

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 220

CR-8575-2014

Date of decision : 30.09.2019

Deep Chand

..... Petitioner

VERSUS

Mahender Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Balram Prashar, Advocate, for the petitioner.

Mr. Rajat Garg, Advocate, for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 03.12.2014, passed by the Civil Judge (Junior Division), Gurugram (for short, the Executing Court), dismissing an application filed by the petitioner seeking stay of execution proceedings during the pendency of an application preferred by him under Order 9 Rule 13 CPC through which he had sought the setting aside of the order of the Trial Court dated 01.06.2006 through which the petitioner was proceeded against *ex parte* and the *ex parte* judgment and decree of the Trial Court dated 06.08.2008.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein specific performance of agreement to sell dated 21.03.2006 pertaining to land measuring 60 square yards detailed and described in the head note of his plaint (for short, the suit property). On being put to notice the petitioner failed to appear before the Trial Court and therefore on 01.06.2006 was proceeded against *ex parte*. Thereafter through an *ex parte* judgment and decree dated 06.08.2008 the Trial Court decreed the respondent's suit. The respondent then filed an application seeking execution of the aforesaid decree of the Trial Court. When the petitioner was put to notice of such execution proceedings, on 27.04.2011, he filed an application under Order 9

01.06.2006 as also the *ex parte* judgment and decree dated 06.08.2008. During the pendency of his application under Order 9 Rule 13 CPC the petitioner filed an application before the Executing Court seeking stay of proceedings. The Executing Court dismissed the petitioner's stay application. Such order is under challenge in the present proceedings.

On 16.09.2019 it was noticed by this Court that the petitioner's application filed by him under Order 9 Rule 13 CPC had been pending before the Trial Court at Gurugram for the last over eight years and this was in spite of the fact that there was no interim stay of such proceedings by any Court. Therefore, the District Judge, Gurugram was directed to file a report as to why such inordinate delay had occurred in the disposal of the petitioner's aforesaid application.

In compliance with the directions by this Court, a report dated 24.09.2019 by the District Judge, Gurugram has been received, as per which it is acknowledged that in spite of no interim stay of proceedings the petitioner's application filed by him under Order 9 Rule 13 CPC remained undecided; that it had been unnecessarily adjourned on several occasions; was inadvertently tagged with the execution proceedings and that the concerned Trial Judge was of the mistaken view that such proceedings were to await the final order of this Court in the present proceedings. It has further been reported that now the petitioner's aforesaid application is listed for his evidence on 26.09.2019.

The above sorry state of affairs are unfortunate.

Nonetheless, the present petition is disposed of with a direction to the Trial Court to dispose of the petitioner's application filed by him under Order 9 Rule 13 CPC seeking therein setting aside of the *ex parte* order dated 01.06.2006 as also the *ex parte* judgment and decree dated 06.08.2008, both passed by the Trial Court, within three months from the dated of receipt of a copy of this order.

As the execution proceedings have remained stayed since the year

2014, such stay shall continue till the disposal of the petitioner's aforesaid application.

30.09.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No