

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

CR No.3336 OF 2016
DATE OF DECISION : 11TH MAY, 2016

Bidhi Chand

.... Petitioner

Versus

Tribhuvan Singh & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes/No
2. To be referred to the Reporters or not ? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

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Present : Mr. Sarabjit Singh Khaira, Advocate for the petitioner.

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DARSHAN SINGH, J.

1. The present petition has been preferred against the orders dated 01.03.2016 and 21.04.2016 passed by the learned Additional Civil Judge (Senior Division), Pathankot/Executing Court.

2. I have heard Mr. Sarabjit Singh Khaira, Advocate learned counsel for the petitioner and have carefully gone through the paper book.

3. Learned counsel for the petitioner contended that the respondents had filed suit for possession of the land measuring 58 Kanals 10 Marlas situated in village Dibku Had Bast Number 179, Tehsil Pathankot, District Gurdaspur and for recovery of mesne profits @ ₹20,000/- per year.

4. Learned counsel for the petitioner further contended that the petitioner has already preferred the appeal against the decree under execution. The said appeal is pending for adjudication. He contended that the petitioner had filed the objections that the execution proceedings should be stayed during the pendency of the appeal. He contended that it is not

proper to proceed with the execution as the appeal filed by the petitioners is pending in the Appellate Court, but the objections filed by the petitioner have been wrongly dismissed and even warrants of possession have been issued with police help. Thus he contended that the impugned orders are illegal.

5. I have duly considered the aforesaid contentions. The respondents have filed a suit for possession of the land measuring 58 kanals 10 marlas situated in village Dibku Had Bast Number 179, Tehsil Pathankot, District Gurdaspur, along with mesne profits @ ₹20,000/- per year. The suit filed by the plaintiffs-respondents was decreed against the petitioner by the learned trial Court vide judgment and decree dated 16.10.2013. The petitioner has preferred the appeal against the said judgment and decree, which is pending before the learned first Appellate Court. The petitioner has moved objection petition alleging therein that as the decree has not become final the appeal against the decree is pending, so it cannot be executed. The said objection petition has been dismissed by learned Executing Court on the plea that the Judgment Debtor-petitioner has failed to produce any stay order issued by the Appellate Court and rightly so. Order 41 Rule 5 Code of Civil Procedure, 1908 provides that an appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree, but the Appellate Court may for sufficient cause order stay of execution of such decree. Thus, it is clear from the aforesaid provisions of law that mere filing of the appeal will not be a ground to stay the execution of the decree. The

remedy of the petitioner was only to approach the Appellate Court to seek the relief regarding stay of execution of decree and the said plea of the petitioner was to be considered by the appellate Court in accordance with law. So there was no substance at all in the objections moved by the petitioner before the learned Executing Court as the learned Executing Court cannot decline the execution of the decree simply on the ground that the appeal has been filed against the decree.

6. Secondly, as the learned Executing Court was satisfied from the report of the *Bailiff* that the execution of the warrants of possession is not possible without police help as the judgment debtors had obstructed the execution thereof so there was nothing wrong in providing the police help for execution of the warrants of possession.

7. Thus keeping in view my aforesaid discussion the present revision petition is without any merits and the same is hereby dismissed.

11th MAY, 2016
'raj'

(DARSHAN SINGH)
JUDGE