

Civil Revision No.978 of 2017
Date of Decision: *February 13, 2017*

M/s R.G. Shipping & Logistics Ltd.

..... PETITIONER

VERSUS

Manjit Singh & others

..... RESPONDENTS

CORAM HON'BLE MR. JUSTICE JASPAL SINGH

PRESENT: Mr. Animesh Sharma, Advocate, for the petitioner.

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Jaspal Singh, J

1. Through the instant revision petition preferred under Article 227 of the Constitution of India, challenge is to order dated January 17, 2017 (Annexure P-1), passed by the Civil Judge (Junior Division), Jalandhar, vide which an application filed by the petitioner for staying execution proceedings during pendency of application under Order IX Rule 13 CPC has been dismissed.

2. Undisputably, in a Civil Suit No.51146 of 2013, captioned as 'Manjit Singh vs. M/s Dhanraj Internodel Transport Pvt. Ltd. & others' an ex parte judgment & decree dated July 30, 2015 was passed against defendant Nos.1 to 4, whereby suit filed by the plaintiff was partly decreed with costs for recovery of ₹ 5,91,388/- alongwith pendenlite interest @ 9% per annum and further interest @ 6% per annum against defendant Nos.1 to 4, who were held jointly and

severally liable to pay the same. Since the aforesaid judgment & decree was not satisfied by defendant Nos.1 to 4, respondent No.1 – Manjit Singh, Proprietor, M/s Ranam Industries, G.T. Road, village Chogittee, Jalandhar, was constrained to file an execution application. During pendency of said execution application, petitioner i.e. one of the defendants, filed an application under Order IX Rule 13 CPC for setting aside the ex parte judgment & decree dated July 30, 2015. Simultaneously, he has also moved an application under Section 151 CPC before the executing court that since an application under Order IX Rule 13 CPC is pending disposal, execution proceedings be stayed but that application has been dismissed by the executing court which has necessitated the filing of instant revision petition.

3. The contention of learned counsel for the petitioner is that in case, ex parte judgment & decree dated July 30, 2015 is implemented and the amount, in pursuance of aforesaid decree is recovered by way of coercive methods from the petitioner, the very purpose of application under Order IX Rule 13 CPC would stand defeated. Infact, the petitioner was not personally served in the suit in which ex parte judgment & decree dated July 30, 2015 has been passed, and there is every likelihood of the setting aside thereof.

4. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner but find the same to be without any legal force.

5. Mere filing of an application under Order IX Rule 13 CPC does not *ipso facto* mean that ex parte judgment & decree dated

July 30, 2015 is rendered unexecutable, rather this Court is of the considered view that petitioner has not approached the Court with clean hands and has suppressed the material facts. His intention is only to delay the execution of the decree. Here, it would be pertinent to mention that earlier in the execution application preferred by the decree holder against judgment debtors, the bank account (No.07661010003700) of JDs was attached but subsequent thereto, JDs moved an application for de-attachment thereof on the ground that due to attachment of their account, they were not in a position to carry on their business in an effective manner. The de-attachment was ordered by the executing court vide order dated March 25, 2016 subject to furnishing bank guarantee to the tune of ₹ 10,14,915/-. But, instead of furnishing bank guarantee, in pursuance of aforesaid order, JDs have moved an application under Order IX Rule 13 CPC as well as application for staying the proceedings in execution petition. Since the JDs including the petitioner are guilty of concealment of the facts and violators of order dated March 25, 2016 passed by the executing court, they do not deserve any discretionary relief. Accordingly, the revision petition stands dismissed.

6. No order as to costs.

February 13, 2017

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**(Jaspal Singh)
Judge**

Whether Speaking/Non-speaking

: Yes/No

Whether Reportable

: Yes/No