

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

131

CR-6373-2023

Decided on : October 20, 2023

MANGA

..... Petitioner

Versus

MEHAM CHAND

..... Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Rahul Jaswal, Advocate
for the petitioner.

NAMIT KUMAR, J. (Oral)

1. The instant Revision Petition has been preferred by the Petitioner/Judgement Debtor under Article 227 of the Constitution of India impugning the order dated 11.10.2023 passed by the court of learned Addl. Civil Judge (Sr. Divn.), Samalkha, whereby the application filed by the petitioner for staying the execution proceedings till decision in the application under Order 9 Rule 13 of CPC has been dismissed.

2. Brief facts relevant for disposal of the present Revision Petition are that the respondent/plaintiff (Meham Chand) filed a civil suit for possession of agricultural land measuring 01 *kanal* and 18 *marlas* within the revenue estates of village Adhmi, Tehsil Bapoli, District Panipat, against the present petitioner wherein the petitioner was proceeded *ex parte* vide order dated 21.11.2019 and thereafter the said suit was decreed vide judgement and decree dated 05.05.2022. Thereafter, an execution petition was preferred by the Decree Holder on 09.08.2022 and the petitioner was again proceeded *ex parte* in the execution proceedings vide order dated 07.10.2022. Thereafter, the petitioner preferred an

application for setting aside the *ex parte* order dated 07.10.2022 on 23.01.2023 and the same was allowed vide order dated 23.01.2023 itself and the order dated 07.10.2022 was set aside to that extent and the case was adjourned for 21.05.2023 for filing the objections. The petitioner filed the objections to the Execution Petition on 11.07.2023, which were rejected by learned Executing Court vide order dated 01.09.2023. The concluding para of the order dated 01.09.2023 are as under:-

“ 8. In view of aforesaid, no good or plausible reason, is made out to allow the objections inasmuch the grounds taken therein ought not to have been agitated in the present form and being the executing court, this court is merely to execute the order of the court in letter and spirit. These objections would not create any hurdle in realizing the fruits of the decree of the DH. These objections appear to have taken to delay and protract the execution in hand, hence, finding no good or reasonable ground to allow the same, they stand hereby dismissed.

*Sd/-
Jogindri
Additional Civil Judge (Sr. Division) Samalkha
UID No. HR-0328
01.09.2023 ”*

The aforesaid said order dated 01.09.2023 was challenged by the petitioner in a revision petition filed before this Court in CR-5610-2023, which was withdrawn by the petitioner on 09.10.2023.

3. In the meanwhile, petitioner also filed an application under Order 9 Rule 13 of CPC for setting aside the judgement and decree dated 05.05.2022 and thereafter filed an application dated 11.09.2023 for staying the execution proceedings in view of the pendency of application under Order 9 Rule 13 CPC. The same was contested by the Decree Holder by filing a detailed reply and the said application has been dismissed by the court of learned Addl. Civil Judge (Sr.

Division), Samalkha, vide impugned order dated 11.10.2023.

4. Learned counsel for the petitioner contends that the impugned order passed by the learned Executing Court is erroneous, perverse and against the law as the application filed by the petitioner under Order 9 Rule 13 CPC is pending consideration before the Court and therefore it was incumbent to stay the execution proceedings. He further contends that RSA Nos.4623 & 4624 of 2013 are pending before this Court with regard to the same suit property. However, he fairly states that no stay has been granted in these appeals till date.

5. I have heard learned counsel for the petitioner and perused the paper book.

6. Admittedly, in the suit filed by the respondent, the petitioner was proceeded *ex parte* on 21.11.2019 in spite of being served in the said suit as he chose not to appear before the trial court and also did not file written statement and therefore, he was proceeded *ex parte* on 21.11.2019. The Order dated 21.11.2019 reads as under:-

*“ Today the case was fixed for filing of written statement on behalf of defendant. However, today none has appeared on behalf of defendant despite repeated calls since morning. It is already 3:15 P.M. Sufficiently waited. No further wait is justified. **Hence, defendant is hereby proceeded against ex parte.***

To come up on 11.03.2020 for ex parte evidence of plaintiff.

*Sd/-
(Gayatri)
ADJ (SD) SDJM, Samalkha
UIS : HR0316
21.11.2019 ”*

7. Thereafter, *ex parte* judgement and decree dated 05.05.2022 was passed by the court of learned Addl. Civil Judge (Sr. Division) Samalkha. The concluding para of the said judgement reads as under:-

“ 7. As a sequel of my finding as aforesaid, suit filed by the plaintiff stands decreed to the cost, subject to court fees, if any, that defendant shall hand over him peaceful possession of the suit land within two months of passing of this judgment. If he fails to part away possession of the suit land in favour of the plaintiff within the time framework, plaintiff shall have the liberty to approach the court for taking its possession. Decree-sheet with memo of cost be prepared accordingly. Un-exhibited documents, if any, be returned to the parties as per rules, if so desired. File be consigned to record room after due compliance.

Pronounced in the open court.

*Sd/-
Jogindri
Additional Civil Judge (Sr. Division)
Samalkha/UID No. HR-0328
05-05-2022 ”*

Thereafter, Execution Petition was filed by the Decree Holder/respondent on 09.08.2022 and even in the said execution proceedings also, the petitioner was proceeded *ex parte* vide order dated 07.10.2022, which was later on set aside on an application filed by the petitioner, vide order dated 23.01.2023. The petitioner filed objections to the execution petition on 11.07.2023, which were duly considered and rejected by learned Executing Court vide order dated 01.09.2023 and the said order was challenged by the petitioner in CR-5610-2023 before this Court, which was withdrawn by the petitioner on 09.10.2023.

8. Thereafter, after a lapse of 08 months, the petitioner filed an application dated 11.09.2023 under Order 9 Rule 13 of CPC for setting aside the *ex parte* judgement and decree dated 05.05.2022 and filed an application for

staying the execution proceedings till the decision of the application filed by him under Order 9 Rule 13 of CPC, which has rightly been dismissed by learned Executing Court vide impugned order dated 11.09.2023, which reads as under:-

“ 6. It is maintained in the judgment that initially defendant appeared but thereafter restrained himself from participating in the proceeding of the court and proceeded against ex parte before filing of his written statement dated 21.11.2019, thus, in these circumstances, when he was very well aware of the pending case against him, no ground is made out to sine die the proceedings of the present execution petition. Mere filing of an application under Order 9 Rule 13, CPC does not provide him any fresh ground to extend the relief mentioned in the present application, hence, finding no good or justifiable reason to allow the application, it stands dismissed.

7. Needless to say, nothing observed herein shall be construed as an opinion of this court on the merits of the case.

Pronounced in Open Court.

*Sd/-
Jogindri
Additional Civil Judge (Sr. Division)
UID No. HR-00328
Samalkha/11.10.2023 ”*

9. The impugned order dated 11.10.2023 passed by the Executing Court is quite detailed and well-reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

10. Finding no merit in the revision petition, the same stands dismissed.

October 20, 2023

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**(NAMIT KUMAR)
JUDGE**

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