

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

132

CR-2205-2022

Date of decision: 30.05.2022

Pritam Pal

.....Petitioner

Versus

Ajit Ram

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Amardeep Singh Gill, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner/judgment debtor is seeking setting aside of order dated 26.04.2022 passed by learned Civil Judge (Jr. Divn.) (NRI Court), Jalandhar (Annexure P-5) vide which his application for setting aside of the order dated 19.12.2019 (Annexure P-2) whereby he was proceeded against ex-parte, was dismissed.

Learned counsel for the petitioner/judgment debtor inter alia contends that after the suit filed by the respondent/decreed holder for permanent injunction was decreed vide judgment and decree dated 16.04.2018 (Annexure P-1), he filed an application under Order 21 Rule 32 read with Section 151 CPC on the ground that the petitioner had not complied with the judgment and decree. Learned counsel submits that vide order dated 19.12.2019 (Annexure P-2), the petitioner was erroneously proceeded against ex-parte. Soon thereafter, the petitioner/judgment debtor filed an application for setting aside the ex-parte order and for deciding the execution on merits after hearing the petitioner/judgment debtor, however, vide impugned order the Civil Judge dismissed his application. Learned counsel contends that the

respondent/decreed holder and the petitioner/judgment debtor were negotiating a compromise after the suit for permanent injunction had been decreed vide Annexure P-1 dated 16.04.2018, the respondent had even assured the petitioner that he would be withdrawing the execution. Since a request had been made by the respondent to the petitioner not to appear in the Court, it was the petitioner who himself asked his counsel not to defend the execution. However, it was the respondent's counsel who played a fraud upon the petitioner by proceeding ahead with the execution proceedings.

I have heard learned counsel and perused the material on record.

It transpires from the impugned order and is rather evident that after notice had been issued to the petitioner on 22.07.2019, the case was adjourned to 17.09.2019 on which date his counsel appeared and filed his power of attorney and thereafter the proceedings were adjourned for filing of reply and objections by the petitioner for 21.10.2019. The case was thereafter adjourned to 13.11.2019 and yet again to 30.11.2019 which was subject to payment of costs of Rs.250/-. However, on the said date neither was any reply filed nor the costs imposed were paid. Ultimately on 19.12.2019, the petitioner was proceeded against ex-parte. A perusal of the impugned order reveals that while the petitioner absented himself in the execution proceedings, at the same time he was actively pursuing the appeal preferred by him against judgment and decree dated 16.04.2018 (Annexure P-1), which contradicts the version of the petitioner qua the parties exploring the possibility of a compromise. In the said facts and circumstances,

learned counsel has failed to bring to the notice of this Court any satisfactory much less genuine reason for not putting in an appearance or filing his objections and for even not paying the costs which were imposed upon him by the Court below.

Dismissed.

30.05.2022

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No