



CR-5720-2025 (O&M)

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

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**CR-5720-2025 (O&M)
Reserved on:-25.08.2025
Decided on :- 28.08.2025**

M/s Ashok Karyana Store

....Petitioner

VERSUS

Sarv Haryana Gramin Bank

....Respondent

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Sandeep Kumar Yada, Advocate for the petitioner.

Mr. Bhushan Bhatia, Advocate for the respondent
(through V.C)

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MANDEEP PANNU J.

1. The petitioner has filed the present revision petition under Article 227 of the Constitution of India challenging following two orders:

- i) Order dated 27.05.2025 passed by the learned Civil Judge (Junior Division), Kanina, whereby the prayer of the petitioner for stay of execution proceedings was declined while his application under Order IX Rule 13 CPC for setting aside the ex parte decree dated 27.05.2025 remains pending; and
- ii) Order dated 06.08.2025 passed by the learned Additional District Judge, Narnaul, (hereinafter referred to as, 'the lower Appellate Court') dismissing the Civil Miscellaneous Appeal preferred against the order dated 27.05.2025, on the ground of non-maintainability in terms of Order 43 Rule 1 CPC.

**Brief Facts**

2. Facts in brief are that respondent/plaintiff-Bank filed suit for recovery against petitioner/defendant No.1. Summons were issued to the petitioner/defendant No.1. However, on his non-appearance despite service, he was proceeded against ex-parte and ex-parte judgment and decree was passed against him. Respondent/plaintiff – Bank filed execution petition, it is only then that the petitioner/defendant No.1 came to know about the ex-parte judgment and decree dated 16.08.2024 passed against him. Thereafter, he had filed an application under Order IX Rule 3 CPC for setting aside the ex-parte proceedings and moved an application for stay of execution proceedings or status quo be maintained and that his property be not attached.

3. However, learned Civil Judge (Junior Division), Kanina, dismissed the application vide impugned order dated 27.05.2025.

4. Thereafter, Civil Miscellaneous Appeal was filed by the petitioner/defendant No.1 which was also dismissed by the lower Appellate Court being not maintainable.

5. Feeling aggrieved by the above-said impugned orders dated 27.05.2025 and 06.08.2025 passed by the Courts below, the present civil revision petition has been filed.

Submissions of learned counsel for the petitioner

6. Learned counsel for the petitioner submits that once an application under Order IX Rule 13 CPC was pending, the execution ought to have been stayed till the decision thereof, and that the lower Appellate Court erred in non-suiting the appeal as not maintainable.



7. *Per contra*, learned counsel for the respondent-Bank has opposed the petition and supported the impugned orders, contending that pendency of application under Order IX Rule 13 CPC does not operate as an automatic stay and that the order declining interim stay is not appealable under Order 43 Rule 1 CPC as has rightly been held by the lower Appellate Court.

8. I have heard the learned counsel for the parties and perused the record.

Findings

9. It is well settled law that the mere pendency of an application under Order IX Rule 13 CPC does not stay the operation or execution of the ex-parte decree. The learned Civil Judge (Junior Division) was, therefore, correct in observing that pendency of application under Order IX Rule 13 CPC was not, by itself, a ground to stall the execution. Similarly whether petitioner/defendant No.1 was not validly served in civil suit, is to be seen on merits in an application under Order IX Rule 13 CPC and is no ground to grant stay of execution, at this stage. This is particularly so when summons prima facie show that defendant was served in civil suit but still chose not to defend the suit and was thus proceeded against ex-parte. The refusal to grant stay cannot be said to suffer from any jurisdictional error or perversity warranting interference in revision.

10. As regards the maintainability of the Civil Miscellaneous Appeal, the order dated 27.05.2025 refusing to grant stay is not included in the catalogue of appealable orders under Order 43 Rule 1 CPC. The learned Lower Appellate Court rightly has held that the Civil Miscellaneous Appeal was not maintainable, and therefore, dismissed the same on that preliminary ground. This finding is in consonance with settled law.



11. Both the impugned orders dated 27.05.2025 and 06.08.2025 reflect correct application of law. The refusal of stay pending decision of Order IX Rule 13 CPC is justified, and the lower Appellate Court correctly declined to entertain an appeal against such refusal, since no such remedy lies under Order 43 Rule 1 CPC.

12. However, in the interest of justice, it is directed that the application of the petitioner under Order IX Rule 13 CPC shall be decided expeditiously, so that the rights of the parties are adjudicated finally without undue delay.

Conclusion

13. The present civil revision is dismissed. Both the orders dated 27.05.2025 and 06.08.2025 are upheld. The Trial Court shall dispose of the pending application under Order IX Rule 13 CPC on merits as expeditiously as possible.

14. Pending application(s), if any, also stand disposed of.

August 28, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No