

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

143

2025:PHHC:046183



**ESA-30-2025 (O&M)
Date of decision: 04.04.2025**

MUKESH KUMAR ALIAS MUKESH KUMAR SOUROT

..Appellant

Versus

COLONEL SINGH RAJ VERMA AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shashi Kumar Yadav, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. The appellant herein is alleged to be a tenant. The respondents filed a suit for possession along with recovery of arrears of mesne profits, which was ex parte decreed. The appellant filed application under Order IX rule 13 Code of Civil Procedure, 1908 (in short 'CPC') to set aside ex parte decree. During the pendency of the application, execution was also filed. The petitioner filed objections. He also prayed for stay of the execution proceedings. The Executing Court dismissed objection petition without adjudicating upon the application under Order IX Rule 13 of the 'CPC'. An application was preferred by the petitioner, which has been allowed.

2. The Court while allowing the appeal has observed as under:-

“6. In view, of the facts pleaded above, before the Court that the Ld. Civil Court proceeded to decide the objections of the appellant/Judgment Debtor, without considering his application under Order IX Rule 13 of the CPC and, thereby also, considering the fact that the appellant, himself, had not been paying the rent of the tenanted premises w.e.f. the month of April, 2019 till date and, was in continuous possession of the premises let by the respondents, to him, it is ordered that the Execution Petition of the respondents/decreed-holders shall remained stayed till the disposal, on merits of the application under



Order IX Rule 13 of the CPC of the appellant/Judgment-Debtor, subject to payment of rent of the tenanted premises, as payable by him (i.e. the appellant) from April, 2019 till date, to the extent of 40% under intimation to the Ld. Executing Court, within a period of one month from the date of passing of this order. In case, of non-compliance of the term and condition above, the restraint order shall stand vacated, automatically.

7. Accordingly, the Appeal in hand, stands allowed.”

3. Learned counsel for the appellant contends that the appellant has a limited grievance. He submits that while filing the suit, the plaintiff (respondent herein) claimed arrears of rent for the months of December 2019 to July 2020 and not from April 2019. He submits that the aforesaid error has occurred during the oversight.

4. This Court has considered the submissions of learned counsel for the appellant and is of the considered view that the petitioner should be relegated to the remedy of filing an application before the First Appellate Court for correction of error, if any.

5. Consequently, the revision petition is disposed of while permitting the petitioner to file an application in this regard before the First Appellate Court.

6. It shall be open to the petitioner to file an application for extending the period for deposit of amount before the First Appellate Court.

7. All the pending miscellaneous applications, if any, are also disposed of.

April 04th, 2025

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*