

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

CR-4352-2022 (O&M)
Reserved on: 24.03.2023
Date of pronouncement: 28.03.2023

Raghubir Singh

...Petitioner

Versus

Gurmukh Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Ms. Puja Chopra, Advocate for the petitioner.

Ms. Sumanpreet Aulakh, Advocate for the respondent.

H.S. MADAAN, J.

Under challenge in this revision petition are orders dated 24.05.2022 (Annexure P7) and 02.09.2022 (Annexure P8) passed by the Court of Civil Judge (Sr. Divn.) Patiala in an execution application titled as 'Gurmukh Singh Vs. Raghubir Singh' bearing No.311 of 2016. Vide order dated 24.05.2022, a request letter has been ordered to be written to learned District Judge, Patiala for providing police help for execution of warrants of possession and in terms of the order dated 02.09.2022, the case had been adjourned to 07.10.2022 for the purpose already fixed.

2. Briefly stated facts of the case are that plaintiff Gurmukh Singh had brought a suit bearing No.02 of 2013 for possession against defendant Raghubir Singh by way of specific performance of agreement to sell dated 14.10.2011 for sale of agricultural land measuring 16 kanals

situated at Village Alipur Wazir Sahib, Tehsil Dudhan Sadhan, District Patiala and for permanent injunction.

3. Notice of the suit was given to the defendant and vide order dated 16.04.2013, the defendant was proceeded against ex parte and after recording ex parte evidence, the suit was decreed, vide judgment and decree dated 22.07.2016. Subsequently, the defendant put in appearance in the Court and filed an application for setting aside of ex parte proceedings/order along with ex parte judgment and decree submitting that he was never served in the civil suit and had not received any notice or intimation and he was wrongly proceeded against ex parte and thereafter, the ex parte judgment and decree were erroneously passed against him. Along with the said application, the defendant had moved a separate application for staying further execution proceedings till decision of the main application under Order 9 Rule 13 CPC read with Section 151 CPC for setting aside of ex parte judgment and decree.

4. Notice of the application under Order 9 Rule 13 CPC was given to the plaintiff/non-applicant who put in appearance and contested the application.

5. Issues on merits were framed and the case was fixed for evidence of the applicant/defendant. Statement of applicant was recorded partly and his cross-examination was deferred. In the meanwhile, the impugned orders were passed, leaving the applicant/defendant aggrieved and he has filed the present revision petition before this Court, notice of which was given to respondent/plaintiff/decreed holder, who has appeared through counsel.

6. I have heard learned counsel for the parties besides going through the record.

7. Admittedly, the application for staying the execution proceedings till disposal of the main application under Order 9 Rule 13 CPC has not been disposed of finally and the applicant/defendant instead of pressing the application for stay before the Executing Court has opted to knock at the door of this Court. Under the circumstances, the revision petition cannot proceed further and the same stands dismissed.

8. However, a direction is issued to the Executing Court to decide the application for staying proceedings before it till final disposal of the application under Order 9 Rule 13 CPC within one week from the date of receipt of the order there.

9. It may be observed that even otherwise, the rights of the revision petitioner is protected since in terms of Section 144 CPC, if the revision petitioner/defendant succeeds in getting the ex parte judgment and decree set aside and even if the possession of the suit property is delivered to the plaintiff/decree holder in the meanwhile, then the possession can be got restored to the revision petitioner/defendant and there is no question of the application becoming infructuous on account of delivery of possession to the plaintiff/decree holder. Nevertheless, the Executing Court is to decide the application for staying the further execution proceedings on its merits without being influenced by any observation made in this order.

10. The judgments referred to by learned counsel for the petitioner i.e. **Gurinder Singh Sodhi Vs. Ramesh Kumar**, 1997(3) RCR

(Civil) 36, Ajit Singh Vs. Santokh Singh, 2002(4) RCR (Civil) 13, Bashiri Vs. Handu, 2019 (3) PLR 343 and Naveen Kumar Vs. Sanjana & Ors., 2017(1) PLR 485. These judgments are not relevant to the present controversy and the revision petitioner may refer those before the trial/Executing Court if so advised.

11. The revision petition stands dismissed accordingly.
12. Resultantly, the interim order passed in this case on 11.10.2022 staying the dispossession of the petitioner, thus, comes to an end.

28.03.2023

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(H.S. MADAAN)
JUDGE

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