

(1998) 01 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4425 of 1994

Supertex Industries and Others

APPELLANT

Vs

Bank of India

RESPONDENT

Date of Decision : 07-01-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 59, Order 9 Rule 13, 115

Citation : (1998) 2 CivCC 477 : (1998) 118 PLR 627 : (1998) 2 RCR(Civil) 439

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : P.K. Mutneja, for the Appellant; G.S. Anand, for the Respondent

Judgement

G.C. Garg, J.—Plaintiff-respondent filed a suit for the recovery of Rs. two lacs and odd against the defendants. Suit was decreed ex parte by the trial court by judgment and decree dated 5.5.1994. The plaintiff-decree holder thereafter filed execution application to execute the ex parte decree. The defendant-petitioners moved an application for setting aside the ex parte decree. They also moved an application in the execution proceedings for stay of auction proceedings that were ordered to be effected in execution of the decree. The executing court on a consideration of the matter, dismissed the application of the petitioners for stay of auction proceedings, by its order dated 12.11.1994. Hence this revision at the instance of the judgment debtors.

2. At the time of motion hearing on 21.11.1994, execution of the decree passed against the judgment debtors was stayed and the petitioners were directed to deposit a sum of Rs. 75,000/- in the court of learned Senior Sub Judge, Panipat. From the record of the revision it is clear that another sum of Rs. 75,000/- was also paid on behalf of the judgment debtors to the respondent-decree holder. Revision: petition was ultimately admitted on 31.7.1995 and the trial Court was directed to dispose of the application of the petitioners for setting aside the ex parte decree passed against them, at the earliest. During the course of hearing, it was informed that the said application has not been decided so far and is

pending for consideration on 30.1.1998. Thus having regard to the fact that the application of the petitioners for setting aside the ex parte decree is still pending and has not been disposed of as yet despite a direction from this Court, it will be just and fair to again direct the trial court to dispose of the said application within a time frame and in the facts and circumstances of this case, I am further of the opinion that till the disposal of the application of the judgment debtors for setting aside the ex parte decree dated 5.5.1994, the execution proceedings should remain stayed, because once the petitioners' application is accepted and the decree is set aside, the question for execution thereof will not arise.

3. In the above circumstances, the revision petition is disposed of with direction to the trial court to dispose of the application filed by the judgment debtors for setting aside the ex parte decree dated 5.5.1994 passed against them within a period of three months from today positively. Till the disposal of that application, the execution proceedings taken out by the plaintiff-bank shall remain stayed. No costs.