

(119) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CR No.5441 of 2018

Date of decision:16.10.2018

Surjit Kaur Petitioner
Versus

Sarabjit Kaur and another Respondents

2. CR No.5447 of 2018

Gurdev Singh Petitioner
Versus

Sarabjit Kaur and another Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Sharad Mehra, Advocate for the petitioner(s).
Mr. Vikas Gupta, Advocate for respondent No.1

B.S. Walia, J. (Oral)

[1] This order shall dispose of CR Nos.5441 and 5447 of 2018 as identical question of law is involved in both cases.

[2] Application (Annexure P-3) under Order 9 Rule 13 CPC was filed by the petitioner for setting aside ex parte judgment and decree dated 08.07.2016 (Annexure P-2) passed by the learned Civil Judge (Sr. Division), Tarn Taran on 28.09.2017 pursuant to receipt of summons in execution application dated 24.10.2016 on 14.09.2017.

[3] While framing issues in the application under Order 9 Rule 13 CPC, the learned Additional Civil Judge (Sr. Division), Tarn Taran

dismissed the application for stay of operation of judgment and decree on the ground that the application was not maintainable under Order 21 Rule 29 CPC. It was also observed that so far as Order 21 Rule 26 CPC was concerned, the application for stay of operation of judgment and decree was not maintainable as the decree in question had not been received by way of transfer by the Executing Court but was passed by the same Court itself.

[4] Learned counsel for the petitioner has relied upon the decision of this Court in **Makhan Singh and others v. Harbans Lal and another, 2017 (1) RCR (Civil) 288** to contend that the impugned order is legally unsustainable. Learned counsel contends that in Makhan Singh's case (Supra), this Court, while considering the alternative prayer for keeping warrants of possession in abeyance, also considered and decided the application for stay of execution while seized of the proceedings under Order 9, Rule 13 CPC and in the light of Order 21 Rule 26 CPC coupled with the fact that application under Order 9, Rule 13 CPC was pending for the past more than one year held that the Executing Court should have allowed reasonable time to the petitioners to enable the judgment-debtors to apply to the Court by which the decree was passed to stay execution of the decree. In the aforementioned circumstances, the revision petition was disposed of with liberty to the petitioners to file an appropriate application for stay of execution proceedings before the Court by which the decree was passed or the Court in which the proceedings under Order 9, Rule 13 CPC were pending and in the meantime, ordered that warrants of possession, if not already executed, be kept in abeyance for a period of two months.

[5] Learned counsel has also relied upon the decision of this Court in **Davinder Pal Singh and another v. Narinder pal Singh and others,**

that where the application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree was still pending, it would not be appropriate to rush with the execution proceedings till the decision of the application under Order 9 Rule 13 CPC, therefore, the execution proceedings were stayed till the decision of the application under Order 9 Rule 13 CPC.

[6] Per Contra, learned counsel for the respondents contended that the facts of the instant case were distinguishable from Makhan Singh's case (Supra) inasmuch as in Makhan Singh's case (Supra), no application for stay had been filed whereas in the instant case, the petitioner had filed the application for stay and the same had been dismissed by the learned Executing Court.

[7] I have considered the submissions of learned counsel for the parties.

[8] Admittedly, application under Order 9 Rule 13 CPC was filed by the petitioner on 28.09.2017 on receipt of summons in the execution application on 14.09.2017 in respect of execution application dated 24.10.2016 seeking execution of the judgment and decree dated 08.07.2016. Along with the application under Order 9 Rule 13 CPC filed by the petitioner on 28.09.2017, an application was moved by the petitioner for stay of execution proceedings till decision of the application under Order 9 Rule 13 CPC. The learned trial Court dismissed the application under Order 21 Rule 26 CPC on the ground that the decree in question had not been received by way of transfer by the Executing Court but was passed by the same Court itself. Order 21 Rule 26 CPC reads as under:-

“When Court may stay execution:- (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment

debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an Order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

*(3) **Power to require security from, or impose conditions upon, judgment-debtor-** Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court shall require such security from, or impose such conditions upon, the judgment debtor as it thinks fit.”*

A perusal of Order 21 Rule 26 CPC reveals that on sufficient cause being shown, the Court to which a decree had been sent for execution can stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the Court by which the decree was passed or to any Court having appellate jurisdiction for an order to stay execution or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellant Court if execution had been issued thereby, or if application for execution had been made thereto.

Thus it is clear that even if the learned trial Court is not the Court to which the decree had been sent for execution, being the Court itself which had passed the judgment and decree in respect of which execution had

been filed, the Court was required to consider whether sufficient cause was made out to stay the execution proceedings.

[9] Since, in the instance case, application under Order 9 Rule 13 CPC is pending with issues having been framed in the same, it would be in the interest of justice that the execution proceedings are not rushed through and the same are stayed till the decision of the application under Order 9 Rule 13 CPC moved by the petitioner in the light of the decision of this Court in Davinder Pal Singh’s case (Supra). Learned counsel for the respondents has sought issuance of directions to the learned trial Court to decide the application under Order 9 Rule 13 CPC expeditiously. The same merits acceptance.

[10] Accordingly, the learned trial Court before which the application under Order 9 Rule 13 CPC as also the execution application is pending, is directed to decide the application under Order 9 Rule 13 CPC as expeditiously as possible, preferably within a period of four months from the date of receipt of certified copy of this order. In the meantime, there shall be stay of the proceedings before the learned Executing Court.

[11] Disposed of with the aforesaid observations.

[12] Needless to mention, the learned trial Court shall not grant any adjournment unless the same is justified in accordance with law. It is further ordered that on the application under Order 9 Rule 13 CPC being decided, if the circumstances of the case so warrant, objections filed to the Execution application be decided and action as warranted, taken in accordance with law.

(B.S. Walia)
Judge

16.10.2018
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