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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3876-2018
Date of decision : 01.06.2018

Mandeep (minor)

... Petitioner(s)

Versus

Tejinder Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwar Satbir Singh, Advocate
for the petitioner.

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AMIT RAWAL, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India for issuance of appropriate directions to the lower Appellate Court, seized of the appeal bearing No.354 of 2016 titled as ***"Tejinder Singh and others V/s Baldev Singh and others***, to decide the application dated 15.10.2016 (Annexure P-8) seeking vacation of *ex parte* stay dated 25.04.2016, which till date is pending for adjudication.

Learned counsel for the petitioner submitted that the trial Court dismissed the suit bearing No.341 of 2015 filed by the respondents-plaintiffs for permanent injunction vide judgment and decree dated 31.03.2016. A civil appeal bearing No.354 of 2016 has been filed by the respondents-plaintiffs, whereby the lower Appellate Court granted *ex parte* stay vide order dated 25.04.2016. However, as indicated above, an application dated 15.10.2016 (Annexure P-8) is still pending adjudication. As per the zimini orders (Annexure P-9), reply to the aforementioned

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application has not been filed so far, though some other party had also moved an application for impleadment as per the provisions of Order 1 Rule 10 CPC.

I have heard learned counsel for the petitioner, appraised the paper book and gone through the zimini orders as well as contents of the application, the lower Appellate Court while entertaining into the appeal along with the interim stay passed the following order:-

> *"Appeal received by assignment. It be checked and registered. Since there are some arguable points in this appeal, so the same is admitted. It be checked and registered. Notice of appeal as well as stay application be issued to the respondents for 27.05.2016 on filng of registered AD and copies of appeal. Learned counsel states that appellants are in continuous possession of the suit land. During trial application under Section 39 Rules 1 and 2 CPC filed by appellants was allowed and rather FIR was registered against respondents and appellants were provided police help to protect their possession. In view of above, it is ordered that till the decision of the appeal, appellants shall not be dispossessed from the suit land."*

An application (Annexure P-8) dated 15.10.2016, which was acknowledged to have been received by the Court below as per order dated 15.10.2016, which reads thus:-

> *"An application under Order 1 Rule 10 CPC moved by applicant Nirmal Kaur. Another application to vacate the stay and to appoint receiver moved by applicant-respondent No.4. To come up on 25.10.2016 for filing of reply as well as*

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arguments on both these applications. In the meantime, lower Court record be summoned for the date fixed. Stay already granted is extended till then."

Thereafter, till last zimini order dated 16.02.2018, reply has not been filed so far and the matter was posted for 02.05.2018. The order dated 16.02.2018 reads as under:-

"Reply to the application under Order 1 Rule 10 CPC, for vacation of stay and for appointment of receiver not filed. Adjournment is again requested. Heard. Request allowed and case is adjourned to 02.05.2018 for filing reply to the aforesaid applications. Stay already granted is extended till then."

On the adjourned date i.e. 02.05.2018, the matter was posted for 17.07.2018.

It is strange that the lower Appellate Court has granted eight adjournments standing over from November 2016 to May 2018. The whole purpose of filing the application, in my view, is defeated. It should not be so liberal in granting the opportunity to the opposite party, when interim stay was sought. The factum of non-filing of the reply to the application under Order 1 Rule 10 CPC as well as to the vacation of stay reveals that the appellants before the lower Appellate Court and respondents herein, are wanting to linger the matter by obtaining *ex parte* stay.

Keeping in view the aforementioned fact, I deem it appropriate to issue a direction to the lower Appellate Court to decide the application seeking vacation of stay in an appeal bearing No.354 of 2016 as expeditiously as possible preferably on the adjourned date i.e. on 17.07.2018 or upto 31.07.2018, by taking the appropriate order noticing the

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fact the reply has not been filed so far, as indicated above.

With the aforesaid observations, the present revision petition is disposed of.

(AMIT RAWAL)
JUDGE

01.06.2018
Yogesh Sharma

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**

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