

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

**CR No.4798 of 2012 (O&M)**

**Date of decision: 03.12.2015**

Hukam Chand

... Petitioner

versus

Harnek Singh and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr. K.S. Boparai, Advocate for the petitioner.

Mr. Parvez Mohammad, Advocate for the respondents.

**K.Kannan, J.**

The petitioner is the defendant in suit who sought for withdrawal of the suit which had been adjourned sine die. The order was passed originally setting its proceedings on the representations of the respective counsel that the suit instituted against the plaintiff's father Hari Singh by the defendant before the Hon'ble Supreme Court was still pending in the High Court in regular second appeal and that the trial should be stayed to await the decision of the High Court. The High Court has disposed of the case and the application for revival of trial of the suit was moved by the defendant.

The plaintiffs took the objection that the judgment in regular second appeal has been a subject of SLP in the Supreme Court and what applied for staying the proceedings till the pendency of the second appeal must be done also for the SLP. The Court accepted his contention and declined to revive the case for trial.

If the order passed originally was on consent, the consent can apply only to what the parties agreed and not what the Court wanted. If the consent was that the trial could be stayed till the disposal of the regular second appeal, it cannot be allowed to work beyond the date of disposal. I wanted to satisfy myself whether the stay of the trial

of suit will stand the test of the mandatory stay that Section 10 CPC contemplates if the suit was between the same parties or persons claiming under them as a subsequently instituted suit. I find that there is no congruity of the parties or the properties. One area of homogeneity could be whether the properties were joint family properties in which the plaintiff claim their own right to impeach the father's alienation. If that issue has not become final, the matter that was still to be seen was whether the plaintiffs could establish the same in their own suit when actually they are not parties to the suit instituted against their father for specific performance. The mandate of Section 10 CPC cannot apply and I will not therefore think it appropriate for the Court to adjourn the case sine die and decline to reopen the case.

The order already passed is set aside. The revision petition is allowed and the trial shall be taken up in right earnest allowing for the parties to give evidence on all issues. Even the issue regarding joint family character cannot be taken as concluded even on a mere fact that the High Court disposed it because admittedly there is SLP pending. The trial Court will take an independent decision unfettered by the decision rendered by the High Court, subject, however to the ultimate decision of Hon'ble Supreme Court in that matter.

The revision petition is allowed to the above extent.

**(K.KANNAN)**  
**JUDGE**

03.12.2015

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