

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

CR No. 2176 of 2017(O&M)

Date of decision: 10.8.2017

Ramandeep

....Petitioner

VERSUS

Manish Satija and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Kashmir Singh, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

CM No.6687-CII of 2017

Prayer in this application is for condoning delay of 48 days in re-filing the petition.

Heard.

In view of the averments made in the application supported by an affidavit of Kashmir Singh, Advocate, the application is allowed. Delay of 48 days in re-filing the petition stands condoned.

Disposed of accordingly.

CR No.2176 of 2017

The present petition directs challenge against orders dated 16.02.2015 passed by the Additional Civil Judge (Senior Division) Garhshankar and dated 18.11.2016 by the Additional District Judge, Hoshiarpur whereby the petition filed by the petitioner against execution of the decree dated 29.11.2010 has been dismissed and the appeal preferred

before the Court of District Judge also came to be dismissed, affirming order passed by the executing Court.

Counsel for the petitioner in line with the averments raised in grounds of revision would contend that the suit property is co-parcenary in nature and the petitioner being one of the co-parceners has a birth right, therefore, execution application filed by the decree holders Smt. Krishan Chander Satija and others against Hari Parkash and others to hand over vacant possession of the demised premises is liable to be dismissed after providing an opportunity to adduce evidence by the petitioner.

I have heard counsel for the petitioner, perused the orders impugned and find that the present petition is misconceived and liable to be dismissed.

Any plea which was available to the defendants/JDs during litigation that has attained finality up to Hon'ble the Supreme Court cannot be allowed to be raised by filing an objection petition with an intent to frustrate the decree that has already attained finality. If such an effort of an unsuccessful litigant is allowed, it would amount to allowing a party to have several rounds of litigation and the decree passed in favour of winning party may never reach fruition. On the other hand, if predecessor in interest of the petitioner had raised such a plea and it was disallowed, the same cannot be re-agitated before the executing Court. Conversely, if such a plea was not raised earlier in the suit, permitting such a plea to be raised now would be barred by the principle of constructive res judicata. Examined from any angle, I do not find any error much less illegality in the impugned orders warranting intervention.

For the foregoing reasons, petition fails and is accordingly dismissed in limine.

AUGUST 10, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no