

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

CR-3577-2022

Date of decision : 02.09.2022

Kamla Devi @ Kamala Yadav

...Petitioner

Vs.

Abhimanyu Rao

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Ajay Jain, Advocate for the respondent.

MANOJ BAJAJ, J.

Petitioner (judgment debtor) is aggrieved against the order dated 24.08.2022 (Annexure P-7) passed by Additional District Judge, Rewari, whereby the order dated 06.04.2022 passed in execution petition bearing No.208/2019 dismissing his application under Order XXXIX Rules 1 and 2 CPC during the pendency of her application under Order IX Rule 13 CPC for setting aside the *ex parte* decree dated 30.07.2019, was upheld.

Briefly, the facts of the case are that the plaintiff (respondent) brought a suit bearing No.2654/2015 seeking possession by way of a specific performance of contract dated 26.03.2018 relating to the suit property bearing House No.742, Sector-3, Part-I, Rewari and the same was decreed in his favour through *ex parte* judgment and decree dated 30.07.2019, as the petitioner/defendant failed to appear despite valid service. Later, decree-holder through execution petition No.208-2019 sought execution of the above decree and during those proceedings also, the judgment debtor did not appear and the

executing Court by appointing Court Commissioner got executed the sale deed No.8015 dated 22.01.2020 in respect of suit property in favour of decree-holder. The possession of the suit property was also handed over to decree-holder on 22.03.2021. Thereafter, on 22.03.2021, the petitioner (judgment debtor) filed an application under Order IX Rule 13 CPC for setting aside *ex parte* decree on the ground that she was never served either in the civil suit or in the execution petition, because the decree holder had connived with the process server and the defendant had no knowledge of these proceedings. As per the contents of the application, the defendant came to learn about the *ex parte* judgment and decree and other proceedings of execution when the possession of the property was handed over to the decree-holder on 23.02.2021. Along with the application under Order IX Rule 13 CPC, a separate application under Order XXXIX Rules 1 and 2 read with Section 151 CPC was also filed to restrain the respondent from selling or alienating the property in question during the pendency of her application.

The application was contested by defendant and the same was dismissed vide order dated 06.04.2022. Aggrieved against the said order, the defendant preferred appeal, and the same was also dismissed vide judgment dated 24.08.2022. Hence this revision petition.

Learned counsel for the petitioner has argued that the suit was filed on 16.08.2018 and the service report dated 19.08.2018 showing valid service upon defendant was improper, whereupon the trial Court on 24.08.2018 ordered *ex parte* proceedings against defendant. He submits that similarly, the *ex parte* judgment and decree dated 30.07.2019 was quietly put under execution, whereupon again in the similar manner the judgment debtor was

proceeded against *ex parte* on 25.11.2019. He submits that the application filed by the petitioner under Order IX Rule 13 CPC is likely to be allowed, therefore, in case the decree-holder alienates the property during the pendency of the said application, irreparable loss would be caused to the judgment debtor. He prays that the application filed by petitioner for interim injunction has been erroneously dismissed by Civil Judge (Senior Division) Rewari and appellate Court has also failed to exercise the jurisdiction in accordance with law, therefore, the impugned orders deserve to be set aside.

During the course of hearing, it is not disputed by learned counsel that the address of the defendant given in the civil suit is correct as the defendant/judgment debtor is residing there. He fairly states that the same address is mentioned in the present revision petition.

At this stage, Mr. Ajay Jain, learned counsel for the decree-holder appears and submits that the judgment debtor was throughout well aware about the suit proceedings, but she had chosen not to contest the same. Learned counsel has further produced the report dated 23.02.2021 submitted by bailiff regarding execution of warrants of possession and pointed out that the said proceedings were carried out in the presence of the petitioner's son, namely, Sandeep. He submits that once the suit proceedings have been completed by executing the decree, therefore, at this stage, the judgment debtor has no case much less *prima facie* to seek injunction against the decree-holder, who is holding valid title of the suit property. He prays for dismissal of the petition.

After hearing learned counsel for the parties and considering the above background, this Court finds that there is no conflict regarding the facts and the sole ground raised by the petitioner that she was not effectively served

either during the pendency of the suit or execution application, is yet to be adjudicated in her application under Order IX Rule 13 CPC, which is pending adjudication.

Concededly, the possession of suit property, which was also the place of residence of defendant, stands delivered to decree-holder, therefore, at this stage, no *prima facie* case is made out in favour of judgment debtor. Learned counsel for the petitioner has failed to rebut the stand of the counsel for the decree holder that the possession of the suit property was handed over to the decree holder peacefully, as the said proceedings dated 25.02.2021 are signed by her son. Further, a perusal of the orders passed by both the Courts shows that the entire material on record has been carefully examined by them, before dismissing her application for interim injunction. The orders do not suffer from any illegality or impropriety, therefore, no interference is called for.

Resultantly, revision petition is dismissed.

(MANOJ BAJAJ)
JUDGE

02.09.2022
vanita

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