



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

117

CR-117-2025 (O&M)

Date of Decision: 17.02.2025

Mohd. Sarwar @ Sabbu

...Petitioner

V/s

Naseer Ahmed (deceased) through LRs and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Nipun Bharwaj, Advocate, for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The present petition is directed against the order dated 07.11.2024 (Annexure P-5), passed by the Court of learned Civil Judge (Jr. Divn.), Malerkotla, vide which, while disposing of the application filed by the petitioner for stay of execution proceedings of the *ex parte* judgment and decree dated 17.07.2023, a direction was issued to the petitioner to furnish security in the shape of bank guarantee amounting to Rs.1 lakh.

2. The facts, as emanating from the revision petition, are that a suit for mandatory injunction was filed by respondent No.1-plaintiff against the petitioner (defendant No.3) and other persons seeking the vacant possession of a building constructed over an area measuring 525 sq. yds. (fully described in the plaint) situated opposite Kamal Cinema Road, Malerkotla (hereinafter referred to as the "disputed property"). The defendants were proceeded against *ex parte* and thereafter *ex parte* judgment and decree dated 17.07.2023 (Annexure P-2) was passed. An application under Order 9 Rules 7 and 13 of the Code of Civil Procedure, 1908 (for short the "CPC") was filed by the present petitioner for recalling of the order dated 02.11.2018 (Annexure P-1), vide which he had been proceeded against *ex parte* and for setting aside the *ex*



parte judgment and decree dated 17.07.2023 (Annexure P-2). Along with the aforesaid application, an application for stay of execution of the *ex parte* judgment and decree dated 17.07.2023 was also moved. The said application was disposed of by way of the impugned order, as has been mentioned in the preceding paragraph, leading to the filing of the present revision petition.

3. I have heard learned counsel for the petitioner.

4. Learned counsel for the petitioner has strenuously urged that the executing Court erred in disposing of the application and in not granting the relief to the petitioner and instead imposing a condition of furnishing a security in the shape of bank guarantee of Rs.1 lakh. He submits that there is no provision of law authorizing the executing Court to pass such an order and, therefore, the same deserves to be set aside. He further submits that once an application for setting aside the *ex parte* judgment and decree had been moved, the Court should have stayed the execution proceedings to await the result of the application. Learned counsel submits that his application under Order 9 Rule 13 CPC is likely to succeed, for, he was in incarceration when the summons are stated to have been issued to him. He submits that a wrong report was given as regards service in the jail, whereas he had never been served. Learned counsel further submits that the petitioner is in fact now willing to abide by the directions issued by the executing Court as regards deposit of Rs.1 lakh but he would require some more time for that. In support of his contentions, learned counsel has placed reliance upon;

1. ***Narinder Kumar vs. M/s N.K. Electronics*, 2010(5) RCR (Civil) 697;**
2. ***M/s Dhingra Brothers vs. M/s Jayanti Constructions Chemicals* (CR-3125-2018, decided on 20.11.2018) and**
3. ***Mohammad Iqbal vs. Smt. Sushma Sahu*, Law Finder Doc Id # 2491033.**



5. I have considered the submissions made by learned counsel for the petitioner and have perused the paper book.

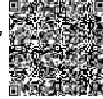
6. The plaint has not been placed on record. However, the judgment and decree dated 17.07.2023 is on record as Annexure P-2. A perusal of the same reveals that the defendants had initially appeared before the Court through their counsel but subsequently they did not appear and were accordingly proceeded against *ex parte*. Another thing which comes out from the judgment and decree dated 17.07.2023 is that defendants No.1 and 2 are the real brothers of defendant No.3 i.e. the present petitioner, whereas defendant No.4 is the wife of defendant No.2 (Mohd. Anwar @ Barru). Defendant No.5 is the son of defendant No.4 but through her previous marriage with Mohd. Shamshad @ Pappu. I do not wish to comment any further on this aspect lest it may prejudice the case of the petitioner in the application under Order 9 Rule 13 CPC.

7. The *ex parte* judgment and decree was passed on 17.07.2023. Naturally, once the judgment and decree had been passed, the petitioner filed an application (Annexure P-3) under Order 9 Rules 7 and 13 CPC for setting aside the *ex parte* judgment and decree dated 17.07.2023 and also moved an application for stay of execution (Annexure P-4). The executing Court was of the opinion that the execution proceedings are not required to be stayed. However, considering the rights of the petitioner, it adjourned the execution proceedings for a period of three months and directed the petitioner to furnish a security in the shape of bank guarantee of Rs.1 lakh within a period of 15 days. He was also directed to pursue the proceedings under Order 9 Rules 7 and 13 CPC, so that the same would be decided within a period of three months. It was clarified that in case the bank guarantee was not furnished within a period of 15 days, the execution proceedings would continue;



“...In the peculiar facts and circumstances of the case, this Court is of the considered opinion that present execution must not be stayed. However, the right of JD No.3 in pursuing his application under Order 9 Rule 7 and 13 CPC must also not be jeopardized. Thus, the Court is of the considered opinion that present execution be adjourned for a period of 3 months and JD No.3 is directed to furnish the security in the shape of bank guarantee of Rs.1,00,000/- (One Lakh only) as condition precedent within a period of 15 days from the passing of this order. Further JD No.3 is directed to expedite the proceedings of the application under Order 9 Rule 7 and 13 CPC as he shall be obliged to get the same decided within a period of 3 months. It is also made clear that in case JD No.3 failed to furnish bank guarantee within 15 days, the proceedings of the present execution shall be taken up on merits. With these observations, application stands disposed off and case stands adjourned to 06.02.2025 for further proceedings in the present case. File to be taken up after 15 days i.e. 22.11.2024, if compliance is not made.”

8. Instead of complying with the said order, the petitioner has knocked the doors of this Court. In the considered opinion of this Court, there is no illegality in the impugned order. The executing Court took a very balanced and pragmatic view of the matter and adjourned the proceedings for a period of three months while putting the petitioner to certain conditions. In the considered opinion of this Court, the executing Court was well within its right to impose such a condition with a view to test the *bona fides* of the petitioner. The apprehension of the executing Court came true when the petitioner, instead of complying with the said order and pursuing the application under Order 9 Rules 7 and 13 CPC, chose to file the present revision petition and that too, much after the expiry of 15 days period. It would be worthwhile to notice that the revision petition has been filed in January 2025. This speaks volumes about the conduct of the petitioner. There is no absolute law that once an application under Order 9 Rule 13 CPC is filed, execution proceedings have to be, under all circumstances, stayed. No doubt, under normal circumstances, execution proceedings would be stayed



when an application under Order 9 Rule 13 CPC is pending. However, keeping in view the facts, as have been noticed in the preceding paragraphs, the executing Court committed no illegality while not staying the proceedings. I have gone through the judgments relied upon by the petitioner. In all the judgments, it has been held that the Court has the power to stay the execution of a decree for a reasonable time once proceedings under Order 9 Rule 13 CPC are pending. There is no dispute in the said position of law, which is in fact well settled. However, reasonable time was granted to the petitioner by the executing Court. As has been noticed above, upon his failure to abide by the conditions imposed, no further relief deserves to be granted to the petitioner.

9. In view of the aforesaid facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

February 17, 2024

vcgarg

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No