

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 118

CR-7502-2018

Date of decision : 01.11.2018

Tinku Goyal

..... Petitioner

VERSUS

Narinder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

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

DEEPAK SIBAL, J. (ORAL)

The present petition has been filed under Article 227 of the Constitution of India for the issuance of a direction to the Additional District Judge, Mansa (for short, the Appellate Court) to take a final decision on the appeal preferred by the petitioner to challenge therein judgment and decree dated 09.10.2015, passed by the Civil Judge (Senior Division), Mansa (for short, the Trial Court) through which the respondent has been held entitled to recover from the petitioner a sum of ₹3,70,000/- alongwith interest.

Learned counsel for the petitioner submits that on 09.10.2015 the Trial Court decreed the respondent's recovery suit against which, within the period of limitation, the petitioner filed an appeal before the Appellate Court. Alongwith the appeal, an application under Order 41 Rule 5 CPC was also filed by the petitioner seeking stay of the aforesaid judgment and decree passed by the Trial Court. Though notice was issued in the appeal as also in the application and the respondent had put in appearance before the Appellate Court, till date no decision has been taken by the Appellate Court on the appeal as also the stay application filed by the petitioner. In the meanwhile, the Executing Court, in execution of the aforesaid judgment and decree passed by the Trial Court has ordered that the petitioner's property be put to auction on 04.12.2018. He submits that if such auction

takes places, it would greatly prejudice the petitioner's rights even before a decision is taken on the aforesaid appeal or at least his application for stay.

The above submissions reveal that even after the passage of nearly three years neither the appeal nor the application for stay filed by the petitioner to challenge therein the judgment and decree of the Trial Court has been decided by the Appellate Court and in the integrum, on initiation of proceedings by the respondent before the Executing Court, in execution of the judgment and decree appealed against it has been directed that the petitioner's property be put to auction on 04.12.2018.

Delay in the decision of the appeal filed by the petitioner violates the petitioner's right for speedy disposal and delay in the adjudication of the stay application filed by the petitioner alongwith his appeal goes against the very purpose for which the provision is made under Order 41 Rule 5 CPC for seeking stay of the judgment and decree against which an appeal has been preferred.

In view of the above as also for the reason that a direction to decide the matter on merits would not prejudice either party to the *lis*, I deem it just and proper to direct the Appellate Court to decide the petitioner's appeal or at least the application for stay preferred by him under Order 41 Rule 5 CPC seeking interim stay before 04.12.2018, in accordance with law.

The present petition is allowed in the above terms.

If the respondent is aggrieved by this order, he is at liberty to approach this Court through an appropriate application.

01.11.2018
shamsher

[DEEPAK SIBAL]
JUDGE

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