

CR-505-2023 (O&M)

Date of Decision :25.01.2023

Rajesh Kumar

...Petitioner

versus

Jai Chemicals

....Respondent

Coram : Hon'ble Mr. Justice B.S. WaliaPresent: Mr. Brijesh Kumar, Advocate for Mr. Kushager Goyal,
Advocate for the petitioner.

B.S. Walia, J. (Oral)

1. Prayer in the petition is for setting aside order Annexure P-9 dated 10.01.2023 whereby the application for staying execution proceedings was rejected.

2. Learned counsel contends that the ex parte judgment and decree dated 29.11.2016 was passed against the petitioner by the learned Civil Judge (Jr. Division), Faridabad and the petitioner had filed an application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 29.11.2016 in the year 2019, in which pleadings are complete and the application is fixed for evidence on 15.02.2023.

3. Learned counsel contends that the application filed by the petitioner for stay of execution was dismissed on the ground that the petitioner had been served notice in the civil suit whereafter he was proceeded ex parte on 25.08.2016 and it was not the plea of the petitioner that he had never been served any notice. Moreover, there was no stay of the order of the Court which had passed the judgment and decree dated 29.11.2016.

4. Learned counsel contends that the findings in order Annexure P-9 that the petitioner had been served notice in the civil suit was factually incorrect and the petitioner had never been served notice in the civil suit and that is the basis on which the application Annexure P-7 was moved. Learned counsel contends that once the application under Order 9 Rule 13 CPC is pending, execution proceedings ought to have been stayed or in the alternative at least deferred for a reasonable period of time to enable the petitioner to move an application for stay of execution before the learned Civil Judge (Jr. Division), Faridabad. Learned counsel refers to Order 21 Rule 26 CPC. The same is reproduced as under:

“ **26. When court may stay execution.**— (1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an Order to stay execution, or for any other order relating to the decree or execution which might have been made by such court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto, (2) Where the property or person of the judgment debtor has been seized under an execution, the court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application. (3) Power to require security from, or Impose conditions upon, judgment debtor:—Before making an order to stay execution or for the restitution of property or the discharge of the judgment debtor, the court shall require such security from, or impose such conditions upon, the judgment debtor as it thinks fit. ”

5. A perusal of Order 21 Rule 26 CPC reveals that the court to

which a decree has been sent for execution shall, upon sufficient cause being

shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an Order to stay execution, or for any other order relating to the decree or execution which might have been made by such court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

6. Learned counsel contends that the learned Executing Court without considering the plea of the petitioner of his not having been served notice in the civil suit and of the application under Order 9 Rule 13 CPC pending before the learned trial Court, dismissed the application for stay of execution, instead issued conditional warrants. Learned counsel states that in the circumstances, he does not press the instant petition but prays for protection for a limited period of time to enable him to move an application for stay of execution before the learned Civil Judge (Jr. Division), Faridabad in terms of Order 21 Rule 26 CPC.

7. Taking into account the submission of learned counsel for the petitioner, namely of the petitioner not having been served notice in the civil suit resulting in passing of ex parte judgment and decree and of the learned Executing Court having recorded to the contrary, namely of the petitioner having been served notice in the civil suit besides, the application under Order 9 Rule 13 CPC pending adjudication before the learned Civil Judge (Jr. Division), Faridabad, I am of the considered view that before issuing conditional warrants, the learned Executing Court ought to have granted reasonable time to the petitioner to invoke the jurisdiction of the learned Civil Court which had passed the judgment and decree for stay of execution

been served on the petitioner in the civil suit, pendency of application under Order 9 Rule 13 CPC and no application for stay having been moved alongwith the application under Order 9 Rule 13 CPC.

8. Accordingly, in the light of the position noted above and without putting the respondent to notice by issuance of summons and thereby necessitating incurring of unnecessary expense and delay, the instant petition is disposed of by granting liberty to the petitioner to move an application under Order 21 Rule 26 CPC before the learned Civil Judge (Jr. Division), Faridabad who had passed judgment and decree dated 29.11.2016, while directing that till 31.01.2023, order (Annexure P-9) issuing conditional warrants against the petitioner/judgment debtor shall not be acted upon. In case any application is moved before the learned Civil Judge (Junior Division), Faridabad by the petitioner, the same be considered and decided in accordance with law. Enforceability of conditional warrants issued vide order (Annexure P-9) after 31.01.2023 would be dependent upon the orders passed by the learned Civil Judge (Jr. Division), Faridabad on the application moved by the petitioner.

9. Disposed of as above.

10. In view of the request made, a copy of this order be furnished to learned counsel for the petitioner under the signatures of the Bench Secretary.

(B.S. Walia)
Judge

25.01.2023

ps

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>