

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

113

CR No.4327 of 2017
Decided on : 07.07.2017

Harish Arora

... Petitioner

Versus

State Bank of India and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE RAMENDRA JAIN

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

Ramendra Jain, J. (Oral)

Dependent No.3, petitioner herein, has filed the instant revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 30.05.2017 (Annexure P/4) passed by the trial court to the extent of directing the petitioner to deposit 50% of the decretal amount while allowing his application under Order 9 Rule 13 CPC.

In nutshell, respondent No.1-bank filed a suit for recovery of Rs.5,39,267/- along with interest at the rate of contractual rate of interest against the principle borrower and the petitioner being a guarantor obtained decree dated 11.08.2014.

The petitioner moved an application for setting aside the aforesaid decree on the ground that he was wrongly proceeded ex parte as he was never served. After due contest, learned trial court accepted the

application of the petitioner and set aside the aforesaid decree dated 11.08.2014 in favour of the bank, but with a condition upon the petitioner to deposit 50% of the decretal amount in the court within two months.

Learned counsel for the petitioner contended that the condition for depositing of 50% of the decretal amount by the petitioner is very harass and erroneous in view of the finding of the trial court itself that the petitioner was never effectively served and was wrongly proceeded ex parte.

I have given my thoughtful consideration to the submissions made by learned counsel for the petitioner.

Since the trial Court itself has found that the petitioner was never served before passing of the judgment and decree dated 11/08/2014, therefore, I am of the considered opinion that imposing any condition upon the petitioner to deposit 50% of the decretal amount within two months is definitely erroneous as according to the trial court itself, the petitioner was not at fault any point of time.

In view of the above discussion, the impugned order dated 30.05.2017, is modified to the extent that the petitioner shall not be liable to deposit 50% of the decretal amount as ordered. In other words, the application of the petitioner under Order 9 Rule 13 CPC shall be deemed to have accepted in toto without any condition.

[Ramendra Jain]
Judge

07.07.2017

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Whether speaking/reasoned

: Yes/No

Whether Reportable

: Yes/No