

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

CR-3697-2022 (O&M)

Date of Decision : 14.09.2022

Rajinder Singh

....Petitioner

VERSUS

Mukesh Sharma

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Pankaj Bali, Advocate for the petitioner.

Mr. Arvind Kashyap, Advocate for the caveator-respondent.

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ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India impugning the order dated 15.06.2022 vide which the application for stay of execution proceedings during the pendency of application under Order 9 Rule 13 CPC has been dismissed.

The brief facts relevant to the present lis are that the plaintiff/decreed-holder/respondent filed a suit for recovery against the defendant/judgment-debtor/petitioner which was decreed ex-parte vide judgment and decree dated 18.10.2014. The petitioner herein filed an application under Order 9 Rule 13 CPC which was allowed by the Court and the suit was restored and the trial began again. Thereafter, the petitioner failed to appear and an ex-parte judgment and decree was passed by the Trial Court against the petitioner on 26.04.2019 for the second time. The respondent herein filed execution against the second judgment and decree

dated 26.04.2019. Subsequent to the filing of the application for execution, an application under Order 9 Rule 13 CPC was filed for setting aside the ex-parte judgment and decree dated 26.04.2019. It is pertinent to note that in the execution proceedings the petitioner filed an application under Order 21 Rule 66 CPC on 15.02.2020. The property of the petitioner was put on sale vide order dated 27.02.2020. Thereafter the petitioner filed objections before the Executing Court which were dismissed vide order dated 11.10.2021. An application for stay of execution was dismissed by the Executing Court on 11.10.2021. Since then the execution is pending for sale of the property of the judgment-debtor petitioner. Appeal filed by the petitioner against the dismissal of his objections was also dismissed by the Additional District Judge, Ludhiana on 10.02.2022. Having availed all his remedies in law before the Executing Court, the petitioner filed the present application for stay of the proceedings. It has been noticed in the impugned order dated 15.06.2022 that an application under Order 9 Rule 13 CPC was filed on 06.02.2020 and the petitioner herein had been appearing before the Executing Court after the passing of the judgment and decree dated 26.04.2019 between the period 26.04.2019 to 06.02.2020. Keeping in view the conduct of the petitioner and holding that the petitioner was playing hide and seek with the Court, the application was dismissed. Aggrieved by said order the present revision petition has been filed.

Learned counsel for the petitioner would contend that the petitioner is willing to furnish security for the entire decretal amount.

Learned counsel for the caveator-respondent has contended that the conduct of the petitioner has to be seen in the present case. The suit was decreed ex-parte for the first time on 18.10.2014. Thereafter on application filed by the petitioner under Order 9 Rule 13 CPC the suit was restored and the trial began again. Thereafter the petitioner, after the application under Order 9 Rule 13 CPC has been allowed and the ex-parte judgment and decree has been set aside, yet again failed to appear before the Trial Court and an ex-parte judgment and decree dated 26.04.2019 was passed against him for the second time.

Heard.

In the present case the petitioner has tried to delay the proceedings on one ground or the other. The petitioner was proceeded against ex-parte and an ex-parte judgment and decree was passed against him on 18.10.2014. On an application filed under Order 9 Rule 13 CPC the ex-parte judgment and decree dated 18.10.2014 was set aside and the trial restarted. After the said order was passed, the petitioner yet again failed to appear and an ex-parte judgment and decree was passed against him for the second time on 26.04.2019. In the execution proceedings the petitioner had been appearing and had availed all his remedies as available in law. Having failed to get any favourable order, an application under Order 9 Rule 13 CPC was filed. The petitioner also filed the present application for stay of the proceedings which has been dismissed. The counsel for the petitioner has not been able to show how the impugned order is illegal, erroneous or without jurisdiction for this Court to interfere. The petitioner has clearly

been lax in protecting his own interests and cannot seek the assistance of the Court to over-come his slackness. A litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance.

In view of the discussion above and keeping in view the conduct of the petitioner, I do not find any illegality or infirmity in the impugned order passed by the Court below. The present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

September 14, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO