

Pawan Kumar Vs. Hem Raj and ors.

Pawan Kumar Vs. Hem Raj and ors.

SooperKanoon Citation : sooperkanoon.com/918372

Court : Himachal Pradesh

Decided On : Apr-18-2011

Judge : Deepak Gupta, J.

Acts : Code of Civil Procedure (CPC) (C.P.C) - Orders 21, 41 Rules 26, 6

Appeal No. : CMPMO No.505 of 2009

Appellant : Pawan Kumar

Respondent : Hem Raj and ors.

Advocate for Def. : Mr. G.R.Palsara, Adv.

Advocate for Pet/Ap. : Mr. Sanjeev Kuthiala, Adv.

Judgement :

1. This petition is directed against two orders. Firstly, the order whereby the application for grant of stay of execution proceedings was rejected and secondly the order whereby the objections of the petitioner/Judgement debtor have been rejected.

2. As far as the first order dated 18.6.2009 is concerned, it would be pertinent to mention that the judgement debtor had filed an application under Order 21 Rule 26 read with Order 41 Rule 6 CPC for staying the execution of the decree only on the ground that he had filed an appeal against the decree dated 25.04.2007. It is not

disputed before me that the appeal has also been finally disposed of. Therefore, this part of the petition does not survive.

3. The next contention of Shri Sanjeev Kuthiala, learned counsel for the petitioner is that the order dated 14.7.2009 does not decide the objections of the judgement-debtor and that the objections could not have been decided in such a cursory manner without framing issues and giving an opportunity to the parties to lead evidence. Shri Sanjeev Kuthiala, Advocate, urges that triable issues arose and therefore, the Executing Court should have framed issues and permitted the parties to lead evidence.

4. In Civil Suit No. 129/2004/2002 filed on 23.5.2002 an ex parte decree was passed against the judgement debtor. The judgement debtor had filed written statement. The defendant-judgement debtor was given time to produce his evidence but no evidence was produced and none appeared for the judgement debtor and he was proceeded against ex-parte. Thereafter the ex-parte decree was passed on the basis of the evidence on record.

As mentioned here-in-above the appeal filed against the ex-parte decree has also been rejected. The objections filed by the petitioner in the Executing Court actually relate to the factum of the judgement debtor being proceeded against ex-parte and according to him on 23.4.2007 the plaintiff-decree holder had told him that he was withdrawing the suit and therefore, the judgement debtor did not appear and hence according to the judgement debtor ex-parte decree was obtained fraudulently. A perusal of the judgement of the learned trial Court shows that the matter is not so simple.

The defendant was given a number of opportunities to lead evidence and his evidence was closed and he was proceeded against ex-parte on 18.10.2006 and not on 23rd April, 2007 as now claimed by him. The learned trial Court has discussed the objections and came to the conclusion that there is no merit in the same.

5. No doubt, as argued by Shri Sanjeev Kuthiala, Advocate, in case triable issues are involved then the executing Court should frame issues and permit the objector

to lead evidence. However, in a case like the present one where the party contested the suit, was proceeded against ex-parte after last opportunity was given to it to lead evidence such triable issues do not arise. Now the appeal of the judgement debtor has also been dismissed and the decree has attained finality. Therefore, the question whether the decree was obtained by fraud cannot be gone into at the execution stage. It is, however, clarified that if the judgement debtor approaches the Executing Court with the prayer that the warrant of possession be issued in accordance with the decree the said matter shall be decided by the learned trial Court on the basis of the decree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com