

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

Sr. No.107

C.R. No.5196 of 2018

Date of decision: 07.12.2018

Ashiq

....Petitioner

versus

Jashandeep Singh

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Arjun Veer Sharma, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 31.05.2018 passed by the Civil Judge (Junior Division), Ferozepur (for short – the Executing Court) through which prayer of the petitioner for stay of execution proceedings has been rejected.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein recovery of ₹1,50,000/- from the petitioner on the ground that the cheque issued by the petitioner for the aforesaid amount had been dishonoured. Interest was also claimed. On being put to notice, in spite of being served, since the petitioner failed to appear before the Trial Court, he was proceeded against ex parte. On the basis of ex parte evidence led by the respondent, the Trial Court decreed his suit and resultantly, he was held entitled to recover from the petitioner an amount of ₹1,50,000/- alongwith interest @ 1% per month from the date of filing of the suit till the date of decree as also future interest @ 1% per month from the date of decree till its realization.

The petitioner filed an application under Order 9 Rule 13 CPC seeking therein setting aside the aforesaid decree passed against him. At the same time, the petitioner also filed an application for staying the execution proceedings initiated by the respondent to execute the aforesaid ex parte decree in his favour. On the dismissal of the petitioner's application by the Executing Court, the present petition has been preferred.

Learned counsel for the petitioner has been heard.

Through the ex parte decree dated 01.02.2018, the respondent has been held entitled to recover from the petitioner an amount of ₹1,50,000/- alongwith interest. Only because an application has been preferred by the petitioner under Order 9 Rule 13 CPC, the execution of such decree cannot be stayed especially when such decree is a money decree and has not been modified, reversed or stayed by any superior Court as also for the reason that under Section 144 CPC, the petitioner can seek refund of the decretal amount in case the application filed by him under Order 9 Rule 13 CPC is allowed at a later stage.

Dismissed.

(DEEPAK SIBAL)
JUDGE

December 07, 2018

Jyoti 1

Whether speaking/reasoned Yes/No

Whether reportable
Yes/No