

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6634 of 2017

Date of Decision: 26.09.2017

Naresh Kumar

... Petitioner

Versus

Satish Kumar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Animesh Sharma, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

The petitioner has approached this Court against the inaction of the Appellate Authority, Patiala in postponing the decision of tenant's application under Order 6 Rule 17 CPC for amending the written statement for the reasons stated in the application supported by an affidavit.

The learned Appellate Authority, Patiala has posted the case for arguments on September 27, 2017.

Mr. Sharma submits that the appeal was filed on March 01, 2017 and the application for amendment was filed on September 13, 2017. When asked whether there was anything in writing by the Appellate Authority that it would not decide the application under Order 6 Rule 17 CPC before proceeding to decide the main appeal he has pointed out the averment made in para.9 of the petition that on the previous date of hearing the Appellate Authority had taken an adverse view on the application and has orally informed the petitioner during Court proceedings that the

application for amendment of the written statement would be decided simultaneously with the main appeal. The petitioner has been asked to address arguments on merits in the main appeal, without first taking a decision in the amendment application. The order sheets have been attached as Annex P-5 which reflect that main appeal is kept pending for arguments without first deciding the amendment application.

It is normally expected that interlocutory applications should draw Court's attention first and be decided irrespective of their fate before proceeding to decide the main appeal unless it is recorded in the first instance that the application is frivolous and vexatious; then Appellate Authority would be well within its right to dismiss application by imposition of costs exemplary in nature. But if there is a plausible reason in such an application it deserves attention first otherwise serious prejudice will be caused if the application is decided with the main case and the aggrieved party would lose an opportunity to bring that order in question within reasonable time. The right to approach superior Court is a right guaranteed under the law and the Code provides sufficient indication for this as also the Constitution of India.

Accordingly, this petition is disposed of with a request to the Appellate Authority to first consider the application and pass appropriate orders thereon and then proceed to decide the appeal by leaving a gap of no more than two weeks between the passing of the order on the application and the date of hearing final arguments in the appeal.

The Appellate Authority may act accordingly.

The petition is disposed of with the above observations and

directions.

A copy of this order be given to the learned counsel for the petitioner attested by the Bench Secretary.

26.09.2017
manju

(RAJIV NARAIN RAINA)
JUDGE

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