

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

Civil Revision No.2346 of 2018 (O&M)

Date of decision: May 29, 2018

Sandeep Kumar

...Petitioner

Versus

Anita

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.S.Panwar, Advocate
 for the petitioner.

 Mr.Rajinder Singh Malik, Advocate
 for the respondent.

INDERJIT SINGH, J.

Petitioner Sandeep Kumar filed this revision petition against respondent Anita under Article 227 of the Constitution of India for setting aside the order dated 22.03.2018 passed by learned Civil Judge (Junior Division), Sonapat/Executing Court, vide which the objections filed on behalf of petitioner/judgment debtor, were dismissed.

Notice of motion was issued. Learned counsel for respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that during the execution proceedings, objections were filed by JD-petitioner mainly upon one ground that he was

not served in the main suit and he was proceeded ex-parte without his knowledge. It is also stated that ex-parte decree has been obtained by the plaintiff-respondent on vague service of alleged summons. It is further stated by the JD-defendant that he has filed petition under Order 9 Rule 13 CPC read with Section 151 CPC.

Learned counsel for the decree holder-plaintiff before the lower Court submitted that summons of main recovery suit were duly served upon the JD, who had intentionally and malafidely did not appear to contest his case. It is further stated that summons of previous suit were duly affixed on the door and official address of JD for 04.01.2017 but he did not turn up in the court and he was rightly proceeded against ex-parte.

Learned Civil Judge (Jr. Divn.) Sonapat, vide order dated 22.03.2018 dismissed the objections.

Aggrieved from the above-said order, present revision petition has been filed.

From the perusal of the record, I find that as application under Order 9 Rule 13 CPC read with Section 151 CPC is pending before the Court for setting aside the ex-parte decree, therefore, the JD-defendant is to file stay application along with that application for the stay of execution proceedings. At the time of arguments, it is stated that application is pending for stay along with that application. Whether defendant has been duly served in the main suit or not served, is to be decided in those proceedings after taking evidence of the parties. The Executing Court cannot go beyond the decree. The Executing Court has no right to comment upon whether the defendant has been properly served or not. The findings

given in the impugned order dated 22.03.2018 by learned Civil Judge (Jr.

Divn.), Sonapat qua due service are set aside. These observations will have no effect on the proceedings under Order 9 Rule 13 CPC. These facts are to be decided by that Court whether the defendant has been served as per law, on the basis of evidence. As already discussed, as regarding stay, the Executing Court cannot accept the objections by stating that defendant has not been served or duly served.

Keeping in view above discussion, I find that no illegality has been committed by learned Court below while dismissing the objections.

Therefore, finding no merit in the present petition, the same is dismissed.

May 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No