereby the objection petition preferred by the appellant under Order 21 Rule 58 of the Code of Civil Procedure, 1908 (in short 'CPC') was dismissed by the executing Court vide order dated 01.12.2014 and the order passed by the executing Court has been affirmed in appeal that came to be decided by the Additional District Judge, Amritsar vide judgment dated 04.03.2015.

The appellant/JD filed the petition under Order 21 Rule 58 CPC on the premise that he has already filed an application under Order 9 Rule 13 CPC for setting aside ex parte judgment and decree dated 24.04.2012 passed by the Additional Civil Judge (Senior Division), Amritsar. The ex parte judgment and decree has been passed due to lack of knowledge and negligence on the part of his previous counsel in the suit and the same has been obtained by the decree holder by concealment of

facts. The appellant/objector also filed an application for stay of execution of the decree and the objection petition and application for stay were disposed of by the executing Court vide separate orders passed on 01.12.2014. The objection petition was dismissed but the application for stay of execution was allowed subject to furnishing of bank guarantee to the tune of Rs.3,46,416/- along with interest accrued up to date. The first Appellate Court concurred with the findings recorded by the executing Court and dismissed the appeal.

Counsel for the appellant is not in a position to say something to point out any error, infirmity much less illegality in the order passed by the executing Court dismissing the objection petition. It is beyond comprehension as to how a JD can prefer the objection petition under Order 21 Rule 58 CPC which deals with third party objections against attachment of property in execution proceedings. It further appears that the objection petition filed before the executing Court is nothing but an abuse and misuse of process of law and may be the result of wrong advice. Filing of an application under Order 9 Rule 13 CPC for setting aside ex parte judgment and decree, under no circumstances, permits a JD to prefer an objection petition under Order 21 Rule 58 CPC. That being so, I do not find any merit in the appeal and accordingly, the same is dismissed in *limine*.

MAY 12, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE