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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

Sr. No.112

**CR No.286 of 2017**

**DECIDED ON: February 06, 2017**

**BALWINDER SINGH**

**..PETITIONER**

**VERSUS**

**SUDESH PUNJ AND ANOTHER**

**...RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE JASPAL SINGH**

Present: Mr. Arihant Jain, Advocate,  
for the petitioner.

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**JASPAL SINGH, J.**

Through the instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of the order dated November 25, 2016 (Annexure P-4) passed by learned Additional Civil Judge (Sr. Divn.) Sunam, vide which, objections filed by him have been dismissed.

2. It has been submitted by learned counsel for the petitioner that respondents-plaintiffs initially filed a petition under Section 18 of the Hindu Adoption & Maintenance Act, 1956 (for short 'Act') only for the recovery of Rs.4,92,375/- along with interest @ 18% per annum from September,

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2005 to August, 2007 as well as for the recovery of future maintenance @ Rs.2500/- per month each from the date of filing of the petition as well as for creating charge over the share of the petitioner-defendant in the land fully detailed and described in the head note of the plaint. The said suit was decreed ex parte vide judgment and decree dated January 08, 2014. However, during the pendency of the said suit, respondents-plaintiffs were granted interim maintenance vide order dated April 24, 2012, who filed an execution petition No.38 dated July 21, 2012 for the recovery thereof. The Executing Court transferred the execution petition from Khanna to Sunam vide order dated August 30, 2014. The petitioner also filed an application in the month of November, 2014, under Order IX Rule 13 read with Section 151 CPC for setting aside the ex parte order dated January 08, 2014. But that application was dismissed by the learned Additional Civil Judge (Sr. Divn.) Khanna vide order dated February 10, 2016 and against the aforesaid order dated February 10, 2016, the petitioner preferred an appeal, which is now pending before the Additional District Judge at Ludhiana. During the pendency of the execution petition at Sunam, the petitioner also filed objections dated July 29, 2016 which have also been wrongly and illegally dismissed vide impugned order dated November 25, 2016. Impugned order is not sustainable, firstly, on the ground that there is no order as to whether the attachment order will continue or cease to operate; secondly, the suit has already been finally decided vide order dated January 08, 2014; thirdly, the appeal is pending against the judgment of dismissal of an application under Order IX Rule 13 CPC before the Appellate Court at Ludhiana and fourthly, the trial court of Khanna has no jurisdiction to attach the property of the

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petitioner-defendant situated at Sunam. In fact, all these objections have been dismissed by the learned trial court without assigning any cogent reason. Due to pendency of the appeal before the learned Additional District Judge at Ludhiana, against the dismissal of an application under Order IX Rule 13 CPC, the proceedings in the objection petition are liable to be stayed because the matter in controversy is yet to be decided between the parties on merits.

3. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner, but does not find any legal and factual force therein.

4. The mere fact that an appeal is pending against the dismissal of an application moved under Order IX Rule 13 CPC by the petitioner-defendant does not ipso facto mean that the execution proceedings stood stayed.

5. As far as the contention of the learned counsel for the petitioner that the interim order whereby the interim maintenance was granted is not executable in view of passing of the final judgment dated January 08, 2014 is concerned, it carries no legal weight, because the interim maintenance can be recovered and the order can be executed. Moreover, the amount so recovered in execution of the said order can be easily adjusted in the amount which is to be finally paid by the petitioner-husband. Similarly, as far as the objection with regard to the attachment of property is concerned, the order has rightly been passed and there is nothing on record to suggest that it has been released from attachment or it has ceased to operate. Similarly, an objections taken by the petitioner that the Khanna Court has no jurisdiction

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to pass any order of maintenance under the provisions of the Act has no legal foundation. The judgment and decree has already been passed and the Executing Court has to execute the decree as it exists. However, an aggrieved party can challenge the same in case any remedy is available to it by way of an appeal or revision etc. Thus, this court is of the considered view that impugned order is perfectly legal and valid. There is nothing to meddle with it.

6. Thus, taking the case of the petitioner from any of the angles, this court does not find any merit in the instant petition. Accordingly, it stands dismissed. Resultantly, impugned order is upheld.

7. No order as to costs.

February 06, 2017  
*Ankur*

(JASPAL SINGH)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |