

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

Sr. No.121

**Civil Revision No. 4086 of 2017
DECIDED ON: June 02, 2017**

GURHARBANS SINGH

..PETITIONER

VERSUS

BALWANT SINGH & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sagar Aggarwal,, Advocate,
for the petitioner.

JASPAL SINGH, J.

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated May 15, 2017 passed by the learned Civil Judge (Sr. Divn.), Tarn Taran (Annexure P-4) vide which an application for staying the execution proceedings during the pendency of an application under Order IX Rule 13 of the Code of Civil Procedure (for short 'Code') filed by the petitioner for setting aside the ex-parte judgment and decree dated May 30, 2003; has been dismissed.

The contention of learned counsel for the petitioner is that

respondent No.1/plaintiff filed a suit for possession land measuring 83 kanals and 5 marlas fully detailed and described in para 1 (i) of the instant revision, which was decreed ex-parte vide judgment and decree dated May 30, 2003. In order to get the afore-said decree implemented and executed, respondent No.1/plaintiff filed an execution petition. It has further been averred by the learned counsel for the petitioner that on February 26, 2016, petitioner went to the Halqa Patwari of village Kasel for some official work and at that time he was informed by the Halqa Patwari that respondent No.1/plaintiff has obtained an ex-parte decree against him, and is trying to get the possession of the land by getting warrants of possession. Immediately, he enquired in the matter and obtained the certified copy of the judgment and decree dated May 30, 2003 and moved an application under Order IX Rule 13 of the Code for setting aside the same. Thereafter, petitioner moved an application for staying the execution proceedings filed by respondent No.1/plaintiff till the final disposal of an application under Order IX Rule 13 of the Code, which has been dismissed vide impugned order.

While assailing the impugned order it has further been contended by learned counsel for the petitioner that executing Court while passing the impugned order, has ignored the basic principles of equity, justice and fair play. In fact, respondent No.1/plaintiff in connivance with Ram Singh has cheated the petitioner and further proforma respondents by creating the forged power of attorney and believing the same to be true and genuine and executed by the respondent No.1 in favour of Ram Singh. As a matter of fact, an application under Order IX Rule 13 of the Code is pending

adjudication and there are good chances that the same be allowed for the grounds taken therein, in case an ex-parte judgment and decree dated May 30, 2003 is implemented/executed, the very purpose of the application would stand defeated. To buttress his contention, learned counsel for the petitioner has placed reliance upon the pronouncement passed by this Court in the case of **Davinder Pal Singh & another vs. Narinder Pal Singh & others; 2016 (3) LAR 376.**

This court has given an anxious thought to the afore-said submissions made by learned counsel for the petitioner and have also gone through the judgment relied upon by learned counsel for the petitioner during the course of arguments.

There is no dispute so far as the observation made in the above-referred judgment is concerned to the effect that it would not be appropriate to rush with the execution till the decision of an application under Order IX Rule 13 of the Code. As the decree is deemed to be subjudiced during the pendency of an application for setting aside thereof, but this Court is of the considered view that the mere fact that an application under Order IX Rule 13 of the Code has been filed does not *ipso facto* mean that ex-parte judgment and decree has lost its sanctity, value and authenticity. The decree is as good as the other decrees till the same is set aside. Moreover, each case has to be decided on its peculiar facts and circumstances and no such judgment can be made applicable as straight jacket formulae. In the case in hand, an ex-parte judgment and decree had been passed in the year 2003. Since then, a period of 14 years has elapsed. An application for setting aside the afore-said ex-parte judgment and decree was filed in the year

2015, it cannot be said to be that petitioner was not aware about the decree or that he only came to know from the Halqa Patwari. It is not the case of the petitioner that he visited the Halqa Patwari for the first time when the above-said facts were disclosed within a period of 12 years. Otherwise also, JDs are enjoying the fruits of the property subject matter of the decree for the last about 14 years illegally.

Thus, pendency of an application under Order IX Rule 13 of the Code is not a bar on the continuation of execution proceedings and in this regard we can have the reference of pronouncement of this Court rendered in the case of ***Shree Chand vs. Juglal; 2002-03 CCC 1.***

In these circumstances, this Court is of the considered view that impugned order does not suffer from any illegality, infirmity or perversity. Otherwise also grant of an injunction and staying the execution proceedings during the pendency of an application under Order IX Rule 13 of the Code would result into great prejudice to the decree holder, who is otherwise deprived of the fruits of the land subject matter of the decree.

In the light of what has been discussed above, this court does not find any merit in the instant petition and same is dismissed, whereby the impugned order is upheld.

No order as to costs.

JUNE 02, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No