

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 103

Civil Revision No.4723 of 2016 (O & M)

Date of Decision: April 20, 2017

Dr. Amardeep Singh

..... PETITIONER

VERSUS

Anurag Goyal

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Rajat Malhotra, Advocate and Mr. Kirpal S. Thakur,
Advocate, for the petitioner.

Mr. Nitin Thatai, Advocate, for the respondent.

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Jaspal Singh, J

CM Nos.19129-CII & 24189-CII of 2016

Applications are allowed as prayed for.

Documents are taken on record.

CR No.4723 of 2016

1. By virtue of instant revision petition, preferred under Article 227 of the Constitution of India, the petitioner has sought setting aside of onerous conditions set up by the executing court vide its order dated May 31, 2016, whereby while staying the execution proceedings till disposal of application under Order IX Rule 13 CPC, the petitioner has been directed to deposit the decretal amount i.e. a sum of ₹ 26,60,000/- within two months

from the date of order failing which further proceedings in execution shall resume.

2. Briefly stated the facts giving rise to the instant case are that respondent filed a suit for recovery of ₹ 26,60,000/- under Order XXXVII Rules 1 & 2 CPC (as amended upto date). The said suit stood decreed exparte vide judgment & decree dated October 06, 2015. Since the said exparte decree was not complied with by the present petitioner – JD, the respondent – DH was constrained to file an execution application. During the pendency thereof, petitioner moved an application under Order IX Rule 13 CPC for setting aside exparte judgment & decree dated October 06, 2015. Alongwith an application moved under Order IX rule 13 CPC, an application for staying the proceedings in execution petition till disposal of application (under Order IX Rule 13 CPC), was filed. The said application for injunction was, though, allowed and proceedings were stayed but subject to the condition of deposit of ₹ 26,60,000/- within two months, in default of which, proceedings in execution were ordered to be resumed, which necessitated the filing of instant revision petition.

3. At the very outset of arguments, it has emerged that the petitioner had infact moved an application under Order IX Rule 13 CPC for setting aside exparte judgment & decree dated October 06, 2015 passed under Order XXXVII CPC. Infact, application under Order IX Rule 13 CPC is not maintainable as Rule 4 of Order XXXVII CPC expressly empowers the court to set aside the decree passed under the provisions of that order. Further, under Order 37 CPC, it was necessary for the defendant to show that special circumstances existed to set aside the decree. Thus, for setting aside judgment & decree dated October 06, 2015, the petitioner is required

to initiate the proceedings under Rule 4 of Order XXXVII CPC and not under Order IX Rule 13 CPC.

4. The instant revision petition is disposed of with direction to the trial court to treat the application under Order IX Rule 13 CPC moved by the petitioner, to be an application under Order XXXVII Rule 4 CPC and then decide the same afresh. Similarly, the application for staying the proceedings moved alongwith aforesaid application is also ordered to be decided afresh after taking into consideration the requirements of Order XXXVII Rule 4 CPC. Accordingly, impugned order dated October May 31, 2016 is set aside the matter is remitted back to the trial court to decide the matter in the terms referred to above.

5. A copy of this judgment be communicated to the concerned court for compliance.

April 20, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No