

**CR No. 6352 of 2025 (O&M)****1**

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

122

**CR No. 6352 of 2025 (O&M)
DATE OF DECISION :- 11.09.2025**

Gurdev Singh**...Petitioner**

Versus

Makhan Singh (now deceased) through his LR**...Respondent****CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL****Present:-** Mr. Amit Kumar Saini, Advocate for the petitioner.

VIRINDER AGGARWAL, J. (Oral)

1. The petitioner filed this Civil Revision under Article 227 of the Constitution of India for setting aside the impugned order dated 02.08.2025 passed by learned Civil Judge, Junior Division, Phillaur whereby the application filed by the petitioner for staying execution proceedings till the decision of the application under Order 9 Rule 13 of CPC has been dismissed and sale warrants of the property of the petitioner has been issued. The order has been assailed on the grounds that the learned Executing Court has not taken into consideration that an application for setting aside ex-parte decree is pending adjudication and that provisions of Order 21 Rule 26 of CPC has been over looked. The Executing Court was required to stay the execution to afford an opportunity to JD to apply to the Court where proceedings under Order 9 Rule 13 of CPC are pending.

2. I have heard learned counsel for the petitioner and gone through the impugned order.



3. The operative part of the impugned order reads as under :-

“After hearing both the parties, this Court is of the considered view that the present execution petition has been filed by the JD for execution of the judgment and decree dated 27.02.2025. Perusal of the aforesaid judgment goes to show that in the said case the defendants No.1 and 2 had appeared and also filed the written statement. However later they opted not to contest the suit and were proceeded against ex-parte. In that set of of circumstances it clearly appears that the application for staying the proceedings has been filed with the intention to mislead the Court and delay the proceedings of the present execution. Further there is no dispute about the settled principle of law that an ex-parte decree is a valid and an enforceable decree unless the same is set aside, by any competent court of law. In the present matter the decree dated 27.-2./2025 has not been set aside till date. Further there is no ground for allowing the present application and staying this execution in the light of the SLP No.8490, 8491 and 8492 of 2020, wherein, directions have been given to dispose the pending execution within a period of 6 months without fail. According the application for staying the present execution also stands dismissed.”

4. The power of the Executing Court to stay the execution is contained in Order 21 Rule 26 which is extracted below :-

"Rule 26: When Court may stay execution-

(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the



execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Power to require security from, or impose conditions upon, judgment-debtor-Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court shall require) such security from, or impose such conditions upon, the judgment-debtor as it thinks fit."

5. A perusal of Rule 26 of Order 21 of CPC shows that Executing Court has power to stay the execution of the decree for a reasonable time to enable the JD to apply to the Court by which the decree was passed or to any Court having appellate jurisdiction in respect of decree or execution thereof for an order to stay execution. Now when the petitioner has already filed an application for setting aside ex-parte proceedings under Order 9 Rule 13 of CPC and his application is pending adjudication, petitioner was required to move application for stay of the execution proceedings till the decision of his application under Order 9 Rule 13 of CPC before the Court with whom the proceedings are so pending but instead of filing the application for stay of execution proceedings before that Court, the petitioner choose to file the stay application by way of objection petition before the Executing Court and Executing Court in view of the provisions of Rule 26 Order 21 of CPC was well within its right to decline the application and the learned Executing Court has not exercised the jurisdiction vested in it improperly or irregularly. Since the petitioner has already filed an application for setting aside ex-parte proceedings and his petition is pending adjudication, petitioner is advised to move application for stay of execution proceedings in the file pertaining to setting aside the ex-parte judgment and decree but in order to protect his interest, and in the interest of justice, operation of the impugned order and execution of the decree is stayed for a period of one week for providing an



opportunity to the petitioner to avail his remedy before the Court where in application is pending for setting aside the ex-parte judgment and decree. In case within a period of one week from today that application is filed for stay of execution proceedings the Court is requested to dispose of the application expeditiously within a period of 15 days from the date of filing of the application and the stay of execution proceedings would remain operative beyond one week till the decision of the application for stay of execution proceedings.

- 6. The petition stands disposed of accordingly.
- 7. Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

11.09.2025
P.Singh

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