

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

Civil Revision No.1590 of 2018.
Decided on:-March 09, 2018.

Pushpinder Pander.

.....Petitioner.

Versus

Karnail Singh.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Amit Puri, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Petitioner has filed the present petition under Article 227 of the Constitution of India impugning the order dated 04.12.2017 passed by learned Civil Judge (Junior Division), Rajpura, whereby evidence of the petitioner-plaintiff was closed by order.

Learned counsel for the petitioner states that the impugned order has been passed merely for the reason that the case is pending since long for evidence of the plaintiff and the plaintiff has already availed numerous opportunities for concluding his evidence. He further states that a suit for recovery was filed by the petitioner-plaintiff on 30.04.2013, wherein the respondent-defendant was proceeded *ex parte* and the suit was decreed vide judgment and decree dated 09.03.2015. Thereafter, the petitioner-plaintiff being a decree holder had filed the execution petition, but the execution

proceedings were rendered infructuous for the reason that on an application filed by the respondent-defendant under Order IX Rule 13 CPC, the judgment and decree dated 09.03.2015 were set aside by the executing Court and the suit was ordered to be decided on merits vide order dated 03.10.2017. It is thereafter, the suit was remanded back to the trial Court for fresh decision and the same was pending before the trial Court for evidence of the petitioner-plaintiff.

Learned counsel for the petitioner further states that the observations of learned trial Court that the case is pending since long for evidence of the plaintiff, runs contrary to record. Virtually, this is his first appearance before the trial Court after the judgment and decree dated 09.03.2015 were set aside by the executing Court. He further states that in case two effective opportunities are granted to the petitioner-plaintiff, he shall conclude his evidence. He has produced a copy of order dated 03.10.2017 passed by learned Civil Judge (Junior Division), Rajpura, which is taken on record.

I have heard learned counsel for the petitioner-plaintiff and perused the impugned order.

The order dated 03.10.2017 passed by learned Civil Judge (Junior Division), Rajpura is reproduced as under:

*“Present:- Sh. Aman Bansal, Advocate, counsel for DH.
Ch. Karamjit Singh, Advocate, counsel for the JD.*

Today, the present execution is fixed for addressing arguments on the application under order 21 rule 66 CPC. The perusal of the file reveals that the decree holder has filed the present execution on the basis of ex parte judgment and decree

dated 09.03.2015 passed by the Court of Ms. Daljit Kaur, PCS, Civil Judge (Junior Division), Rajpura. The judgment debtor had filed an application under order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 9.3.2015. The said application under order 9 Rule 13 CPC filed by the judgment debtor has been allowed by this Court vide order of even date. Accordingly, the present execution has become infructuous and the same stands disposed of accordingly. File be consigned to record room after due compliance.

*Pronounced
03.10.2017.*

*(Karandeep Kaur) PB0393
Civil Judge (Junior Division),
Rajpura.”*

On the basis of aforesaid order dated 03.10.2017, it is clear that on the basis of application under Order IX Rule 13 CPC filed by the respondent-defendant-J.D., the ex parte judgment and decree dated 09.03.2015 were set aside and the execution filed by the petitioner-plaintiff was rendered infructuous. Since the suit had been remanded back to the trial Court for a fresh decision, it was incumbent upon the trial Court to grant adequate opportunities to the petitioner to lead his evidence, as if the suit was filed for the first time.

Accordingly, the present petition is disposed of with a direction that the learned trial Court shall grant two effective opportunities to the petitioner-plaintiff so as to enable him to conclude his evidence.

It is made clear that this petition has been disposed of without issuing notice to the respondent-defendant at this stage as it would further delay the proceedings, However, if the respondent-defendant still finds that he

is aggrieved with the order passed by this Court, he shall be at liberty to file an appropriate application for recalling of this order.

March 09, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No