

(1997) 09 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : C.V. Revision No. 12 Of 1997

Divisional Manager, Oriental Insurance Co.	APPELLANT
Vs	
Jehlum Exports	RESPONDENT

Date of Decision : 04-09-1997

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 9 Rule 13, 115

Citation : (1998) KashLJ 555 : (1998) SriLJ 45

Hon'ble Judges : A.Q.Parray, J

Bench : Single Bench

Advocate : Anil Bhan , A.M.Khan , Advocates appearing for the Parties

Judgement

1. I have heard learned counsel for the parties at length in this revision. The grievance projected by the petitioner is that the exparte decree has been passed by the court below, of which he had already applied for setting aside the same under the provisions of 09R13 of CPC and same is pending before the Court below. The petitioner besides raising legal pleas has also factually stated that he had filed written statement in the main suit, but same was not considered by the Court at the time of passing of the exparte decree etc. And in the meantime he had asked the court to stay execution of the proceedings. But instead of staying execution proceedings, the Court had issued notice to other party to file objections and in the meantime issued the directions to the bank to deposit the money with the Court. The learned counsel submits that as because his application for stay of execution has been deferred. Notice has been sent to other party and Court has passed directions asking the bank to make money available before Court. He apprehends that nothing has been left out to be agitated. The apprehension of Mr. Bhan are not sound. There is no

specific order passed by the Court below till today, whereby, the application for staying of proceedings has been rejected. The application for stay

of proceedings is still pending/under consideration before court below, for which objections have been sought from other party/ decree holder.

2. The grievance projected by Mr. Bhan is not legally sound because order in this revision has been passed by the court below in execution of

proceedings, which has been put to challenge. The order impugned wherein objections have been sought and directions have been issued for

procurring of the amount from the bank, is not order passed in proceedings for stay of execution and order does not fall under the provisions of

section 47 of CPC. Because yet the Court has to pass the order regarding that. So merely giving direction to the bank that let amount be deposited

with the court in execution proceedings does not amount to rejection of the application for stay of execution, or stay of execution, or stay of

execution of decree, which is to be passed by the Court below. (SIC) He is seized of the case. However, while disposing the application of the

judgment debtor, the court is directed that he shall hear the parties regarding stay of execution and pass appropriate orders and shall not make any

order regarding payment of the amount which have been procured by the bank to be deposited with the court. The court is also within its

competence to ask for security whatever is legally possible in terms on 021R25 CPC in execution proceedings/in proceedings for setting aside

exparte decree.

3. The Court will hear the parties and pass appropriate orders. Let records go back to the court below. Parties are directed to cause their

appearance before the Court below on 20.9.1997