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

CR No. 3474 of 2018

Date of Decision: 30.08.2019

M/s More Mobile and Support Private Limited through its
Managing Director

-Petitioner

Vs

M/s French Telecom

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. H.P.S. Ghuman, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

At the time of issuance of notice of motion on
23.05.2018, following order was passed:-

*“Learned counsel for the petitioner
contends that exparte judgment and decree
dated 30.11.2013 was passed by the trial Court
against the petitioner for recovery of an amount
of Rs.50,000/- along with interest @ 12% per
annum from the date of institution of the suit till
the date of decree and @ 6% simple interest
from the date of decree till final realization of the
amount. Against the exparte judgment and
decree, an application under Order 9 Rule 13*

CPC was filed by the petitioner which is pending. Execution was filed by the decree holder in which objections were made by the petitioner. Objections have been dismissed on the ground that mere filing of application under Order 9 Rule 13 CPC is no ground for non-payment of amount in execution.

Learned counsel relies upon Order 21 Rule 26 CPC to contend that though the Executing Court cannot go beyond the decree passed by the competent Court but in terms of the provision, the Executing Court has powers to stay execution of a decree for a reasonable time in order to enable the judgment debtor to apply for stay in the proceedings under Order 9 Rule 13 CPC or to file an appeal against the exparte judgment and decree. Till such time, the Executing Court can grant stay for a limited purpose.

*Learned counsel relies upon **Narinder Kumar vs M/s M.K. Electronics 2010 (5) RCR (Civil) 697.***

Notice of motion for 17.08.2018.

Till the next date of hearing, the Executing Court is directed to adjourn the proceedings beyond the date fixed by this Court.”

Provision in terms of Order 21 Rule 26 CPC was invoked to the effect that the Executing Court has powers to stay execution of a decree for a reasonable time so as to enable the judgment debtor to apply for stay in the proceedings under Order 9 Rule 13 CPC or to file appeal against exparte judgment and decree.

On the strength of **Narinder Kumar vs M/s M.K. Electronics 2010 (5) RCR (Civil) 697**, protection was granted in favour of the judgment debtor thereby directing the Executing Court to adjourn the proceedings beyond the date fixed by this Court.

Evidently, the aforesaid protection was granted to the petitioner for a limited purpose till decision of miscellaneous application in the proceedings under Order 9 Rule 13 CPC. Impression was given to the Court that the stay application is pending in the proceedings under Order 9 Rule 13 CPC. Interim order remained in operation on subsequent occasions.

Vide order dated 19.08.2019, it was desired to know status of pending application for stay in the proceedings under Order 9 Rule 13 CPC and learned counsel for the petitioner

sought time to show that the application for interim stay for execution is pending in the main proceedings under Order 9 Rule 13 CPC before the trial Court.

Today, learned counsel very candidly states that no such application was filed by the petitioner in the proceedings under Order 9 Rule 13 CPC.

It is a very sorry state of affair that the process of the Court was mis-used.

No indulgence can be granted in favour of a party who has not come to the Court with clean hands.

This revision petition is accordingly, dismissed.

30.08.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No