

CR-4657-2023
DECIDED ON: 21.09.2023

.....PETITIONERS

VERSUS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Sunil Tiwari, Advocate for
Ms. Shubhpreet Kaur, Advocate
for the petitioners.

Mr. Om Pal Sharma, Advocate
for the respondents.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition is directed against the order dated 17.07.2023 (Annexure P-9) passed by the Civil Judge (Junior Division), Ludhiana vide which the application filed by the petitioners for staying the operation and execution of the ex parte judgment and decree dated 03.08.2012 (Annexure P-1) during the pendency of the application (Annexure P-5) under Order 9 Rule 13 CPC was dismissed.

2. The facts, as emanating from the revision petition, are that a suit for recovery of ₹31,48,700/- (₹18,30,639/- as principal amount and ₹13,18,061/- as interest @ 24% per annum) was filed by the respondents/DHs against the petitioners-JDs. This suit was decreed ex parte on 03.08.2013. Execution petition was filed. The execution petition was, however, sent to Delhi by the Executing Court at Ludhiana. The petitioners-JDs appeared before the Executing Court at Delhi on 03.12.2021 (Annexure P-3). Thereafter, an application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree was filed by the petitioners-JDs at Ludhiana.

Alongwith the said application, an application (Annexure P-6) for stay of

operation of the judgment and decree in question was also filed. Reply to the application under Order 9 Rule 13 CPC was filed (Annexure P-7) vide which the application was opposed. The basic ground taken in the application under Order 9 Rule 13 CPC was that the petitioners-JDs had never been served. Reply to the application for staying of operation and execution of the judgment and decree was also filed which is on record as Annexure P-8. Vide the impugned order, the said application for stay of operation and execution of the judgment and decree was dismissed leading to the filing of the present revision petition.

3. I have heard learned counsel for the parties and have also gone through the paper book.

4. Learned counsel for the petitioners-JDs has strenuously urged that the Executing Court gravely erred in dismissing the application for stay of operation and execution of the ex parte judgment and decree dated 03.08.2013. It has been submitted that the petitioners-JDs had never been served and the service report had been manipulated by the respondents/DHs. It has been contended that though the execution proceedings have been sent to Delhi, the application for stay of the operation and execution of the ex parte judgment and decree is very well maintainable before the Court which passed the decree and that the Court at Ludhiana has erroneously held that such an application would not be maintainable before it. It has been submitted that the Court at Ludhiana would duly have the jurisdiction to entertain such an application and to pass an appropriate order. It has also been submitted that it is settled law that during the pendency of an application under Order 9 Rule 13 CPC, the decree should not be executed and Courts should not rush through to execute such decrees. In support of his contentions, learned counsel

No.1046 of 1927 titled as '*Fatehchand Rampratap and Others Vs. Jitmal Rupchand*', *1929 AIR (Bombay) 418*, judgment passed by the *Lahore High Court* in *Misc. First Appeal No.773 of 1929* titled as '*Hanuman Bakhsh and Others Vs. Chunna Mal*', *1930 AIR (Lahore) 199*, judgment passed by the Manipur Judicial Commissioner Court in *Civil Revision Case No.19 of 1965* titled as '*Thoudam Ningol Ningthoujam Onghi Vs. Leisangthem Tombi Singh*', *1966 AIR (Manipur) 15* and the judgment passed by Patna High Court in *A.F.O.O. No.309 of 1948* titled as '*Radheyshyam and Others Vs. Devendra*', *1952 AIR (Patna) 213* as well as the judgments passed by this Court in *CR No.722 of 2016* titled as '*Davinder Pal Singh and Another Vs. Narinder Pal Singh and Others*', *2016 (3) RCR (Civil) 194*, *CR No.5441 of 2018* titled as '*Surjit Kaur Vs. Sarabjit Kaur and Another*' and *CR No.1087 of 2021* titled as '*Rajesh Kumar Vs. Kamaljit Singh and others*', *2022(1) PLR 549*.

5. On the other hand, learned counsel for the respondents/DHs has submitted that there is no illegality or infirmity in the order passed by the trial Court. It has been contended that the petitioners-JDs have preferred an application under Order 21 Rule 26 CPC before the Executing Court at Delhi also and under the circumstances, the petitioners-JDs cannot be permitted to avail their remedies at both places. It has further been submitted that issues in the application filed under Order 9 Rule 13 CPC were framed as far back as on 10.11.2022 and thereafter, not even a single witness has been examined. Learned counsel has contended that the petitioners-JDs are deliberately delaying the application under Order 9 Rule 13 CPC also with a view to frustrate the decree in favour of the respondents/DHs.

6. I have given my thoughtful consideration to the submissions made by learned counsel for the parties.

7. The ex parte judgment and decree was passed as far back as on 03.08.2013. Recovery of ₹18,30,639/- alongwith interest @ 9% per annum alongwith future interest @ 6% per annum was ordered to be made. The judgment records that the petitioners-JDs had duly been served. Be that as it may, an application under Order 9 Rule 13 CPC was preferred by the petitioners-JDs before the Courts at Ludhiana in January 2022. Prior to that, the petitioners-JDs put in appearance on 03.12.2021 before the Executing Court at Delhi where the execution petition had been transferred. An application under Order 21 Rule 26 CPC was filed before the said Court. At the same time, alongwith the application under Order 9 Rule 13 CPC, an application for stay of operation and execution of the judgment and decree was also filed.

7.1 The petitioners-JDs have not placed on record interlocutory orders either of the execution proceedings at Delhi or that of the proceedings in the Order 9 Rule 13 application at Ludhiana. However, it has been stated by learned counsel for the respondents/DHs and not denied by learned counsel for the petitioners-JDs that issues in the application under Order 9 Rule 13 CPC were framed as far back as on 10.11.2022 and no witness has been examined till date. What proceedings are going on in Delhi is also not known. The fact remains that the petitioners-JDs have preferred an application for stay both at Delhi and at Ludhiana. The fact also remains that the respondents/DHs are running from pillar to post with a decree dated 03.08.2013 in their hands but are not being able to execute it.

8. It is not unknown that petitioners-JDs adopt every possible tactic to frustrate the decrees. Under these circumstances, the Hon'ble Apex Court laid down directions in the case of '**Rahul S. Shah Vs. Jinendra Kumar**

Gandhi and Others' 2021 (2) RCR (Civil) 854, that execution petitions

should be disposed of within a period of six months. This Court is not going into the question as to whether an application for stay could have been filed at Ludhiana or not. The judgments relied upon by learned counsel for the petitioners-JDs in the case of *Fatehchand Rampratap and Others (Supra)*, *Hanuman Bakhsh and Others (Supra)*, *Thoudam Ningol Ningthoujam Onghi* and *Radheyshyam and Others (Supra)*, do show that such an application can be maintained before the Court which passed the decree. However, in the considered opinion of this Court, the petitioners-JDs cannot be permitted to pursue such applications at both places. The petitioners-JDs should choose their remedies. From the entire set of facts and circumstances one thing which becomes clear is that the petitioners-JDs are delaying the proceedings. At the cost of repetition, it is necessary to note that after almost one year of issues having been framed in the application under Order 9 Rule 13 CPC, not even a single witness has been examined. Staying of execution proceedings during the pendency of a petition under Order 9 Rule 13 CPC is not an absolute rule though it is desirable that execution proceedings should not be rushed through while an application under Order 9 Rule 13 CPC is being tried. However, where the conduct of the petitioners-JDs is such that an attempt to delay the proceedings is apparent, no stay deserves to be granted. This Court does not, therefore, find any illegality in the impugned order.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

21.09.2023
Prince Chawla

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No