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

**CR-2681-2023 (O&M)
Date of Decision: 02.05.2023**

Harbant Singh

...Petitioner

Versus

Ramesh Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.S. Sahu, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for directing Ld. First Appellate Court to decide the pending application for stay of operation of judgment and decree dated 16.11.2016 on the ground that now Ld. Executing Court has issued a conditional warrant vide order dated 31.03.2023 (Annexure P-9) in execution proceedings initiated on the basis of aforesaid judgment and decree dated 16.11.2016

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondent/plaintiff has filed a suit for recovery of money with the averment that Sh. Harbant Singh (petitioner herein) was known to him and was having friendly relations with him. In October 2012, the petitioner/defendant approached him and requested for loan of Rs. 3 Lakhs citing some domestic purpose. Keeping in view, their friendly relations, he advanced Rs.3 Lakhs to the defendant on 19.10.2012 repayable with interest @ 1.5/month. The defendant also

executed pro-note and receipt dated 19.10.2012 regarding the said loan. However, the defendant had not repaid the said loan on stipulated time and date. He requested the defendant to repay the said loan along with the agreed interest number of times but to no avail. Then, the respondent/plaintiff has filed a suit for recovery of Rs. 4 Lakhs 62 Thousand i.e. Rs. 3 Lakhs Principal and Rs.1.62 Lakhs interest (@ Rs. 1.5/month i.e. 18 % per annum from 19th October, 2012 along with the *pendente lite* interest @ Rs. 1.5 per month i.e. 18 % per annum till actual realization.

2.2. Petitioner/defendant was duly served, appeared and filed his written statement taking preliminary objections *qua* cause of action, locus standi, maintainability, separation of true facts etc. On merits, he had submitted that he used to cultivate land of others on contractual basis and used to have dealing with M/s Ram Chander Ramesh Kumar, the commission agent which started about 23-24 years back and he used to take advances from the said firm from time to time and for securing said advances the plaintiff had obtained his signatures on various blank papers. Plaintiff used to issue J-Forms sometimes *qua* sale of agricultural produces and sometimes avoid the same on one pretext or the other. He used to sell his entire crop to the said firm.

2.3. It was further submitted that in March 2013, he suspected foul play. regarding accounts, and requested the plaintiff for settlement of accounts, However, the plaintiff has not provided the correct accounts and, thereafter. a panchayat, consisting of respectable of the society, was convened wherein it was decided that he will pay Rs. 1 Lakh to the plaintiff and shall deposit the entire wheat crop, to be harvested in April 2013, to the firm whereupon the accounts between them stands settled. It was also decided that after the aforesaid payment

and deposit/supply, the plaintiff shall return his blank signed documents. He paid the agreed amount of Rs. 1 Lakh and has also deposited the entire wheat crop to the firm or plaintiff. However, the plaintiff has not returned his blank signed documents. Subsequently, he stopped contractual farming due to his old age and illness. The plaintiff has misused his blank documents and has filed a false and frivolous suit. Rest of the plaint averments were specifically denied by the defendant and with these averments, he has prayed for dismissal of present suit, being devoid of merits.

3. Thereafter, on the basis of contradictory pleading of the parties, issues were framed by the Ld. Trial Court vide order dated 01.03.2016 to the effect whether the plaintiff is entitled to decree for recovery as prayed for; whether the suit of the plaintiff is false, frivolous, vexatious and liable to be dismissed; whether the plaintiff has not come to the Court with clean hands and has suppressed true and material facts from the Court; whether the plaintiff has no locus standi and caused of action to file the present suit; whether the suit of the plaintiff is not maintainable in the present firm; whether the suit of the plaintiff is time barred and liable to be dismissed; whether the plaintiff estopped by his own act and conduct to file the present suit and sought the relief.

4. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

5. On appraisal of evidence vis-à-vis pleadings, the suit of respondent/plaintiff was decided in his favour directing to the effect that it appears that Rs.4.62 Lakhs was outstanding against petitioner/defendant *qua* the said loan and plaintiff would also be entitled to *pendente lite* interest @ 18% per annum.

6. Feeling aggrieved and having no source of income, the petitioner filed an appeal as an indigent person against impugned judgment and decree dated 16.11.2016 alongwith the application for stay of operation of the said impugned judgment and decree.

7. The appeal was adjourned from time to time and now the matter is fixed for 17.07.2023. However, the respondent/plaintiff filed execution petition which was dismissed as withdrawn on the ground that respondent/plaintiff has failed to furnish any list of properties. The respondent/plaintiff again filed an application for execution of judgment and decree dated 16.11.2016 and the Ld. Executing Court issued conditional warrant vide impugned order without complying with the provisions of Order 21 Rule 37 to 40 and 51(C) CPC. Resultantly, the petitioner filed a revision bearing CR No.4580 of 2022 which was disposed of vide order dated 14.12.2022 with liberty to the petitioner to approach the Appellate Court and press for application for stay pending before it. Since Ld. Executing Court has now issued the conditional warrant vide impugned order, the petitioner has moved the instant revision for directing the application for stay of operation of impugned judgment and decree dated 16.11.2016.

8. Given the nature of order being passed, there is no necessity to issue notice to the respondent, as no serious prejudice would be caused to him. Notice to respondent herein is thus dispensed with.

9. Ordinarily, this Court would not have interfered. However, in view of the fact that petitioner/defendant had filed an appeal against judgment and decree dated 16.11.2016 accompanied with an application for stay of the said judgment and decree passed by Ld. Trial Court and neither the appeal nor the application has been yet decided. In the meanwhile, the decree-holder/respondent

has initiated execution proceedings against the petitioner (appellant in first appeal) and Executing Court has issued conditional warrant against the petitioner. In these circumstances, the revision petition is disposed of with the expectation from the Ld. First Appellate Court that it shall take up the matter and decide either the application for stay or the appeal or both, as it may deem fit, without granting any unnecessary adjournments. Meanwhile, as a one time measure, the Ld. Executing Court shall adjourn the matter until either the stay application or the appeal is decided by Ld. First Appellate Court.

10. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 02, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No