

Civil Revision No.2676 of 2017

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

Sr. No.121

**Civil Revision No.2676 of 2017
DECIDED ON: April 19, 2017**

OM PARKASH SOOD

..PETITIONER

VERSUS

SARDAR SINGH (DECEASED) THROUGH HIS LRS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Abhishek Arora, Advocate,
for the petitioner.

JASPAL SINGH, J.

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of the order dated February 09, 2017 (Annexure P-4) passed by the learned Civil Judge (Sr. Divn.), Fatehgarh Sahib, vide which, the property of the petitioner-JD has ordered to be attached.

2. While assailing the impugned order, it has been argued with vehemence by the learned counsel for the petitioner that the same is absolutely against the settled cannons of law. The objections preferred by the petitioner have been dismissed on the basis of conjectures and surmises. In fact, the petitioner was never served in the civil suit, in which, an ex-parte judgment & decree dated February 19, 2003 has been obtained by the

decree-holder. The petitioner has already moved an application under Order IX Rule 13 read with Section 151 C.P.C. for setting aside of the aforesaid ex-parte judgment and decree, which is still pending disposal. Otherwise also, during the pendency of the suit, it was agreed and settled between the petitioner and Sardar Singh, the predecessor-in-interest of the decree holder that petitioner would make the payment of ₹ 30,000/- in lump sum and he (Sardar Singh) would not pursue the case further. In pursuance thereof, petitioner visited the house of Sardar Singh (since deceased) accompanied by Manjit Singh and paid a sum of ₹ 30,000/- to him. At that time, on the assurance given by late Sardar Singh, petitioner did not appear before the trial court, which resulted into passing of an ex-parte judgment & decree. Not only this, the executing court has also failed to appreciate the fact that the grant of interest @ 18% p.a. is an exorbitant and excessive.

3. Learned counsel for the petitioner further submits that there are number of co-sharers in the property, which has been ordered to be attached and put on sale. The value of attached property is worth crores of rupees, whereas the amount sought to be recovered is very meagre.

4. While concluding his arguments, it has been submitted by learned counsel for the petitioner that even at present, petitioner is ready to deposit the amount, in case, the proceedings are stayed and his property is released from attachment.

5. After bestowing due considerations to the aforesaid submissions made by learned counsel for the petitioner and scrutinizing the impugned order, this court does not find any legal and factual weight.

6. Passing of the ex parte judgment and decree dated February 19,

2003 is an undisputed fact, the execution of which is pending before the executing court. It is also an undisputed fact that an objection petition was preferred by the petitioner before the executing court, which has been dismissed vide impugned order dated February 09, 2017. The mere pendency of an application under Order IX Rule 13 read with Section 151 CPC filed by the petitioner does not ipso facto mean that an ex parte judgment & decree dated February 19, 2003 has become un-executable. If, the petitioner was so aggrieved of the execution proceedings, he could have sought the stay of proceedings by the court moving an appropriate application in the court, which is seisin of the application under Order IX Rule 13 read with Section 151 CPC.

7. As far as, the another objection raised by the learned counsel for the petitioner that he has already paid a sum of ₹ 30,000/- to late Sardar Singh in the presence of Manjit Singh is concerned, it also carries no legal weight. The payment is alleged to have been made by him, during the pendency of the suit in the court. Had there been an understanding or mutual settlement, in pursuance of which, a sum of ₹30,000/- is alleged to have been paid to late Sardar Singh, at least either the statement should have been made in the court or a receipt should have been obtained from Sardar Singh showing the payment of the said amount. A prudent man is not expected to make the payment in such a manner, especially when a litigation is going on between the parties.

8. As far as, an objection to the effect that there are large number of co-sharers in the joint property, which has been attached for the satisfaction of the decree in question is concerned, no other person has come

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forward to challenge the said attachment. Otherwise also, it is clear from the impugned order dated February 09, 2017 that as far as the objection regarding attachment of excess property is concerned only such property which is required for the recovery of the decretal amount shall be put to sale. So, in case the entire property which is stated to be worth crores is put on auction for the satisfaction of a smaller amount, the petitioner can very well approach the executing court and provide the details of the property which is sufficient for the satisfaction of the decree. But, no ground is made out to stall the execution proceedings.

9. As far as, the objection with regard to the fact that the petitioner has not been duly served in the suit, in which, an ex-parte judgment and decree has been passed or that the interest awarded by the trial court is an exorbitant one or on higher side or that the decree has been obtained by mis-representation of the facts is/are concerned, these grounds are not available to the objector/plaintiff in the execution proceedings for the simple reason that the executing court cannot go behind the decree.

10. In the light of what has been discussed above and taking the case of the petitioner from any of the angles, this court does not find any merit in the instant petition. Accordingly, it stands dismissed.

April 19, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No