

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

**ESA No.08 of 2014 (O&M)
Decided on: 31.08.2016**

Sukhdev Singh and anotherAppellants
Versus
Rajinder Singh and others ...Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Abhinav Jain, Advocate for the appellants.

Mr. Harkaran Singh, Advocate
for Mr. B.S. Bhalla, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

CM No.2170-C of 2014

Prayer in this application is for condoning delay of 02 days
in re-filing the appeal.

Heard.

In view of averments made in the application supported by
an affidavit of Sukhdev Singh, the application is allowed and delay of
02 days in re-filing the appeal stands condoned.

ESA No.08 of 2014 (O&M)

The present appeal has been directed against order dated
23.08.2013 passed by the Additional District Judge, Moga whereby the
appeal filed against order dated 08.01.2011 passed by the Executing
Court disposing of objections preferred by Ms. Swaran Kaur widow of
Harbilas (JD since deceased) was allowed and the matter has been
remitted to the Executing Court for decision of the objections afresh
after framing of issues and permitting the parties to adduce evidence.

Counsel for the appellants has submitted that Sukhdev

Singh and Sewa Singh filed a suit for possession by way of specific performance of agreement of sale dated 06.07.1998 purported to be executed by Harbilas in favour of the plaintiffs. The suit was decreed vide judgment and decree dated 11.10.2003. The appeal preferred by the unsuccessful defendants was dismissed vide judgment and decree dated 14.02.2006. The regular second appeal filed before this Court was also dismissed on 06.08.2010. It is argued with vehemence that as the judgment and decree passed by the trial Court has been affirmed up to the High Court, the Court of Additional District Judge has committed a grave error rather illegality in setting-aside the order dated 08.01.2011 and to remit the matter to the Executing Court for decision of the objections after framing of issues and permitting the parties to adduce evidence.

Counsel for respondent No.1 has supported the impugned order with the submissions that as disputed questions of fact have been raised in the objection petition preferred by Swaran Kaur, the same cannot be decided except by following the recourse suggested by the Court of appeal i.e. by framing of issues and permitting the parties to adduce evidence. In addition, it is argued that no prejudice would be caused to the appellants as they would be entitled to cross-examine the witnesses to be examined by the objector and further adduce evidence in rebuttal.

I have heard counsel for the parties, perused the paperbook particularly the order dated 08.01.2011 passed by the Executing Court dismissing objections filed by Smt. Swaran Kaur widow of Harbilas (JD) and order dated 23.08.2013 passed by the Court of appeal.

Be that as it may, it is an undisputed position of the case that Harbilas was JD in the case and objection petition was preferred by his widow Smt. Swaran Kaur by raising an issue that decree-holder No.2 for himself and on behalf of decree-holder No.1 had received an amount of Rs.1,90,000/- from the objector on 28.12.2006 and executed an affidavit in this regard. Counsel for the respondents (LR of Ms. Swaran Kaur (since deceased)) has not disputed that Swaran Kaur filed the objections being LR of JD Harbilas (since deceased) and thus being successor-in-interest of the JD. As Ms. Swaran Kaur preferred the objection petition having stepped into the shoes of Harbilas (JD) by contending that the decree has been rendered unexecutable, no appeal is competent against the order passed by the Executing Court dismissing her objections as the only remedy available to the objector was to file a revision petition before this Court as objection petition preferred by her would be an objection petition filed under Section 47 of the Code of Civil Procedure. In this view of the matter, Court of appeal exceeded its jurisdiction and committed a serious jurisdiction error, thus, the impugned order cannot be allowed to sustain and accordingly set-aside.

For the foregoing reasons, the appeal is allowed and the impugned order is set-aside. However, the respondent would be at liberty to take recourse to appropriate proceedings, in accordance with law.

31.08.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No