

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

CR No.7580 of 2015.

Date of Decision: 06.11.2015.

Shamsher Singh and another

....Petitioners.

VERSUS

Bijender Mann @ Vijender Mann and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Rajesh Bansal, Advocate for the petitioners.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for setting aside the order dated 09.10.2015 passed by learned Civil Judge (Senior Division), Panipat, vide which the application of the petitioners for staying the execution proceedings was dismissed.

The facts are that a suit for possession by way of specific performance of agreement to sell was filed by respondents No.1 to 3 plaintiffs which was decreed by learned Civil Judge (Senior Division), Panipat vide judgment and decree dated 12.05.2010. Petitioners filed an appeal which was dismissed by Additional District Judge, Panipat vide judgment and decree dated 19.10.2011. Still aggrieved, the petitioners preferred Regular Second Appeal No.4946 of 2011 before this Court which

was dismissed vide judgment dated 11.09.2013. Unfortunate for the petitioners, the Special Leave to Appeal (Civil) No.35537/2013 filed by them was also dismissed in limine on 05.12.2013 by Hon'ble Supreme Court. The Review Petition (C) No.963/2014 in SLP(C) No.35537/2013 was dismissed on 09.07.2014.

Respondents No.1 to 3-plaintiffs filed a petition for execution of the judgment and decree dated 12.05.2010. The petitioners then filed a Civil Writ Petition under Article 32 of the Constitution of India challenging the constitutional validity of proviso to section 49(C) of the Registration Act, 1908 (for short, "the Act of 1908") alleging it to be in violation of the Constitution of India. They also filed an application before Civil Judge (Senior Division), Panipat i.e. the Executing Court for stay of the execution proceedings in view of pendency of the said writ petition before Hon'ble Supreme Court of India, but their request was declined and the application was dismissed vide the impugned order dated 09.10.2015 passed by the Executing Court.

The submissions made by learned counsel representing the petitioners have been considered.

Learned counsel for the petitioners submitted that arguments in the writ petition have since been heard by Hon'ble Supreme Court and the order has been reserved. In the said premises, it is necessary that the execution proceedings before learned trial Court i.e. delivery of possession of the suit property to the decree holders is stayed.

There is absolutely no merit in the argument of learned counsel

for the petitioners. The petitioners have already contested the litigation upto the highest level. Even their petition for review of the order, by virtue of which their SLP(C)35537 of 2013 was dismissed in limine, had been dismissed by Hon'ble Supreme Court. For the mere fact that a writ petition assailing the constitutional validity of proviso to Section 49(C) of the Act of 1908 had been filed by the petitioners is no ground for stay of the execution proceedings. Learned executing court has rightly declined the prayer of the petitioners made in that regard. A perusal of the impugned order shows that the executing court had mentioned that the possession of the suit property be delivered to the decree holders after the crop is harvested by the cultivators. In other words, the interest of the petitioners in the legal process had been taken care of by the executing Court.

Thus, finding no illegality or perversity or a ground for intervention in the order dated 09.10.2015 of learned Civil Judge (Senior Division), Panipat, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

06.11.2015.
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