

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 101

Case No. : CR No. 7246 of 2017 (O&M)

Date of Decision : November 28, 2018

Jaswinder Singh Petitioner

vs.

Sahib Masih and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Raman Goklaney, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the orders dated 07.01.2017 and 18.07.2017 passed by Civil Judge (Junior Division), Ferozepur (for short – the Executing Court), through which the petitioner/judgment-debtor's objections have been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondent no. 1 filed a suit seeking therein possession of land detailed and described in the head note of the plaint (for short – the suit property). In such suit, the petitioner, who was defendant no. 1, was proceeded ex-parte. After considering the ex-parte evidence led by respondent no. 1, through judgment and decree dated 19.10.2007, Civil Judge (Junior Division), Ferozepur (for short – the trial court) decreed respondent no.1's suit. About six years thereafter i.e. in

September 2013, the petitioner filed an application under Order 9 Rule 13 CPC seeking setting aside of the aforesaid judgment and decree passed by the trial court. Such application was dismissed by the trial court on 07.11.2016, against which the petitioner has filed an appeal which is pending before the Appellate Court. In the meanwhile, in the execution proceedings initiated by respondent no. 1, the petitioner filed objections to the effect that his application under Order 9 Rule 13 CPC was pending and that as per the revenue record, he was the owner of the suit property. Since the decree, the execution of which had been sought by respondent no. 1, had neither been reversed/modified nor the same had been stayed by any superior Court, the Executing Court dismissed the petitioner's objections. Such order of the Executing Court is the subject matter of challenge in the present proceedings.

Learned counsel for the petitioner has been heard.

No fault is found with the order of the Executing Court seeking to execute the judgment and decree, through which respondent no.1/plaintiff's suit for possession has been decreed as such judgment and decree has neither been stayed nor reversed/modified by any superior Court, especially when the petitioner also has the remedy for seeking restitution of possession under Section 144 CPC in case the judgment and decree passed against the petitioner is set aside or modified in the Order 9 Rule 13 CPC proceedings being pursued by the petitioner for setting aside the ex-parte judgment and decree passed against him.

In view of the above, no merit is found in the present petition

and accordingly, the same is dismissed. However, it is clarified that the dismissal of the present petition would not debar the petitioner from applying for stay before the Appellate Court where his appeal against the dismissal of his application under Order 9 Rule 13 CPC is pending.

(DEEPAK SIBAL)
JUDGE

November 28, 2018
monika

<i>Whether speaking/reasoned ?</i>	<i>Yes.</i>
<i>Whether reportable ?</i>	<i>No.</i>