

CR-5145-2016 (O&M)

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5145-2016 (O&M)
Date of decision : 06.02.2019

Gujjar Singh (deceased) through LRs

... Petitioner

Versus

Master Bachittar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.K.S. Phoolka, Advocate for the petitioner.

None for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 12.07.2016 (Annexure P-1), whereby the application for interim stay moved along with application under Order 9 Rule 13 of CPC seeking setting aside the *ex parte* judgment and decree dated 09.04.2005, has been declined.

This Court on 10.08.2016 passed the following order:-

"Learned counsel for the petitioner contends that there was an ex parte decree dated 9.4.2005 against the petitioner. The suit was decreed for a sum of ₹22,000/- along with interest @ 6% per annum from the date of pronote till the date of decree and future interest @ 4% per annum from the date of decree till final realisation of the amount. An application under Order 9 Rule 13 CPC has already been filed before the trial Court, which is still pending. In the application for interim stay, the impugned order came to be passed, thereby granting interim stay subject to deposit of ₹44,714/- by the petitioner- judgment debtor within stipulated time. Learned counsel further contends that under Order 21 Rule 26 CPC, even the Executing Court has powers to stay execution of a decree for a

CR-5145-2016 (O&M)

reasonable time in order to enable the Judgment debtor to apply under Order 9 Rule 13 CPC or to file appeal against ex parte decree. The Court is empowered to grant stay for a limited period till conclusion of proceedings under Order 9 Rule 13 CPC. The deposit of entire decretal amount along with interest would amount to satisfy the execution of ex parte decree during subsistence of proceedings under Order 9 Rule 13 CPC.

Notice of motion for 19.9.2016.

Subject to furnishing of adequate security to the satisfaction of Executing Court, operation of the impugned order dated 12.7.2016 shall remain stayed."

Mr. P.K.S. Phoolka, learned counsel for the petitioner submitted that in pursuance to the order dated 10.08.2016, adequate security has been given and the application under Order 9 Rule 13 of CPC is pending.

The respondents though represented by Mr. A.S. Brar, Advocate, as per order dated 25.10.2016 and 27.02.2017, but thereafter, there is no representation.

Keeping in view the aforementioned facts, I am of the view that since the application under Order 9 Rule 13 CPC is pending and issues have been framed and the parties have been leading evidence, it would be in the fitness of things to make the order dated 10.08.2016, as absolute, till the pendency of the application, aforementioned.

With the aforesaid observations, the present revision petition is disposed of.

06.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No