

In the High Court of Punjab and Haryana at Chandigarh

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CR No. 4092 of 2017 (O&M)

Date of decision: 22.7.2019

MANJEET SINGH PROP M/S RANOM INDUSTRIES

.....petitioner

Versus

M/S R.G. SHIPPING & LOGISTICS LTD & ORS

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.G.S.Rana, Advocate,
for the petitioner.

Mr.Animesh Sharma, Advocate
for respondents No.1 to 4.

RAJ MOHAN SINGH, J.(oral)

Petitioner has preferred this revision petition against the order dated 30.3.2017 passed by the Civil Judge (Jr.Divn.), Jalandhar, whereby the application under Order 9 Rule 13 CPC filed by defendants No.2 and 3 was allowed and the ex parte judgment and decree dated 30.7.2015 was set aside against all the defendants. Challenge is further made to the subsequent order dated 11.5.2017, whereby the application filed by the defendants for declaring the execution as infructuous was allowed and the accounts of the judgment debtors were de-attached.

The suit for recovery filed by the plaintiff/ petitioner was decreed ex parte vide judgment and decree dated 30.7.2015. Perusal of the interlocutory orders dated 22.1.2009 and 27.1.2011 would show that only defendants No.1 and 4 were served. Defendants No.2 and 3 were never served even by means of publication for which plaintiff never deposited necessary charges. The presence of Sh. Sidharath Kapoor, Advocate on behalf of defendants No.1 to 4 was wrongly marked as he had appeared only for defendants No.1 and 4. There was no power of attorney on behalf of defendants No.2 and 3 on record. In execution of the decree, the accounts of judgment debtor were attached. Thereafter vide order dated 17.1.2017, the Executing Court/ Civil Judge (Jr.Divn.) Jalandhar dismissed the application filed by the judgment debtor for staying the execution. The relevant part of the order is reproduced herein-below:-

“3. I have considered the contradictory version of the contesting parties and have deliberated over the arguments advanced in the light of documents, submissions made and peculiar facts and circumstances of the case.

4. From the perusal of the case file it transpires that vide judgment and decree dated 30.7.2015 the

plaintiffs were held entitled to recover an amount of Rs.5,91,388/- along with pendente lite interest @ 9% per annum and future interest @ 6% per annum from judgment debtors. Earlier in the present execution the account of the judgment debtors was attached by order of learned predecessor of this court but thereafter the JD's moved an application for de-attachment of their account bearing no. 07661010003700 on the ground that due to the attachment of the account they were not in a position to carry on their business in an effective manner. Then on their application the learned predecessor of this court vide order dated 25.3.2016 directed the JD's to furnish bank guarantee for an amount of Rs.10,14,915/-. But instead of furnishing the bank guarantee in pursuance of the order dated 25.3.2016 the Jds have moved the present application which shows that the JDs are dilly delaying the proceedings of the present execution. Even otherwise mere pendency of an application under Order 9 Rule 13 CPC is no ground to stay the proceedings of the present execution and to deprive the decree holder of his rights that accrued to him by passing a decree

in his favour.

5. As such, the application for staying the present execution is hereby dismissed. However, this order of mine have no effect on the merits of the present case.

Now to come up on 18.2.2017 for furnishing bank guarantee as per the order dated 25.3.2016.”

Against the aforesaid order Civil Revision No.978 of 2017 was filed by M/s R.G.Shipping and Logistics Ltd. The said revision petition was also dismissed by the High Court vide order dated 13.2.2017. The relevant part of the order reads as under:-

“5. Mere filing of an application under Order IX Rule 13 CPC does not ipso facto mean that ex parte judgment & decree dated July 30, 2015 is rendered unexecutable, rather this Court is of the considered view that petitioner has not approached the Court with clean hands and has suppressed the material facts. His intention is only to delay the execution of the decree. Here, it would be pertinent to mention that earlier in the execution application preferred by the decree holder against judgment debtors, the bank account

(No.07661010003700) of JDs was attached but subsequent thereto, JDs moved an application for de-attachment thereof on the ground that due to attachment of their account, they were not in a position to carry on their business in an effective manner. The de-attachment was ordered by the executing court vide order dated March 25, 2016 subject to furnishing bank guarantee to the tune of ₹10,14,915/-. But, instead of furnishing bank guarantee, in pursuance of aforesaid order, JDs have moved an application under Order IX Rule 13 CPC as well as application for staying the proceedings in execution petition. Since the JDs including the petitioner are guilty of concealment of the facts and violators of order dated March 25, 2016 passed by the executing court, they do not deserve any discretionary relief. Accordingly, the revision petition stands dismissed.

6. No order as to costs.”

The ex parte judgment and decree has been set aside by the trial Court vide order dated 30.3.2017. Thereafter, the accounts have been de-attached vide the impugned order dated 11.5.2017. The decree has been set aside on the

technical ground.

In view of proviso to Order 9 Rule 13 CPC, the service qua defendants No.1 and 4 was an admitted fact. Even the aforesaid defendants appeared through their counsel and thereafter proceeded against ex parte.

In view of facts and circumstances of the case, it would be just and expedient to direct the defendants to execute security for the amount in question to the satisfaction of the trial Court, where suit is pending.

The present revision petition is disposed of accordingly.

July 22, 2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No