

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-7574-2018

Date of decision: 16.10.2019

Parminder Singh

.....Petitioner.

vs.

Kuldeep Singh

.....Respondent.

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Mr. Munish K. Garg, Advocate for the petitioner.

Mr. Amarjeet Markand, Advocate for the respondent.

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Sanjay Kumar, J. (ORAL)

This revision petition under Article 227 of the Constitution of India arises out of the order dated 20.9.2018 passed by the Executing Court of the learned Civil Judge (Junior Division)-cum-JMIC, Tohana, District Fatehabad, in CIS No. EXE/30/2015. The said Execution Petition was filed by the decree holder-plaintiff in Civil Suit No. 322-C of 2012, the respondent herein.

The said suit, filed for specific performance of agreement to sell dated 22.7.2009 with consequential reliefs, was decreed on 6.5.2015 whereby, the defendant in the suit, the petitioner in this revision, was directed to execute the sale deed in favour of the plaintiff, the respondent herein, regarding the suit land after receiving the balance sale consideration within two months from the date of the order. By the impugned order dated 20.9.2018, the Executing Court permitted the plaintiff, the respondent herein, to withdraw the Execution Petition reserving liberty to file a fresh

Execution Petition as per law. However, in the body of the order, the Executing Court made various observations on the merits of the matter in the context of the objections raised by the petitioner herein, being the judgment debtor in the Execution Petition.

Mr. Garg, learned counsel representing the petitioner, would contend that the observations made on merits would adversely affect the rights of his client in the event a fresh Execution Petition is filed pursuant to the liberty granted by the Executing Court. Mr. Markand, learned counsel representing the plaintiff, the respondent herein, would inform this Court that no fresh Execution Petition has been filed as yet pursuant to the liberty granted by the Executing Court but the application filed by the petitioner herein under Order 9 Rule 13 of the Code of Civil Procedure to set aside the ex-parte decree passed in the suit was dismissed on 31.5.2015 and the appeal filed thereagainst is pending consideration.

In the light of the aforesaid averments, this Court is of the opinion that it would suffice in the interest of justice if the rights of both parties are protected at this stage. Having dismissed the Execution Petition reserving liberty to the petitioner therein to file a fresh Execution Petition, the Executing Court ought not to have gone into the merits of the matter and made observations thereon. Such an exercise was not called for when the petitioner therein sought leave to withdraw the Execution Petition.

The Civil Revision petition is accordingly disposed of making it clear that the observations made on merits in the order dated 20.9.2018 by the Executing Court of the learned Civil Judge (Junior Division)-cum-Judicial Magistrate Ist Class, Tohana, District Fatehabad, shall not be binding on the

parties or the Court in the event a fresh Execution Petition is filed by the respondent herein. It shall be open to the petitioner to raise all contentions available to him in law therein.

(SANJAY KUMAR)
JUDGE

16.10.2019
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whether speaking/non speaking	yes
whether reportable/non reportable	yes/no