

CR No. 8023 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

CR No. 8023 of 2016

Date of Decision: 29.11.2016

Makhan Singh and others

---Petitioners

vs.

Harbans Lal and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr., Raman Goklaney, Advocate
for the petitioners

Rekha Mittal, J.

The present petition directs challenge against order dated 10.10.2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Ferozepur whereby objections filed by the petitioners/judgment debtors have been dismissed.

Counsel for the petitioners has submitted that the respondent/plaintiffs filed a suit for possession of land, detailed in head note of the plaint that was decreed ex parte vide judgment and decree dated 10.9.2012 passed by the Additional Civil Judge (Senior Division), Ferozepur. The respondents filed an application for execution of the decree and in the execution proceedings, warrants of possession were issued on the basis whereof the petitioners learnt about passing of the ex parte judgment and decree dated 10.9.2012. They filed an application for setting aside the ex parte judgment and decree in October 2015 and the same is pending adjudication after framing of issues but the parties are yet to adduce their evidence. It is argued that the petitioners filed objections/reply in the execution proceedings with a prayer to stall the execution process till the application for setting aside ex parte judgment and decree is decided by the Court. A serious prejudice shall be caused to the petitioners if the decree for possession is executed without deciding application of the petitioner for setting aside ex parte judgment and decree when otherwise there is every likelihood of the petitioners becoming successful in getting ex parte decree set aside and thereafter an opportunity to defend the suit. It is prayed that

the execution proceedings are stayed till disposal of the application for setting aside ex parte decree. In support of his contention, he has referred to judgment of this Court **Davinder Pal Singh and another vs. Narinder Pal Singh and others 2016(3) RCR(Civil) 194**. Further reference has been made to judgment of the Andhra Pradesh High Court **Guguloth Babu Rao and others vs. Suraksha Chit Funds, Yellandu, Khammam District and another 2010 (6) Andh LD 489**. In the alternative, it is submitted that execution of warrants of possession issued by the Court may be stayed by providing an opportunity to the petitioners to file an appropriate application for stay of execution proceedings in the proceedings under Order 9 Rule 13 of the Code of Civil Procedure (in short “CPC”) but some time bound direction may be issued to the trial court to decide the stay application.

I have heard counsel for the petitioners, perused the paper book particularly the order impugned.

The Executing Court has dismissed the application for stay on the premise that the petitioners should have filed an application for stay of execution before the Court in which application for setting aside ex parte judgment and decree is pending and not before the Executing Court.

Counsel for the petitioners has referred to judgment of this Court **Davinder Pal Singh and another's case (Supra)** but the said judgment does not deal with any provision in law or a precedent having binding force in order to uphold plea of the petitioners that execution proceedings are liable to be stayed merely because an application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree has been filed by the judgment debtors.

In **Guguloth Babu Rao and others' case (supra)**, a detailed reference has been made to the facts of the case wherein Court denied an opportunity to the first petitioner to appear as a witness despite the fact that he sought time till 8.6.2009 to arrange an amount of Rs. 15000/- imposed as costs on 1.6.2009 and eventually the suit was decreed on 8.6.2009 despite an application under Section 141 read with Section 151 CPC having been filed on 6.6.2009 for setting aside the order dated 1.6.2009 and reopen the case. The Court in concluding lines of para 7 of the judgment has observed that when the petitions filed to set aside ex parte judgment and decree are pending the courts should be slow in executing the ex parte decrees.

Counsel for the petitioners has failed to cite any provision in law or a binding precedent that execution proceedings should be stalled merely because an application for setting aside ex parte decree has been filed by the judgment debtor.

The application for setting aside the ex parte judgment and decree was filed in October 2015. There is nothing on record suggestive of the fact that till date, the petitioners have filed an application for stay in the proceedings under Order 9 Rule 13 CPC. Despite the petitioners having filed an application for setting aside ex parte judgment and decree in October 2015, the instant objections have been filed in September 2016 meaning thereby that they approached the Executing Court almost one year after having filed an application for setting aside the ex parte decree, sufficient to prove that the petitioners remained sleeping for quite sometime.

Counsel for the petitioners, in the alternative, has made a submission that warrants of possession may be kept in abeyance till the time the petitioners file an application for stay of execution and the application is decided by the Court seized of the proceedings under Order 9 Rule 13 CPC. Order 21 Rule 26 CPC provides for stay of execution. A relevant

extract from Rule 26 reads as follows:-

“When court may stay execution.- (1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an Order to stay execution, or for any other order relating to the decree or execution which might have been made by such court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

Keeping in view the import of Rule 26 extracted hereinabove coupled with the factum that application filed under Order 9 Rule 13 CPC is pending for the past more than one year, the Executing Court should have allowed reasonable time to the petitioners to enable the judgment debtors to apply to the Court by which the decree was passed to stay execution of the decree. Taking into consideration the aforesaid provision, the petition stands disposed of with liberty to the petitioners to file an appropriate application for stay of execution before the court by which the decree was

passed or the Court in which the proceedings under Order 9 Rule 13 CPC are pending. In the meantime, warrants of possession, if not already executed, would be kept in abeyance for a period of two months. In case the petitioners file an application for stay before the Court concerned within a period of seven days from today, the Court would decide the same within a period of one month from the date of its filing. In case the petitioners fail to file such an application or the application filed by the petitioners fails, the stay granted by this court would stand automatically vacated.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondents in order to avoid inconvenience and incurring expenditure by them. However, if the respondents have any grievance to express, they shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

29.11.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No