

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-581-2020 (O&M)
Date of decision : 11.05.2023

Uttam Singh ... Petitioner(s)

Versus

Rita & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Prateek Sodhi, Advocate for the petitioner.

Mr. A.P.S. Sandhu, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 02.12.2019, whereby the Executing Court has dismissed the application for staying the execution proceedings during the pendency of the application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (CPC) for setting aside the *ex parte* judgment and decree dated 09.01.2014.
2. Learned counsel for the petitioner would contend that the *ex parte* judgment and decree was passed in a suit for specific performance of an agreement to sell on 09.01.2014 and that an application under Order 9 Rule 13 CPC was filed by the petitioner herein and that it would be in the

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fitness of things that the execution proceedings are stayed till the application under Order 9 Rule 13 CPC is decided. In support of his contentions, learned counsel has relied upon the judgments in the cases of **Amrik Singh Vs. Jasbir Singh [1995 (3) RRR 519]**; **Davinder Pal Singh & Anr. Vs. Narinder Pal Singh & Ors. [2016 (3) RCR (Civil) 194]**; **Sanjay Sharma Vs. Raj Kumar [2020 (2) RCR (Rent) 557]** and **Gurharbans Singh @ Harbans Singh Vs. Balwant Singh Dhillon & Ors. [2017 (3) Law Herald 2441]**.

3. *Per contra*, learned counsel for respondent No.1 has contended that the conduct of the petitioner needs to be taken into account in the present case. The *ex parte* judgment and decree was passed on 09.01.2014 and the execution petition itself was filed in the year 2014. On issuance of notice, the counsel appeared on behalf of the petitioner before the Executing Court. However, it is only in the year 2019 that the present application for stay of the proceedings was filed. Learned counsel has further contended that the application under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 09.01.2014 was also filed in the year 2019 though the petitioner was very well aware of the passing of the *ex parte* judgment and decree dated 09.01.2014 when he had appeared through counsel in the execution proceedings.

4. Heard.

5. In the present case, the petitioner despite having put in appearance after notice was issued in the execution petition as per the

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averments made in his own application for stay of proceedings before the Executing Court, chose to file the application for stay of proceedings only in the year 2019. Even the application under Order 9 Rule 13 CPC has been filed only in the year 2019. The judgments relied upon by learned counsel for the petitioner would not come to his rescue inasmuch as keeping in view the facts of the present case the petitioner does not deserve the concession which has been given to the parties in the cases referred to by learned counsel for the petitioner. There are no reasons forthcoming for not filing the application for stay at an early date. Even the application under Order 9 Rule 13 CPC has been filed only in the year 2019. Be that as it may, this Court in order to do complete justice between the parties deems it appropriate to grant liberty to the petitioner to file an application for stay in the application moved under Order 9 Rule 13 CPC before the Court concerned within a period of two weeks from today. Till then, the execution proceedings shall remain in abeyance. The present revision petition is disposed off in the above terms.

6. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

7. Disposed off accordingly. Pending applications, if any, also stand disposed off.

11.05.2023

Yogesh Sharma

(ALKA SARIN)
JUDGE

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