

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-5388-2018(O&M)

Date of decision : 21.08.2018

Rajpal and others

... Petitioners

Versus

Dharambir and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ajit Sihag, Advocate
for the petitioners.

AMOL RATTAN SINGH, J.(ORAL)

Learned counsel for the petitioners points to the order passed
by the learned appellate Court on 15.05.2018:-

*“Case received by way of transfer. It be checked
and registered.*

*Learned counsel for the appellants request a date
for arguments due to his personal difficulty.*

*On request, which is not opposed, adjourned to
06.07.2018 for arguments. Parties to maintain status quo
till next date. If the matter is not argued on the date
fixed, status quo stand vacated. LCR be also summoned
for the date fixed.”*

Thereafter on 06.07.2018, on the joint request of parties, the
matter had been adjourned to 31.07.2018, on which date the impugned order
had been passed, which reads as follows:-

*“Ld.counsel for appellant requests for a date on account
of his personal difficulty. Date is not opposed. On
request, which is not opposed, adjourned to 20.11.2018
for arguments.”*

He submits that though it is stated in the impugned order that a

“date was not opposed” by counsel for the petitioners, however, factually, since the execution proceedings are at the final stage, with the next date of hearing being 29.08.2018, he submits that if possession of the suit land is taken from the petitioners in terms of the decree possessed by the respondents, without the appeal having been heard at all, it could amount to the appeal being rendered infructuous, or at least repossession of the land being turned into a very cumbersome process.

That being so and looking at the orders pointed to by learned counsel in this petition, without even issuing notice to the respondents the petition is disposed of with a direction that if the application filed under Order 41 Rule 5 CPC before the appellate court has not been already dismissed by that court, the executing court shall not pass the final order till the next date of hearing before the appellate court.

It is further clarified that if the application under Order 41 Rule 5 CPC continues to remain pending before the appellate court, the executing court shall not pass the final order. However, if that application has been dismissed, the executing court would be free to pass the final order, subject of course to any order brought to its notice reversing the order of the appellate court on the application under Order 41 Rule 5 CPC.

(AMOL RATTAN SINGH)
JUDGE

August 21, 2018.

D.K./archna

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No