

In the High Court of Punjab and Haryana at Chandigarh

257

CR No. 6240 of 2018

Date of decision: 29.11.2018

DARSHAN SINGH

.....petitioner

Versus

NIRMAL SINGH AND ORS

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Puneet Singla, Advocate for
Mr.Gaurav Goel, Advocate,
for the petitioner.

Mr.Manvender Singh Dalal, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(oral)

This petition has been filed by the petitioner against the order dated 9.2.2018 passed by the Additional District Judge, Ludhiana, whereby stay granted in favour of the petitioner on 11.1.2018 was vacated for want of service upon the decree holder.

Exparte judgment and decree was passed in favour of the decree holder on 25.4.2014. An application under Order 9 Rule 13 CPC was filed by the Judgment debtor, which was dismissed vide order dated 21.12.2017. In the pending appeal before the lower Appellate Court, prayer in terms of interim relief was granted by the lower Appellate Court by staying the operation of the impugned judgment and decree dated 25.4.2014 till the next date of hearing. Petitioner was directed

to serve the decree holder by *dasti* process, failing which, interim order was to be vacated automatically. *Dasti* process was sought to be issued on the address of decree holder shown in the decree sheet itself. The process could not be issued on the decree holder for want of necessary particulars of the house and the street. The interim order was vacated on account of rigor of the interim order, wherein, it was recorded that in the event of not effecting *dasti* service on the decree holder, the interim order would be vacated.

At the time of issuance of notice of motion on 17.9.2018, following order was passed by this Court:-

“Learned counsel for the petitioner contends that in the appeal filed against the order passed in the application under Order 9 Rule 13 CPC, the interim order staying the operation of *exparte* judgment and decree dated 25.04.2014 was passed, till the next date of hearing. Respondents were ordered to be served by *dasti* process, failing which interim order was to be vacated automatically. *Dasti* process was sought to be served on the address of decree holder as shown in the decree itself. The process server could not serve the decree holder for want of necessary particulars of house and street.

The interim order was vacated on account of rigor of implication arising out of dasti process.

Learned counsel further contends that there was no fault on behalf of the petitioner as the decree holder was sought to be served on the address given by him in obtaining exparte judgment and decree.

Notice of motion to respondent No.1 only at this stage for 29.11.2018.

Till the next date of hearing, operation of the impugned judgment and decree dated 25.04.2014 passed by the trial Court shall remain stayed.”

Learned counsel appearing on behalf of respondent No.1 i.e. decree holder states that he has no objection in case the interim order is revived during pendency of the appeal before the lower appellate Court provided some directions be issued to the lower Appellate Court to decide the appeal on some early actual date.

On merits, I find that the *dasti* process could not be issued upon the decree holder for want of necessary particulars of the house and street. He was sought to be served by *dasti* process on the address as shown in the decree sheet.

In my considered opinion, no fault can be attributed to the petitioner-judgment debtor in not serving the decree holder intentionally, particularly when the decree holder was sought to be served on the given address.

Be that as it may, I find that this revision petition can be disposed of by reviving the interim order during pendency of the appeal. Ordered accordingly. Lower Appellate Court is directed to decide the pending appeal in a time bound manner, preferably within a period of six months from the date of receipt of certified copy of this order. During pendency of the appeal before the lower Appellate Court, there shall be stay of operation of the impugned judgment and decree dated 25.4.2014 passed by the trial Court.

November 29, 2018
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No