

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

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IN VIRTUAL COURT

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CR No. 1087 of 2021

Date of decision : 19.8.2021

Rajesh Kumar

.....Petitioner

Vs.

Kamaljit Singh and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Gitish Bhardwaj, Advocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Article 227 of the Constitution of India seeking quashing of order dated 15.3.2021, passed by the Civil Judge (Senior Division), Patiala; in Execution Application No. 654 of 2018 (CNR No. PB PT 02-002959-2018), whereby the sale of assets of petitioner was ordered; without taking into consideration the pendency of the application under Order 9 Rule 13 CPC, which has been filed for setting aside the ex parte decree dated 17.8.2017.

It has been submitted by counsel for the petitioner that the decree sought to be executed was passed when the petitioner, along with all his brothers, was in custody in connection of a criminal case. Therefore, the petitioner was not served as per the law. Nor had the petitioner got an opportunity to present his case at the relevant time because of being in jail. However, after coming out of the jail, the petitioner had moved an application under Order 9 Rule 13 CPC for setting aside the ex parte

proceedings. The said application is being repeatedly adjourned because the respondents/decreed holder has been seeking time to file reply to the application. Consequently, the same is pending for about two years now. Therefore, it is submitted by counsel for the petitioner that; on the one hand, the Executing Court is proceeding further with the Execution, and on the other hand, the application filed by the petitioner for setting aside the ex parte decree is not getting decided because of the fault of the respondents/decreed holder. Counsel for the petitioner has relied upon the judgment of this Court rendered in the case of **Davinder Pal Singh v. Narinder Pal Singh (P & H)** Law Finder Doc. ID #767550, to contend that the execution should not be proceeded further till the final decision is taken on the application filed by the judgment debtor under Order 9 Rule 13 CPC.

Having considered the case and having perused the judgment cited by counsel for the petitioner, this Court finds substance in the argument of counsel for the petitioner. Needless to say, that the ultimate aim of the process of the Court is to ensure that the justice done to the parties. Sticking to the technicalities of law may hamper justice in certain situations. Therefore, in case of option with the Court to choose between the technicalities and the substantial justice, it is the option for substantial justice which should prevail. Decision on the application filed by the petitioner under Order 9 Rule 13 CPC is a step towards ensuring that the petitioner gets the justice by presenting his case before the Court. Hence, it would be appropriate if the trial Court is directed to decide the application moved by the petitioner within a time bound manner and till then, the

proceedings before the Executing Court are kept in abeyance.

Accordingly, the present petition is disposed of with a direction to the trial Court to decide the application moved by the petitioner under Order 9 Rule 13 CPC, within a period of six months from the date of receipt of certified copy of this order.

Till the date of decision of the said application, the proceedings before the Executing Court are ordered to be kept in abeyance.

(RAJBIR SEHRAWAT)
JUDGE

19.8.2021

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No