

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

**CR No.6933 of 2018(O&M)
Date of Decision-29.11.2019**

Deepak Mehra ... Petitioner
Versus
M/s Pee Pee Marketing and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajiv Joshi, Advocate
for the petitioner.

Brig. J.S. Jaswal, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 21.05.2018 passed by the executing Court vide which objections filed by the petitioner were dismissed.

[2]. Petitioner was proceeded against *ex parte* in the main suit. *Ex parte* judgment and decree was passed by the trial Court on 05.05.2011. An application under Order 9 Rule 13 CPC was filed belatedly in the month of March, 2018. No appeal was filed against the *ex parte* judgment and decree passed by the trial Court.

[3]. The decree holder filed execution. In the execution proceedings, judgment debtor/petitioner got filed memo of appearance on 23.09.2016 and thereafter, he did not appear in the executing Court and was proceeded against *ex parte* on 03.01.2017. No application was filed for setting aside the *ex parte* order dated 03.01.2017 in the execution.

[4]. Learned counsel for the petitioner submitted that in the proceedings of application under Order 9 Rule 13 CPC filed for setting aside the *ex parte* decree dated 05.05.2011, application for grant of interim stay has already been declined.

[5]. Perusal of the record would show that there was no challenge made to the order vide which prayer for interim stay in the proceedings under Order 9 Rule 13 CPC was dismissed. On the other hand, objections were filed in the execution on 04.04.2018. Now the objections have been dismissed vide the impugned order and that is how, the present revision petition came to be filed.

[6]. Admittedly, the petitioner has not assailed the order vide which prayer for interim stay was declined in the proceedings under Order 9 Rule 13 CPC. Secondly, the order dated 03.01.2017, vide which petitioner was proceeded against *ex parte* in the execution has not been set aside by any competent Court.

[7]. In view of aforesaid, petitioner cannot maintain objections in the executing Court. It is true that under Order 21 Rule 26 CPC, the petitioner could have availed protection of stay of execution proceedings for a fixed period in order to get his application for interim relief decided in the proceedings under Order 9 Rule 13 CPC.

[8]. Since application for interim stay during the proceedings under Order 9 Rule 13 CPC has already been dismissed and the same has attained finality, therefore, in my considered opinion, the

objections filed by the petitioner in execution proceedings are not maintainable, particularly when the order dated 03.01.2017 vide which petitioner was proceeded against *ex parte* in execution has not been set aside by any competent Court. The record would also show that against the *ex parte* judgment and decree dated 05.05.2011, application under Order 9 Rule 13 CPC was filed only on 07.03.2018 i.e. after a period of about 7 years. In the execution filed in the year 2014, the petitioner appeared through memo of appearance on 23.09.2016, but thereafter, preferred to be proceeded against *ex parte* on 03.01.2017 and that order has not been challenged in any forum. The property has already been attached and now the same is being put to auction/sale.

[9]. For the reasons recorded hereinabove, I see no reasons to differ with the impugned order passed by the executing Court. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

29.11.2019

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No