

# The High Court Of Madhya Pradesh

MP-417-2019

(MUKESH KUMAR Vs SMT.MAMTA BAI)

**Gwalior, Dated : 29-01-2019**

Shri Gaurav Mishra, Counsel for the petitioner.

Shri B.M. Patel, Government Advocate for the respondent No.2/State.

This petition under Article 227 of the Constitution of India has been filed against the order dated 11.12.2018 passed by Additional Civil Judge, Class-2, Ganjbasoda, District Vidisha in Case No.3/2017 EXA.

Since the lis involved in the petition can be disposed of at the earliest, therefore, the submissions made by the counsel for the petitioner are being considered without issuing notice to the respondents and if the respondents feel aggrieved by this order, then they can approach this Court by way of recall of this order.

The necessary facts for the disposal of the present petition in short are that an exparte judgment and decree has been passed against the petitioner on 9.11.2017 by which the suit filed by the respondent No.1 for specific performance of contract has been decreed. The petitioner has filed an application under Order 9 Rule 13 of CPC which is pending and has also prayed for stay of the execution of the decree. The Court below by order dated 11.12.2018 has held that in absence of any specific provision for stay of the execution proceedings, the application filed for stay of the execution proceedings during the pendency of the application filed under Order 9 Rule 13 of CPC is not maintainable.

Challenging the order passed by the Court below, it is submitted by the counsel for the petitioner that when there is no specific provision in Civil Procedure Code, then the Court can exercise the powers under Section 151 of CPC.

To buttress his contention, the counsel for the petitioner has relied upon the judgment passed by this Court in the case of **Laxmi Vastralaya v. Oswal Agencies** reported in **1983 MPWN 450** which reads as under:-

"It is conceded by the learned counsel for the non-applicants that there is no specific provision for staying execution of the ex parte decree. Where an application is made for setting aside a decree under O.9, R.13 in the absence of any specific provision, section 151, CPC is applicable for staying its execution. The Court below had jurisdiction to entertain the application for stay under S.151. The question whether stay should be granted or not would be within the discretion of the Court below after the application under S.151 is entertained. The mistake committed by the Court below was in holding that the application under S.151 was not maintainable at all. Revision allowed."

The counsel for the petitioner has also relied upon **order dated 23.8.2017** passed by this Court in the case of **Ali Mohammad vs. Devi Shankar** passed in **W.P.No.5496/2017** and the **order dated 26.7.2017** passed by the Principal Seat of this Court at Jabalpur in **W.P.No.6777/2017** in the case of **Mannulal Jagannathdas Trust Hospital Dixitpura Jabalpur vs. Devendra Dhar Bargaiyan** and the **order dated 4.10.2017** passed by the Principal Seat of this Court at Jabalpur in **W.P.No.14278/2017** in the case of **Dileep Singh Khare & Anr. vs. Smt. Saroj Khare**.

It is also submitted by the counsel for the petitioner that in the proceedings which are pending before the court below, the petitioner has already paid process fee, however, he is not in a position to submit that whether the respondents have entered their appearance or not.

Accordingly, the order dated 11.12.2018 passed by the court below is hereby set aside. The court below is directed to dispose of the application filed under Order 9 Rule 13 of CPC as expeditiously as possible and if the respondents have already appeared, then the application shall be disposed of within a period of one month from today, otherwise the application should be decided within a period of one month from the date of appearance of the

respondents before the court below. Till then, the execution proceedings shall remain stayed.

With aforesaid observations, the petition is finally disposed of.

**G.S. AHLUWALIA)**  
**JUDGE**

(alok)

