

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

**CR No.6415 of 2018(O&M)
Date of Decision-29.11.2019**

Rajinder Kumar

... Petitioner

Versus

Rinku and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

Mr. S.K. Kaushik, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 01.09.2018 passed by Additional District Judge, Karnal, vide which appeal against the order dated 07.07.2017 passed by Civil Judge (Junior Division), Karnal was set aside.

[2]. Perusal of the record would show that the petitioner/decreed holder filed a suit for permanent injunction which was decreed ex parte by the trial Court vide judgment and decree dated 20.01.2015. Defendants were restrained from interfering in the peaceful possession of the plaintiff over the suit property as detailed in para No.2 of the plaint.

[3]. Petitioner/decreed holder filed execution petition under Order 21 Rule 32 read with Section 151 CPC alleging the encroachment over the suit property by the defendants/judgment debtors by putting cow dung cake and by tethering the cattles over the suit property. Executing Court vide order dated 07.07.2017 on the basis of evidence led by the decreed holder found that the judgment debtors have violated the judgment and decree dated 20.01.2015 deliberately and ordered for detention in civil imprisonment under Order 21 Rule 32 CPC for a period of 30 days. In the executing Court also, judgment debtors were proceeded against *ex parte* after due service.

[4]. Perusal of the impugned order would show that against the order dated 07.07.2017 passed by Civil Judge (Junior Division), Karnal, an appeal was preferred before the Lower Appellate Court on 05.06.2018 i.e. after a period of 11 months. The impugned order is silent with regard to any application for condonation of delay filed by the judgment debtors or any order passed in the context of condonation of delay. The order is also silent with regard to sufficient cause for not filing the appeal in time before the Lower Appellate Court. The Lower Appellate Court by referring to agreements to sell dated 02.02.2018 and 11.04.2018, held that the plot owned by the judgment debtors has been sold to Som Nath @ Somi and photographs were placed on the record to show that encroachment had already been removed from the alleged property of the decreed holder. On the basis of subsequent events, the Lower

Appellate Court accepted the appeal and set aside the order dated 07.07.2017 passed by Civil Judge (Junior Division), Karnal.

[5]. It appears from the record that the Lower Appellate Court has not adverted to anything in respect of delay (if any) in filing the appeal, nor any discussion has been made whether the delay was condoned after showing sufficient cause by the judgment debtors. Lower Appellate Court has also not adverted to the fact that whether subsequent agreements to sell vide which the plot owned by the judgment debtors were sold to Som Nath @ Somi, would in any case dilute the rigour of any violation which was done prior to passing of the order dated 07.07.2017 passed by Civil Judge (Junior Division), Karnal. The order passed by the Lower Appellate Court is totally silent about the aforesaid facts.

[6]. In view of facts and circumstances of the case, it would be just and expedient to direct the Lower Appellate Court to re-visit the issue again and pass appropriate order in accordance with law.

[7]. In view of above, impugned order dated 01.09.2018 passed by the Lower Appellate Court is set aside. This case is remanded to the concerned Court with a direction to decide the appeal afresh preferably within a period of six months from the date of receipt of certified copy of this order. This order may not be construed as an opinion on merits of the case of either side. Lower Appellate Court shall pass afresh order in accordance with law on the basis of material produced by the parties on record.

[8]. Both the parties are directed to appear before the Lower Appellate Court on 13.12.2019.

(RAJ MOHAN SINGH)
JUDGE

29.11.2019
Prince

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