

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

**CR No.4202 of 2017(O&M)
Date of Decision: 28.05.2019**

Tarlochanpreet Singh

....Petitioner

Versus

Mastan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Naresh Jain, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. As per office report, service is complete. None has put in appearance on behalf of the respondent.

[2]. Notice of motion was issued on 03.07.2017 by passing the following order:-

“Learned counsel for the petitioner by referring to number of litigations contends that the petitioner was entitled for delivery of possession in the year 2009 itself and the same was delayed by way of protracted and baseless litigations by the respondent right upto the Hon'ble Supreme Court. The stand of the respondent was found to be false on number of occasions. The possession was delivered only in 2016. The amount lying deposited with the Executing Court has to be attached before judgment in terms of Order 38 Rule 5 CPC as this was the only tangible security available

with the respondent as on date in view of affidavit executed by the respondent and in view of para No.29 of the application to which only an evasive reply was filed.

Notice of motion for 27.09.2017.

Till the next date of hearing, amount to the tune of Rs.17,25,798/- lying deposited with the Executing Court may not be disbursed to the respondent.”

[3]. Petitioner was entitled for delivery of possession in the year 2009 itself. The deliver of possession was delayed by the respondent by involving the petitioner in protracted and baseless litigation right upto the Hon'ble Supreme Court. The stand of the respondent was found to be baseless. The possession was delivered only in the year 2016. In the suit filed by the petitioner for recovery of liquidated damages, the application under Order 38 Rule 5 read with Order 39 Rules 1 and 2 CPC was dismissed.

[4]. Learned counsel for the petitioner submitted that amount lying deposited with the executing Court has to be attached before the judgment in terms of Order 38 Rule 5 CPC as this amount is the only tangible security available with the respondent as on date. This is because of the fact that affidavit was executed by the respondent himself and in reply to para No.29 of the application, only an evasive stand was taken. Till

date, an amount of Rs.17,25,798/- is lying deposited with the executing Court.

[5]. In view of aforesaid circumstances, it would be just and expedient to direct the executing Court not to disburse the amount of Rs.17,25,798/- to the respondent till decision of the suit. Till such time, the executing Court may deposit the amount in some fixed deposit in some nationalized bank fetching maximum interest.

[6]. This revision petition is disposed of accordingly.

28.05.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No