

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. R. No. 4122 of 2018

Date of Decision : July 03, 2018

Simarjit Kaur

....

Petitioner

vs.

Jarnail Singh

....

Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Rajesh Narang, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. :

Through the present petition, challenge is made to the order dated 17.05.2018 passed by the Additional Civil Judge (Senior Division), Fazilka (for short – the Executing Court) dismissing the application filed by the petitioner seeking therein stay of the proceedings initiated by the respondent to execute the ex-parte judgment and decree dated 24.12.2014, for the reason that an application filed by her under Order 9 Rule 13 CPC for setting aside the aforesaid ex-parte judgment and decree was pending.

The facts, in brief, which need to be noticed for adjudicating the issues raised in the present petition are that the respondent had filed a suit seeking therein the specific performance of the agreement dated 26.09.2011. In this suit, the petitioner, who was defendant therein, was proceeded ex-parte and the suit was decreed on 24.12.2014. After 3½ years, when the execution proceedings initiated by the respondent were pending, the petitioner filed an application before the trial Court under Order 9 Rule

13 CPC for setting aside the ex-parte judgment and decree. Simultaneously, the petitioner filed an application before the Executing Court seeking stay of the execution proceedings during the pendency of the aforesaid application filed by the petitioner under Order 9 Rule 13 CPC. The application was dismissed by the Executing Court leading to the filing of the present petition.

Counsel for the petitioner has been heard and with his able assistance, the record perused.

In the case in hand, on 16.05.2012, the respondent had filed a suit against the petitioner seeking therein specific performance of the agreement to sell dated 26.09.2011. In this suit, the petitioner was proceeded ex-parte and thereafter, on 24.12.2014, the suit was decreed. After the respondent had initiated proceedings for execution of the decree, the petitioner filed an application before the trial Court under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree dated 24.12.2014. Simultaneously, the petitioner filed an application before the Executing Court seeking stay of the execution proceedings during the pendency of the aforesaid application filed by the petitioner under Order 9 Rule 13 CPC. Such application has been dismissed by the Executing Court.

A perusal of the impugned order shows that the application filed by the petitioner has been dismissed by the Executing Court on the ground that there is no order of stay of the execution proceedings. That being so, instead of rushing to this Court through the present petition, the

petitioner should have first availed of her remedy for seeking stay of the execution proceedings in the proceedings initiated by her under Order 9 Rule 13 CPC. The same has not been done.

Dismissed.

(DEEPAK SIBAL)
JUDGE

July 03, 2018

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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>