

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

**CR No.585 of 2019 (O&M)
Date of Decision : 11.02.2019**

Vandana Sood

.....Petitioner

Versus

Yuvraj Dada and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. S.S. Chopra, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

CM No.2152-CII of 2019

Allowed as prayed for.

CR No.585 of 2019

The petitioner, who happens to be the Decree Holder, in the Execution Case pending before the Ld. Additional Civil Judge (Senior Division), Ludhiana, is aggrieved that her Execution Application was dismissed in default under Order 9 Rule 2 of the Civil Procedure Code (for short, 'the Code') on 15th November, 2018 ostensibly due to non-filing of copy of the application as well as RC/AD for notifying the Judgment Debtor under Order 21 Rule 66 of the Code.

2. The specific grievance of the petitioner is that in the aforesaid order the Executing Court observed that copy of the

application and the other requisites were not filed, which is factually incorrect. The petitioner, therefore filed an application under Section 151 of the Code for recalling the aforesaid order and restoration of the Execution Application to its original number by drawing attention of the Court to the fact that the requisites had actually been filed in compliance of the earlier Order dated 26th October, 2018, which had not come to the notice of the Court. But even that application was rejected vide the impugned Order dated 19th December, 2018 with the following observations *inter alia* -

4. ...It is worth to mention that on 26.10.2018, the applicant was directed to comply the same and it was a last opportunity to do the needful within three days and finally, case was adjourned on 15.11.2018, when the case was fixed for summoning the JD through speed post. On 15.11.2018, when the matter was put up before this court, due to non filing of process fee, this court dismissed the execution in default u/o 9 Rule 2 CPC for want of compliance. So far as the applicant's case is concerned, he had deposited the requisite charges on 03.11.2018 and this court has also signed on the summons to serve the JD on the next date of hearing, but on the perusal of the case file, it reveals that no receipt of deposit was ever filed before this court, rather the applicant retained the original of deposit slips and therefore, on the report of the Ahlmad, this court finds that requisite fee had not been deposited and for noncompliance, the execution petition was dismissed in default.

5. *It is worth to mention here that once the party is directed to comply with the order, he is duty bound to comply such direction within the time and shall produced its compliance report to the office, for doing necessary however, in this case, admittedly, no deposit receipt was ever shown or produced before the office of this court and it was not within the knowledge of this court that the appellant had already deposited the requisite charges. Admittedly, original receipt produced along with the application. If any receipt was produced before this court, only, in that situation, applicant would be entitled to seek review of the order. Once, he himself failed to comply with the directions of this court, no ground to review my own order is make out, rather, the application for review of the order is not maintainable.”*

3. The petitioner now contends that there was no laches on her part in the matter of depositing the requisite Process Fee and Postal Charges, and the error was on the part of the Court's Ahlmad/Nazir who omitted to make the relevant notings to that effect, and so the petitioner could not be penalized for such laches attributable to the Court's machinery.

4. Admittedly, there is no procedure prescribed that after having filed the Process Fee and all other requisites, the petitioner must show any receipt to the Presiding Officer in open Court to bring to his notice about the compliance having been made. To that extent therefore dismissal of the petitioner's Application for Restoration on the grounds mentioned by the Ld. Court below, as reproduced above,

would certainly appear to be erroneous.

5. For the aforesaid reasons, the impugned order is set aside and the petitioner's Execution Application is ordered to be restored to its original status and number.

6. Ld. Executing Court is directed to proceed in accordance with law after utilizing the Process Fee and requisites, already filed on behalf of the petitioner.

February 11, 2019

Dpr

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No