

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 105

Civil Revision No.8679 of 2016 (O & M)
Date of Decision: March 01, 2017

Satyawan

..... PETITIONER

VERSUS

Bal Kishan & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Munish Kumar Garg, Advocate, for the petitioner.

Mr. Vivek Goel, Advocate, for respondent Nos.1 to 4.

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Jaspal Singh, J

1. Challenge in this revision petition preferred under Article 227 of the Constitution of India is to Order dated December 01, 2016 (Annexure P-11) passed by the Additional Civil Judge (Senior Division), Rohtak in Execution Petition No.508 of 2013, captioned as 'Bal Kishan & others vs. Karan Singh & others', in pursuance of which, warrant of possession dated December 06, 2016 (Annexure P-12) has been issued, as well as to order dated December 15, 2016 (Annexure P-13) passed in Application No.63 of 2016 which had been adjourned to February 01, 2017 for filing reply and Power of Attorney on behalf of the respondents – plaintiffs, without deciding the stay application moved alongwith application under Order IX Rule 13 CPC.

2. Undisputably, in a Civil Suit No.296 of 2004, captioned as 'Bal Kishan & others vs. Karan Singh & others', an ex parte judgment & decree dated May 10, 2011 (Annexure P-7) was passed, for possession regarding plot Nos.29 and 30 in favour of the plaintiffs and against defendants with costs. Since the JDs/defendants did not comply with the said judgment & decree, the decree holders were constrained to file an execution application. During the pendency of execution application, one of the defendants i.e. petitioner filed an application under Order IX Rule 13 CPC for setting aside judgment & decree dated May 10, 2011. Simultaneously, he also moved an application before the executing court for staying the proceedings in view of pendency of application for setting aside the judgment & decree which has been declined by the trial court and warrant of possession has been issued. These orders have been challenged by the petitioner through the instant revision petition.

3. The contention of learned counsel for the petitioner is that in case, ex parte judgment & decree dated May 10, 2011 is implemented, the very purpose of application under Order IX Rule 13 CPC would stand defeated. Infact, the petitioner was not served in the suit in which the aforesaid ex parte judgment & decree has been passed and there is every likelihood of setting aside thereof.

4. This Court has given an anxious thought to the aforesaid submissions made by learned counsel but find the same to be without any legal force.

5. Mere filing of an application under Order IX Rule 13 CPC does not *ipso facto* mean that ex parte judgment & decree dated May 10, 2011 has rendered unexecutable. It is incumbent upon the petitioner to prove

judgment & decree is set aside, it is the duty of the executing court to execute the same, especially in the circumstances that earlier while passing the decree, sufficient notice was given to the concerned parties. Moreover, there is no provision to stay the execution of the decree merely on filing of an application under Order IX Rule 13 CPC. If at all, petitioner is aggrieved, he can approach the court, which is seized of the matter, seeking stay with regard to operation of ex parte judgment & decree which has not been done in the instant case.

6. In the light of what has been discussed above, this Court is of the considered view that the orders under challenge are absolutely in consonance with the legal proposition and do not call for any interference. The instant petition being devoid of any merit is dismissed.

March 01, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No