

245 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5118 of 2018

Date of Decision:12.09.2019

NARINDER KUMAR

...Petitioner

Versus

PREM KUMAR AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ramesh Kumar Vashisht, Advocate
for the petitioner.

Mr. Vinay Kumar, Advocate
for the respondents.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 09.02.2016, passed by the Civil Judge (Junior Division), Barnala (for short-the Executing Court) through which an application preferred by the petitioner seeking restoration of his execution application was dismissed. Also under challenge is the order dated 04.07.2018, passed by the Additional District Judge, Barnala (for short-the Appellate Court), dismissing the petitioner's appeal filed by him against the aforesaid order of the Executing Court.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition, are that in the year 1995 the petitioner filed a suit seeking therein possession by way of partition of the

property detailed and described in the head-note of the plaint (for short-the suit property). Permanent injunction to restrain the respondents from alienating any specific portion of the suit property and operating the floor mill installed therein was also sought.

On being put to notice, the respondents who were defendants in the suit, appeared before the Trial Court and filed their respective written statements. While respondent No.1 admitted the petitioner's claim, respondent No.2 disputed the same. The grounds on which both the parties set up their respective claims being not material for the disposal of present proceedings are not being discussed.

After sifting the evidence led by the contesting parties, a preliminary decree was passed by the Trial Court on 27.09.2000 and thereafter a final decree on 07.12.2002. Such decree attained finality.

On 24.03.2003, the petitioner filed an application seeking therein to execute the aforesaid final decree dated 07.12.2002. Such application remained pending before the Executing Court for over 8 years and for non-appearance of the petitioner or his counsel, was dismissed in default on 22.11.2011. Well within the prescribed period of limitation, on 20.12.2011, the petitioner filed an application seeking restoration of his execution application. Such restoration application was dismissed by the Executing Court on 09.12.2016. Against such dismissal, the petitioner filed an appeal which was also dismissed by the Appellate Court on 04.07.2018. Orders dated 09.02.2016 passed by the Executing Court and 04.07.2018 of the Appellate Court are the subject matter of challenge in the present proceedings.

Learned counsel for the petitioner submitted that for over eight years the petitioner pursued his execution application and during such period on all dates fixed before the Executing Court either the petitioner or his counsel was present. Only because on one date i.e. 22.11.2011 the petitioner, on account of illness and his counsel being busy before some other Court could not appear, his execution application was dismissed in default. It was further submitted that both the Executing Court and the Appellate Court erroneously disregarded the medical certificate produced and proved by the petitioner.

Learned counsel for the respondent while justifying the orders impugned in the present proceedings, submitted that the petitioner had not attached the medical certificate alongwith his restoration application and even otherwise, the same was apparently bogus as the petitioner is a resident of Barnala whereas the certificate was from a Doctor practicing at Bathinda.

The petitioner's suit, filed by him in the year 1995, seeking therein joint possession by way of partition of the suit property, was finally decreed on 07.12.2002. Admittedly, such decree attained finality. On 24.03.2003 the petitioner filed an application before the Executing Court seeking therein fruits of the aforesaid decree in his favour. For over 8½ years such application remained pending and during such period it is the admitted position that the petitioner or his counsel attended all the dates fixed before the Executing Court. Only because on one date i.e. 22.11.2011 the petitioner could not attend the Court proceedings and that too on account of his illness and that his counsel also could not appear before the

Executing Court as he was busy before some other Court, the Executing Court dismissed his execution application in default and thereafter through order dated 09.02.2016 even dismissed the petitioner's restoration application which had been filed by him well within the prescribed period of limitation. On an appeal preferred by the petitioner the Appellate Court also affirmed the order of the Executing Court refusing to restore the petitioner's execution application.

In the above facts the dismissal of the petitioner's application in default and thereafter refusal to restore the same is found to be rather harsh especially when the petitioner had produced and proved his illness on the relevant date through a medical certificate given by a qualified Doctor through which the petitioner had been advised bed rest and that his cross examination on the issue of genuineness of the aforesaid medical certificate also could not extract anything from him which would doubt the veracity of such certificate.

The Executing Court as also the Appellate Court rejected the medical certificate produced by the petitioner on the ground that the petitioner was a resident of Barnala and the Doctor who had given the medical certificate practiced in Bathinda; the Doctor who was the author of the medical certificate had not produced and that the petitioner had not appended the medical certificate with his restoration application. As observed earlier, the petitioner appearing as his own witness duly proved his medical certificate and his cross examination at the hands of the respondents did not yield anything which would doubt the veracity of the same. Nothing was also placed or produced on the record by the respondent

which would put to doubt the authenticity of the aforesaid medical certificate produced by the petitioner.

In the absence of any material, simply because the Doctor who authored the certificate was practicing at Bathinda and the petitioner resided at Barnala cannot be made the basis for discarding the certificate.

In the light of the above as also for the reason that all that the petitioner is craving for is a decision on merits on his execution application filed by him seeking therein the fruits of the final decree of partition passed in his favour on 07.12.2002, the impugned orders are set aside and resultantly, the Executing Court is directed to dispose of the petitioner's execution application on its merits in accordance with law.

Since from the filing of the petitioner's execution application over 16 years have passed, the Executing Court is directed to finally adjudicate upon the petitioner's execution application expeditiously but not later than three months from the date of the receipt of a copy of this order.

The petition is allowed in the above terms.

The parties are directed to appear before the Executing Court on 30.09.2019.

(DEEPAK SIBAL)

JUDGE

September 12, 2019

Whether speaking/reasoned Yes/No Whether Reportable Yes/No

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