

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

(118)

CR-2576-2017

Decided on: July 10, 2017.

Sobha Chand son of Nathu (Since Deceased) and others

.... Petitioners

Versus

Ram Chander and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Jitender Nara, Advocate, for the petitioners.

M.M.S. BEDI, J (ORAL)

The suit for possession filed by the plaintiffs-petitioners, was decreed on 22.03.2016 subject to the condition that they would pay within one month requisite advelorum Court fee.

An application filed by the petitioners for extension of time has been dismissed vide impugned order dated 06.02.2017.

On asking of the Court, learned counsel for the petitioners informs that the defendants have preferred an appeal against the decree of possession before the lower Appellate Court which is pending at Rohtak.

I am of the considered opinion that a conditional decree had been passed in favour of the plaintiffs but having not been able to fulfill the condition of payment of Court fee in time, their suit is deemed to have been dismissed. Vide impugned order dated 06.02.2017, the Court has refused to extend the period. This Court is of the considered opinion that in case the appeal of the defendants is allowed by the lower Appellate Court, the decree in favour of the plaintiffs would be set aside irrespective of their having paid/not paid the Court fee. The impugned order can be challenged by the

plaintiffs-petitioners by filing a cross-appeal in the appeal filed by the defendants-respondents in the light of Order 43 Rule 1-A CPC.

This petition is disposed of with liberty to the petitioners to file an appeal against the conditional decree and it will be open to them to challenge the order by filing an appeal (also a cross appeal) by challenging order dated 06.02.2017 which would be considered by the lower Appellate Court along with appeal of the defendants-respondents.

(M.M.S. BEDI)
JUDGE

July 10, 2017
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No