

CNR No.PBAS020054452015

Exe.No. 845 of 22.12.2015

Nirmal Chopra vs. Baljit

Present: Sh.Amandeep Saini,Adv.for D.H
Sh.Raman Sharma,Adv.for JD

Heard on two applications simultaneously one moved by the JD in the shape of objections and the other one moved by DH for providing police help to the Decree Holder for getting the decree executed.

2. As per contention of the judgment debtor, the present execution is the outcome of exparte judgment and decree dt.29.7.15 passed by the then CJSD,Amritsar. The JD filed application under order 9 R.13 CPC which has also been dismissed and an appeal against the said order is pending. It is submitted that until and unless the application under order 9 rule 13 CPC is not disposed off, the execution cannot proceed further. It is prayed for accepting the objections and consigned the execution as sinedie till the decision of the appeal.

3. The D.H replied and opposed the objections.

4. The D.H filed application for providing police help to get the decree executed.

5. After hearing the contentions of ld.counsel for both the parties and going through the case file, this court is of the opinion that plaintiff filed the suit for possession byway of specific performance of agreement to sell which was decreed in her favour on 29.7.2015. Undisputedly the said suit was decided exparte and even the application for setting aside exparte judgment and decree by the defendant/judgment debtor has also been dismissed. No doubt the said order passed in application under order 9 rule 13 CPC is pending before the Ld. Appellate authority but mere filing of appeal cannot be considered as stay of proceedings under a decree. The remedy with the judgment debtor is only to approach the appellate court to

seek the relief regarding stay of execution of decree. Therefore, there is no substance at all in the objections moved by the judgment debtor before the executing court as the executing court cannot decline the execution of decree simply on the ground that appeal has been filed against the order passed in the application under order 9 rule 13 CPC. Accordingly, objections are ordered to be dismissed being not maintainable on the face of it.

6. As far as application for granting police help to the decree holder is concerned, the executing court is satisfied from the reports of concerned process serving authorities that the execution of warrants of possession is not possible without police help as the Judgment debtor had obstructed the execution of warrants. Accordingly, present application for granting police help to the decree holder is disposed off with the direction to the D.H to produce his entire evidence with regard to grant of police help on 10.7.2018.

Announced.
28.5.2018

(Ravi Inder Kaur)
Civil Judge(Sr.Divn.),
Amritsar.
UID No.PB0186

Ashwani Shingari
Stenographer Gd.II
Next date: 10.7.2018
Purpose :