

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.4821 of 2017

Date of Decision:-26.07.2017

Mohan Lal.

.....Petitioner.

Versus

Niranjan Dass deceased through his Lrs & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Rajan Bansal, Advocate for the Petitioner.

JASWANT SINGH, J. (ORAL)

Petitioner (tenant no.1) is in revision assailing the order dated 04.07.2017 (P-4) passed by the learned Additional Civil Judge (Sr. Divn.), Ambala whereby his application for stay of execution proceedings and recalling warrants of possession unexecuted was dismissed.

Learned Counsel for the petitioner (tenant no.1) has argued that admittedly the petitioner has filed an application for setting aside the ex-parte judgment and decree by invoking the provisions of Order 9 Rule 13 CPC which was dismissed but the appeal is pending and thus, the executing Court has acted beyond its jurisdiction by continuing with the execution application and dismissing the application for recalling the warrants of possession vide impugned order dated 4.7.2017 (P-4). In support of his contention he has placed reliance upon **Davinder Pal Singh & Anr. Vs. Narinder Pal Singh & Ors. 2016(3) RCR (Civil) 194 & Sunita Khanna Vs. B.L. Gupta 2001(3) Civil CC 14.**

After hearing learned Counsel for the petitioner and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and deserves to be dismissed.

It is not in dispute that the petitioner (tenant) had appeared through his counsel during trial but had subsequently stopped appearing, which resulted into passing of the ex-parte eviction order dated 20.05.2016. It is also not in dispute that after dismissal of application under Order 9 Rule 13 CPC vide order dated 04.02.2017 (P-2), tenant-petitioner filed an appeal on 28.04.2017, however, no stay of the proceedings has been ordered by the Appellate Authority. In the meantime, respondent (landlord) filed an execution application in which warrants of possession have also been issued. Under these facts and circumstances, the learned Executing Court rightly dismissed the application filed by the petitioner (tenant) for recalling the warrants of possession, as there is no vested right in the petitioner (tenant) to seek stay of proceedings in execution, especially when there is no stay granted by the Appellate Authority. The judgments that have been relied upon by learned Counsel for the petitioner are not applicable to the facts of the present case because in both the cases, applications under Order 9 Rule 13 CPC were pending and thus, there was no adjudication on the merits or demerits of the application itself. However, in the present case, after framing of issues, the trial Court has dismissed the application under Order 9 Rule 13 of CPC finding it to be frivolous.

In view of the above, present petition is dismissed being devoid of merit with costs of Rs.10,000/- to be deposited before the District Legal Services Authority, Ambala.

(JASWANT SINGH)
JUDGE

July 26, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>