

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

CM-11858-CII-2022 in/and

CR-2263-2017 (O&M)

Date of Decision: 25.01.2023

Kirloskar Pneumatic Company Ltd.

.....Petitioner

Versus

M/s Dura Sales and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. P.S. Jammu, Advocate
for the applicant-petitioner alongwith
Mr. Jayender Manocha, Manager (Legal)/
Authorized Representative of the petitioner-company.

Mr. A.S. Syan, Advocate
for the non-applicants-respondents.

ARUN MONGA, J. (ORAL)

CM-11858-CII-2022

For the reasons stated, the application is allowed subject to all
just exceptions. Documents (Annexures P-3 to P-5) are taken on record.

CR-2263-2017 (O&M)

Petition herein is for setting aside order dated 14.02.2017 passed
by the Ld. Executing Court, whereby the execution application filed by the
plaintiff (petitioner herein/decreed-holder) has been dismissed.

2. Learned counsel for the petitioner draws my attention to last
order, when the matter was heard by Harkesh Manuja, J. at some length, who
recorded the entire controversy and also made certain observations vide order
dated 18.10.2022, which being apposite, are reproduced herein below-

*“Petitioner happens to be a decreed-holder who is
aggrieved against the order dated 14.02.2017; whereby his*

execution application has been ordered to be dismissed by the learned Civil Judge (Senior Division), Pune.

The facts leading to the present revision petition are that a suit for recovery was filed by the petitioner/ decree holder (hereinafter referred to as the 'decree holder') against respondent-judgment debtor (hereinafter referred to as the 'judgment debtor'). The same was decreed ex-parte vide judgment and decree dated 03.02.2007. An execution application dated 16.05.2008 was filed in pursuance to the judgment and decree dated 03.02.2007.

Therefore, two applications came to be filed at the instance of judgment debtor, i.e., (i) Under Order 9 Rule 13 CPC for setting aside of the ex-parte judgment and decree dated 03.02.2007; and (ii) regarding the stay of execution proceedings initiated at the instance of decree-holder at Pune.

Vide order dated 02.09.2007, application under Order 9 Rule 13 CPC filed at the instance of petitioner was allowed by the learned trial Court at Pune, however, order was made subject to payment of Rs.20,000/- as costs to be deposited within a period of 30 days.

Though, a demand draft dated 24.09.2007 amounting to Rs.20,000/- was got prepared by the respondents, however, it was not deposited within the prescribed period of 30 days and it was presented only on 20.10.2010.

In a separate, but related development, the executing court has dismissed the execution application of judgment debtor on the ground that once vide order dated 02.09.2010, the application filed under Order 9 Rule 13 CPC at the instance of judgment debtor was allowed, the execution application cannot be continued/ pursued. It is the aforesaid order which has been impugned in the present revision petition at the instance of decree-holder.

By way of CM-11858-CII-2022, the decree-holder has placed on record an application dated 09.02.2021; whereby a prayer was made before the learned trial Court, Pune, for supplying him copy of the last order passed in the application under Order 9 Rule 13 CPC. In response thereof, a copy of order dated 02.09.2010 has been supplied to the decree-holder stated to be the last order passed in the suit/ proceedings pending at Pune. Copy of the said order dated 02.09.2010 has been placed on record as part of annexure p-3.

In view of the documents appended along with the misc. application, learned counsel for decree holder contends that once after 02.09.2010, there is no order passed in the civil suit, the executing Court committed an error while dismissing execution application on the ground that the ex-parte decree dated 03.02.2007 stood re-opened.

On the other hand, learned counsel for the respondent submits that an application for seeking extension of time as regards the deposit of amount as directed in pursuance of the order dated 02.09.2010 was moved at the instance of judgment debtor which was allowed by the learned trial Court at Pune and in pursuance thereof, the requisite cost amounting to Rs.20000/- even stands tendered before the learned trial Court, however, he submits that as the file before the Courts at Pune is not traceable as such he is not in a position to produce copy of the order passed by the trial 'Court at Pune in his regard. Further, he seeks time to place on record the exact status of the pendency of CS No. 1639/1996, pending in the Court of Civil judge, Senior Division, Pune.

Adjourned to 23.11.2022.

In case, learned counsel for the respondent is not able to produce the exact status of pendency of CS No.1639/1996, by the next date of hearing, it shall be presumed that there is no lis pending between the parties at Pune and the revision petition shall be decided on merits.

To be shown in the urgent list."

3. Order dated 23.11.2022 is also relevant, which reads thus:

"Learned counsel for the respondents submits that last and final opportunity be granted to him for the purpose of verifying the facts as required vide previous order dated 18.10.2022.

Prayer is granted.

Adjourned to 25.01.2023.

It is made clear that in case the information is not provided by the respondents, no further opportunity in this regard shall be granted to them.

Be shown in the urgent list."

4. Learned counsel for respondents once again sought time to comply with orders dated 18.10.2022 and 23.11.2022, onus of which was put on them by this Court, the matter was accordingly adjourned to enable them to do the needful, yet again when the matter has been taken up today on resumed hearing, he is unable to produce any material on record to verify the facts, as recorded vide order dated 18.10.2022 *ibid*.

5. In the premise, I am not inclined to give further opportunity for which time is again being sought.
6. Petition is allowed. Impugned order is set aside and the execution application is restored to its original number with liberty to Executing Court to proceed further in accordance with law.

(ARUN MONGA)
JUDGE

January 25, 2023
ashish

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