

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

252

CR No.7779 of 2016 (O&M)

Date of decision: 22.02.2018

Sanjiv Gupta

..... Petitioner

Versus

Monika

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. P.L. Singla, Advocate for the petitioner.

Ms. Alka Sarin, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

This Court while issuing notice of motion had passed the following order on 18.11.2016:-

“Counsel for the petitioner has submitted that a money decree was passed in favour of the respondent/plaintiff with regard to recovery of Rs.25,000/- principal along with interest at the rate of 1% per month w.e.f. 09.04.1996 to the date of decree but due to some typographical mistake, pendente lite and future interest has been mentioned at the rate of 6% per month in place of 6% per annum. It is further submitted that as the trial Court reduced interest from 18% to 12% per annum w.e.f. 09.04.1996 to the date of decree, there was no reason for the trial Court to allow pendente lite and future interest at the rate of 72% per annum. It is further submitted that the petitioner is ready to pay the entire decretal amount (principal + interest) including future interest at the rate of 6% per annum.

Notice of motion for 03.03.2017.

In the meantime, petitioner shall deposit Rs.90,000/- with the trial Court within a period of one month out of which an amount of Rs.70,000/- shall be released in favour of the

respondent/decreed holder and the remaining shall be deposited in a Fixed Deposit Receipt payable to the successful party. On necessary deposit being made with the trial Court, recovery of the remaining amount shall remain stayed and notice in the present petition shall be sent to the respondent after intimation to the Registry in regard to deposit.”

Learned counsel for the petitioner has vehemently argued that the application under Section 151 and 152, CPC was moved by the petitioner-judgment debtor, however, the learned trial Court dismissed the same on the ground that the Executing Court cannot go behind the decree.

The application was filed before Civil Judge (Jr. Division), Jagraon. A reading of the application does not show that the application was in fact moved in the execution petition. The application is maintainable before the same Court under Section 152 and 153, CPC for correcting a typographical/clerical error due to accidental omissions. As noticed by this Court, prima facie, it appears to be that the judgment is result of typographical error. Hence, the Presiding Judge was in error dismissing the application to have been filed in the execution. Therefore, the order under challenge is set aside.

Learned trial Judge is directed to re-decide the application within a period of one month from today. As ordered by this Court, the decree-holder would be entitled to withdraw Rs.70,000/-. The execution of the remaining amount shall remain stayed till the disposal of the application.

Revision petition is allowed.

22.02.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No