IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7572-2019 (O&M)
Date of decision: 02.12.2019

Sanjeev Kumar Aggarwal

…..**Petitioner**

versus

Major Singh Ubokay and another

……**Respondents**

CORAM: Hon'ble Mr. Justice Deepak Sibal

Present: Mr.Prateek Sodhi, Advocate for the petitioner

Deepak Sibal, J. (Oral)

Respondent no.1 filed a suit seeking therein to recover from the petitioner arrears of rent to the tune of Rs.6,27,501/-. Pendente lite and future interest was also claimed. Through an ex-parte judgment and decree dated 02.07.2016, respondent no.1's suit was allowed by the Additional Civil Judge (Senior Division), Amritsar (for short, the Trial Court) to the extent that respondent no.1 was held entitled to recover from the petitioner an amount of Rs.4,09,214/- along with future interest @ 6% per annum from the date of filing of the suit till its realization.

The petitioner filed an application under Order 9 Rule 13 CPC seeking therein to set aside the aforesaid ex-parte decree passed against him as according to him no notice of respondent no.1's suit had been served upon him. The petitioner also filed an application seeking stay of execution proceedings which had been initiated by respondent no.1 through which he had sought to execute the aforesaid decree of the Trial Court dated 02.07.2016.

The Trial Court allowed the petitioner's application seeking stay of execution proceedings. However, the same was subject to the petitioner furnishing a bank guarantee for Rs. 2 lakhs before the Executing Court and early disposal of the petitioner's application filed by him under Order 9 Rule 13 CPC. The condition imposed by the Trial Court regarding furnishing of the bank guarantee is under challenge in the present proceedings.

Learned counsel for the petitioner submitted that while staying the execution proceedings the Trial Court could not have imposed upon the petitioner the onerous condition to deposit a bank guarantee of Rs. 2 lakhs as such amount was beyond the petitioner's reach and therefore such condition would virtually take away his right to maintain his application under Order 9 Rule 13 CPC. It is further submitted that the impugned condition could have only been imposed by the Trial Court at the stage of allowing the petitioner's application filed by him under Order 9 Rule 13 CPC and not while disposing of the application filed by the petitioner seeking stay of the execution proceedings during the pendency of his challenge to the ex-parte judgment and decree passed against him. In support of his contention, reliance is placed on a Division Bench judgment of the Andhra Pradesh High Court in *Rajeswara Industries and others versus State Bank of Hyderabad, 1991 CCC 719.*

The submissions raised by learned counsel for the petitioner do not warrant a favourable consideration.

Through an ex-parte judgment and decree dated 02.07.2016, respondent no.1's recovery suit was allowed and resultantly he was held entitled to recover from the petitioner an amount of Rs.4,09,214/- along with future interest to be calculated from 31.12.2014 till the realization of the amount. As on date, the amount due from the petitioner would be Rs.5,30,000/- (approximately).

Even after the passage of about 3 ½ years the aforesaid decree remains unsatisfied and this is inspite of the fact that respondent no.1 has filed proceedings to get the same executed.

After three years of its passing i.e. in July 2019, the petitioner filed an application under Order 9 Rule 13 CPC seeking therein to set aside the aforesaid exparte decree passed against him. Along with his application, he sought stay of execution proceedings initiated by respondent no.1. The Trial Court while granting stay of the execution proceedings initiated by respondent no.1, has issued directions for expeditious disposal of the petitioner's application filed by him under Order 9 Rule 13 CPC and to balance the equities between parties and since the Trial Court was staying the execution of a money decree, to partially secure respondent no.1, has used its discretion to direct the petitioner only to furnish a bank guarantee of about 40% of the decretal amount.

As a result of the interim stay, during the pendency of the application filed by the petitioner under Order 9 Rule 13 CPC, he is not required to satisfy the money decree passed against him. He is also not to deposit the decretal amount or any part thereof. All that he is required to do is to furnish a bank guarantee and that too for about 40% of the decretal amount. At the same time, the Trial Court has also issued directions for disposal of the petitioner's application filed by him under Order 9 Rule 13 CPC within a period of one month.

The above discretion exercised by the Trial Court is neither found to be arbitrary nor perverse warranting interference by this Court in its revisionary jurisdiction under Article 227 of the Constitution of India.

In *Rajeswara Industries* *(supra),* through the order impugned therein, condition of deposit of half of the decretal amount and the awarded costs had been imposed by the Trial Court at the stage of entertaining the application filed under Order 9 Rule 13 CPC. However, in the case in hand, no condition has been imposed at the stage of entertainment of the petitioner's application under Order 9 Rule 13 CPC. Such discretion has been exercised by the Trial Court while staying the money decree passed against the petitioner. Further, no condition has been imposed by the Trial Court requiring the petitioner to make actual deposit of the decretal amount or even a part thereof. The petitioner has only been directed to furnish security in the form of a bank guarantee for about 40% of the decretal amount. *Rajeswara Industries case* *(supra)* is thus clearly distinguishable.

Dismissed.

To further balance the equities between the parties, it is directed that in case the Trial Court dismisses the petitioner's application filed by him under Order 9 Rule 13 CPC, the bank guarantee to be furnished by the petitioner shall not be encashed for a period of one week thereafter. This is only to enable the petitioner to avail of his statutory remedy of appeal against dismissal of his application. It is further clarified that in the afore eventuality if the petitioner does file any such appeal, the Appellate Court shall consider the petitioner's interim prayer, without being influenced by the present direction and that such prayer for stay against the encashment of the bank guarantee shall be considered by the Appellate Court strictly on the basis of the merits before it.

If respondent no.1 is aggrieved by any direction issued through this order, he is granted liberty to approach this Court by filing of an appropriate application.

02.12.2019 **(Deepak Sibal)**
gk **Judge**

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No