

Writ Petition No. 15409/2013

19.09.2013

Shri Sandeep Dubey, learned counsel for the petitioner.

He is heard on the question of admission.

The petitioner- judgment debtor has filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 8.1.2013 passed by the 7th Additional District Judge, Mauganj, Rewa in Civil Execution Case NO. 1-A/01, whereby the warrant of arrest has been directed against the petitioner to recover the sum of the impugned decree.

The petitioner's counsel after taking me through the averments of the petition as well as papers placed on record by referring the execution application and the impugned order said that such order has been passed without taking into consideration and complying the provision of Order 21, Rule 11 -A of CPC, according to which, mentioning the grounds in the application, on which the warrant of arrest is applied, is necessary. In continuation he said that the impugned decree was passed exparte by practicing the fraud with the petitioner and on filing the application for setting aside the exparte decree under Order 9, Rule 13 of CPC, by the petitioner, the same was not entertained and dismissed by the trial court saying that unless the petitioner is produced before the court, no such proceeding could be entertained by such court under Order 9, Rule 13 of CPC.

Keeping in view aforesaid arguments advanced by the counsel, I have carefully gone through the averments of the petition as well as papers placed on record alongwith the impugned order. Firstly without entering on any merits of the matter, I have found that the impugned order was passed on dated 8.1.2013 and this petition is preferred by the petitioner on dated 30.8.2013, i.e. near about after quarter to eight months from the date of passing the order. So on the ground of delay and laches, this petition deserves to be dismissed. Secondly for the sake of arguments, on examining the matter on merits, then it is apparent from the copy of the Execution application, Ann. P-4 that the same has been filed stating that by arresting the petitioner and attaching his property, the decretal sum be recovered. So I have not found any circumstance in the matter to show whereby the trial

court has violated the Rule 11-A of Order 21 of CPC.

So far arguments advanced by the petitioner's counsel that the impugned decree was obtained by practicing fraud by the respondent without serving notice of the suit on the petitioner is concerned, in view of settled position of law, I am of the considered view that the Executing Court has no authority to go beyond the decree as such Executing Court is bound to execute the decree and could not examine any other merits either about fraud or any other objection. The Executing Court has right to examine only those questions which are relating to execution, satisfaction and discharge of the decree and not more than that as stated under Section 47 of the CPC. So in such premises, I have not found any scope in the matter to interfere in the impugned order.

Apart this I am apprised by the petitioner's counsel that as stated above the proceeding filed by the present petitioner under Order 9, Rule 13 of CPC for setting aside ex parte decree has been dismissed by the trial court on 18.7.2013, then subject to limitation, the petitioner has remedy to approach to the appellate court against such order dated 18.7.2013, from where he may obtain stay against execution of the decree on the grounds which are permissible under the law but in the present matter the order of the Executing Court could not be interfered as the same has been passed in consonance with the procedure prescribed under the law. Consequently this petition being devoid of any merit is hereby dismissed.

There shall be no order as to costs.

(U. C. Maheshwari)
Judge

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