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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.8655 of 2017

Date of Decision: 10.12.2018

BIJENDER SINGH

.....Petitioner

Vs

KOTAK MAHINDRA PRIME LTD & ANR.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Manoj Kumar Sood, Advocate
for the petitioner.

Mr. Nipun Vashisht, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 17.10.2017 passed by the Addl. District Judge, Faridabad, vide which objections in execution petitions were dismissed.

[2]. After hearing learned counsel for the parties, it appears that the petitioner had availed facility of finance from the respondent-Company for a vehicle. *Ex parte* judgment and decree was passed against the petitioner on 06.06.2012. The contention of learned counsel for the petitioner was that though the petitioner has availed finance facility from the respondent-Company and is owner of vehicle bearing Regn. No.HR-51R-9892, but under the garb of *ex parte* judgment and decree, decree in respect of vehicle Regn. No.HR-51R-9847 is being

executed against the vehicle bearing Regn. No.HR-51R-9892 owned by the petitioner. The factum of petitioner being a loanee is not denied. In the decree passed by the executing Court, there is no reference of any vehicle number.

[3]. At the time of issuance of notice of motion on 11.12.2017, following order was passed by the Co-ordinate Bench of this Court:-

“Learned counsel for the petitioner, inter alia, contends that the petitioner is owner of vehicle No.HR-51-R-9892, whereas the plaintiffrespondent No.1 filed a suit for recovery with regard to the vehicle bearing registration No. HR-51-R-9847. The said suit was decree exparte vide judgment dated 06.06.2012. The present petitioner was wrongly impleaded as defendant in the suit and he has filed an application for setting aside of the exparte decree. The vehicle against which, loan was taken was bearing No. HR-51-R-9847, whereas petitioner-Bijender Singh son of Tuhiram is owner of vehicle bearing registration No. HR-51-R-9892.

Notice of motion for 04.04.2018.

In the meantime, execution proceedings shall remain stayed.”

[4]. Learned counsel appearing on behalf of respondent No.1 submitted that till date no application under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 06.06.2012 has been filed by the petitioner before the trial Court. The executing Court cannot go beyond the decree.

[5]. The aforesaid fact has been refuted by learned counsel for the petitioner saying that the application under Order 9 Rule 13 CPC is pending consideration before the trial Court. Though exact date is not known to him.

[6]. Be that as it may, if the application under Order 9 Rule 13 CPC is pending before the trial Court as on date, then in terms of Order 21 Rule 26 CPC, the executing Court can be obligated to defer the proceedings for a reasonable time so as to allow the petitioner to obtain appropriate order in the proceedings under Order 9 Rule 13 CPC.

[7]. In view of ratio of **Narinder Kumar vs. M/s N.K. Electronics, 2010(5) R.C.R. (Civil) 697**, the rigor of aforesaid provision can be applied only to a limited period i.e. till the next date of hearing, if any, in the application under Order 9 Rule 13 CPC. If there is no pending application under Order 9 Rule 13 CPC, the rigor of this order would vanish away automatically.

[8]. It is also made clear that no application under Order 9 Rule 13 CPC shall be entertained today for the purposes of availing benefit of this order.

[9]. In view of aforesaid terms, this revision petition is disposed of.

December 10, 2018

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No