

CWP No.6264 of 2018

[1]

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

CWP No.6264 of 2018
Date of decision: April 20, 2018

Balla ...Petitioner

Versus

Daily Lok Adalat and another ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Renu Dhull, Advocate,
for the petitioner.

Rakesh Kumar Jain, J. (Oral)

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the order dated 09.02.2018 passed by the Daily Lok Adalat, Kaithal (hereinafter referred to as the "Lok Adalat").

In brief, respondent no.2 (Canera Bank) filed a suit against the petitioner for recovery of ₹3,21,784/-. In the said suit, the petitioner had engaged S.K.Dhos, Advocate. The said suit was decreed on 20.01.2017. In para 3 of the judgment dated 20.01.2017, the trial Court has noticed that the defendant-petitioner appeared and filed his written statement. The case was contested both with reference to the preliminary objections and also on merits. The plaintiff-bank led its evidence but the defendant-petitioner did not examine any witness. Consequently, the suit was decreed. After the decree, respondent no.2-bank filed an application for seeking execution of the said decree under Order 21 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC") and also filed an application under Order 21 Rule 66 of CPC for

seeking permission to sell the mortgaged property. The execution was given the number as EXE No.1448/17. Notice in the execution was issued to the petitioner, however, he refused to accept the notice and, therefore, proceeded against *ex-parte* before the Executing Court as well. Thereafter, the petitioner filed the application under Order 9 Rule 13 CPC for setting aside the alleged *ex-parte* decree and the stand of the petitioner was that he had already made the entire payment to respondent no.2-bank. The matter was listed before the Lok Adalat on the fateful day, i.e. 09.02.2018, and it appears that both, the petitioner who had filed the application for setting aside the *ex-parte* decree and the decree holder-bank who had filed the execution application, withdrew their respective applications as it is recorded in the said order that the parties have entered into a settlement out of their free consent and sound disposing mind and it is requested to withdraw the matter. In view of the statement made, the said matter, which was listed before the Lok Adalat, was dismissed as withdrawn.

Learned counsel for the petitioner has submitted that S.K.Dhos, Advocate was not appointed as his counsel by the petitioner to appear in the execution application and in this regard, she has referred to the Power of Attorney, placed on record at page 53 of the paper book, to show that the petitioner had not signed the same.

The petitioner has also filed an application to bring on record the alleged fact of having paid the entire amount to the bank but I am not satisfied with the said evidence because it is submitted by the petitioner that he had given the money to some Chandi Ram for its further deposit in the bank. There is no evidence brought on record that the money has been paid to the bank.

Be that as it may, since neither the petitioner has made any complaint to the Bar Council or the Bar Association against S.K.Dhos, Advocate who had appeared on his behalf without his instruction nor he has brought plausible and convincing evidence with regard to payment to the bank, therefore, it appears that the petitioner is making lame excuses in order to wriggle out of his liability to make the payment arising out of the decree passed in the suit for recovery.

In view of the aforesaid observations, the present petition is found to be without any merit and hence, the same is hereby dismissed.

April 20, 2018
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No