

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

CR no.1925 of 2019

Date of Decision: 12.04.2019

Ajay Kumar

...Petitioner

Vs.

Kapil Hans

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Parminder Singh, Advocate, for the petitioner.
Mr. Namit Khurana, Advocate, for the respondent.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the three orders passed by the learned executing court, of which two are dated 20.02.2019, with the last dated 12.03.2019.

The order Annexure P-5 (dated 20.02.2019) is one by which the application of the petitioner seeking stay on the execution proceedings during the pendency of his application filed under Order 9 Rule 13 CPC, has been dismissed.

The other order of the same date, i.e. Annexure P-6, is one by which, after noticing that the application seeking stay on the execution proceedings had been dismissed, the matter was adjourned to 26.02.2019 for filing a draft sale-deed.

Vide the order dated March 12, 2019 (copy Annexure P-9), another application seeking stay on execution proceedings has been dismissed on the ground that in fact even the sale-deed that was to be

executed pursuant to the decree issued in favour of the respondent-decree holder, had already been executed and therefore execution proceedings could not be stayed.

On the last date of hearing, learned counsel for the respondent had brought to the notice of this court that as a matter of fact against both the orders passed on February 20, 2019, as have been impugned in the present petition, an appeal had been filed by the petitioner before the learned Additional District Judge, which was withdrawn only after the present petition was instituted in this Court and consequently this petition would not be maintainable.

On that issue, Mr. Parminder Singh submits that the appeal was filed under a mistaken impression that it was maintainable and consequently upon this petition having been filed (upon notice of motion having been issued in this petition) that appeal was withdrawn, which actually should have been withdrawn prior to the filing of this petition.

That contention is very difficult to digest because even under a mistaken impression that an appeal had been filed and thereafter it was realized that it was not maintainable, with a revision instead being maintainable before this court, the appeal should have been withdrawn first before the filing of this petition.

Even taking it that it was not withdrawn due to a *bona fide* error as is contended by learned counsel for the petitioner, what this Court cannot omit to notice is that the said appeal was withdrawn on 30.03.2019,

only after notice of motion had been issued in the present petition on March 27, 2019.

Obviously, the petitioner is trying to play with the judicial system and as such he does not deserve any sympathy whatsoever.

As regards the merits of the aforesaid order, dated February 20, 2019, in the order Annexure P-5, it is stated that the application filed by the petitioner under Order 9 Rule 13 CPC having been dismissed by this Court on that date itself, the question of staying proceedings before the execution Court on that ground in any case would not arise.

I see no error in the reason given by the trial in dismissing that application.

As regards the order of same date (copy Annexure P-6), upon dismissal of the application filed under Order 9 Rule 13 of the CPC and the one seeking stay on the execution proceedings, the next natural step with the executing court naturally was that the draft sale deed as was to be executed in terms of the decree issued in favour of the respondent-decree holder, be submitted to the Court.

Hence, I see nothing unreasonable stated in that order either.

Coming last to the order Annexure P-9, dated March 12, 2019, that is again an order dismissing another application seeking stay on execution proceedings, a copy of the said application dated March 02, 2019 being Annexure P-8 with this petition.

The reasoning given in that order impugned, is to the effect that with the objections filed by the defendant-judgment debtor (present

petitioner) already having been dismissed, and his application under Order 9 Rule 13 also having been dismissed and the application itself seeking stay on the execution proceedings having been filed when the sale deed had already been executed in favour of respondent-decree-holder, with no application under Order 9 Rule 13 therefore pending in the District Court at Karnal, there was no question of any stay being granted.

It has been further observed in the order that possibly an appeal against the order dismissing the application under Order 9 Rule 13 may have been pending, but that actually had not been pleaded by the applicant (present petitioner) in his application.

That observation is found to be perfectly correct upon a perusal of Annexure P-8 herewith, wherein not a word has been stated to the effect that an appeal against the order dismissing the petitioners' application under Order 9 Rule 13 was pending, the wording used being that an application under Order 9 Rule 13 was pending in the District Court, Karnal, which was sub-judice "before the trial court".

Again very obviously either it was a case of extremely poor drafting or an attempt to overreach the system, and consequently, the learned trial court made no error in dismissing that application, it not being maintainable in the first place, the previous application seeking the same relief already having been dismissed.

That being so, this petition is dismissed with costs of Rs.10,000/-.

Even having dismissed this petition and having imposed costs

on the petitioner, for filing frivolous applications one after the other and filing a revision petition before this court without withdrawing a non-maintainable appeal earlier filed, and withdrawing that appeal only after notice of motion was issued in this petition, yet, in the interest of justice, since the appeal under Order 9 Rule 13 CPC is still stated to be pending before the learned appellate court, the petitioner be not dispossessed from the premises till the next date of hearing in that appeal, i.e. 06.05.2019, with it made absolutely clear that the learned appellate court would positively decide that appeal either on that date itself, or at the most within one week thereafter; and if that appeal is dismissed, the interim order passed by this Court in this petition shall stand automatically vacated, and of course, if that appeal is allowed by the appellate court, further orders on dispossession/non-dispossession would be passed by that court itself (in the order to be passed in that appeal).

12.04.2019

vcgarg/dinesh

**(Amol Rattan Singh)
Judge****Whether speaking/reasoned : Yes****Whether reportable : Yes**