

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision:28.2.2019

(1) CR No.1052 of 2019

Pritpal Singh

... Petitioner

versus

Narinder Kumar

... Respondent

(2) CR No.6550 of 2018

Pritpal Singh

... Petitioner

versus

Narinder Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Ashish Gupta, Advocate,
for the petitioner
Mr.J.S.Mundi, Advocate,
for the respondent
...

AMOL RATTAN SINGH, J.

1. These are two petitions filed by the same petitioner, both essentially arising out of the suit instituted by the respondent herein against the petitioner, as was decided decreed in favour of the respondent, by the learned Additional Civil Judge (Senior Division), Dhuri, on 06.07.2013, though the orders as have been impugned in these petitions, are passed by two different courts, one being the appellate court and the other the execution court.

2. In CR No.6550 of 2018, the petitioner challenges the order of the learned Additional District Judge, Sangrur, dated 26.7.2018, by which

the application of the petitioner seeking restoration of the appeal filed by him, was dismissed.

That appeal was filed against the judgment and decree suffered by the petitioner, in the suit instituted by the respondent-plaintiff seeking a decree of specific performance of an agreement of sale entered into between the parties, also seeking a decree of perpetual injunction qua the suit property.

A perusal of the impugned order shows that the appeal filed by the present petitioner had been dismissed on 5.10.2016, with the following order passed at that stage:-

“Case was listed for hearing but Shri S.K.Goyal, Advocate, pleaded no instructions on behalf of the appellant. Perusal of file shows that earlier appellant has engaged Shri Yogesh Gupta, Advocate and thereafter, Shri S.K.Goyal, Advocate was engaged. As per the statement recorded today by the counsel for the appellant, he is unable to argue the case because of no instructions and also case file documents were not supplied to him. In the circumstances, it seems that appellant is not interested in prosecuting the appeal. No notice to appellant is necessary and in the appellant proceedings, the appellant is expected to be vigilant. Appeal is accordingly dismissed for non prosecution.”

Consequently, in the order now impugned, it has been stated that in the aforesaid circumstances, especially when the petitioner-judgment debtor thereafter had also appeared in execution proceedings on 24.11.2017,

but thereafter neither he nor his counsel had turned up before the execution Court, with the application seeking restoration of the appeal also having been filed only on 2.7.2018, there was no ground to restore the appeal.

3. In the second petition, i.e. CR No.1052 of 2019, the petitioner has challenged the order of the learned execution Court dated 4.1.2019, by which fresh warrants of possession have been issued (qua taking possession of the suit property), such warrants at that stage having been executable by 25.2.2019. However, the operation of the order impugned in this petition (CR No.1052 of 2019), was stayed by this Court on 21.2.2019.

4. Learned counsel for the petitioner has submitted that the petitioner deserves one chance for his appeal to be restored and heard on merits, before the execution proceedings are finalized, because he did not come to know of the dismissal of his appeal on 5.10.2016, till execution proceedings were actually initiated by the respondent-decree holder, after which, despite his counsel having appeared before the execution Court on 24.11.2017, he did not thereafter appear before that Court, which was again not to the knowledge of the petitioner (as contended).

He submits that in fact he has also filed a complaint against the counsel concerned with the Bar Council.

He also relies upon two judgments of coordinate Benches of this Court in Tahil Ram vs. Ramchand, 1993(2) RCR (Criminal) 617 and Baljit Singh vs. Maya Ram and others, 2006(4) RCR (Civil) 415.

5. Learned counsel for the respondent on the other hand submits that the appeal having been dismissed on account of the fact that the petitioner herein had not even given complete instructions to his counsel, as

has been recorded by the appellate court in the order dated 5.10.2016 (reproduced in the order dismissing the application for restoration), and thereafter he even having appeared in execution proceedings, the petitioner obviously chose not to appear again to defend those proceedings, and therefore the present petitions are only a delaying tactic and nothing else.

6. Having considered the matter, in my opinion these petitions need to be dismissed. As already noticed, in the impugned order dated 26.07.2018, passed by the learned Additional District Judge, the earlier order of that court dated 05.10.2016, dismissing the appeal for non-prosecution, has been reproduced, clearly stating therein that the petitioner, even after change of counsel by him, had not instructed his counsel and had not supplied any documents to him (as per the contention made before that court on 05.10.2016).

The appeal therefore having been dismissed on 05.10.2016, the petitioner chose to remain silent right till 24.11.2017, by which time notice had also been issued to him in execution proceedings qua the decree issued in favour of the respondent herein, with him having appeared before that court through counsel on that date.

7. Undoubtedly, learned counsel has submitted that his counsel not appearing before the execution court after 24.11.2017, was not his fault and therefore he has also made a complaint against that counsel before the Bar Council; however, no such complaint been annexed with the petition. Yet, even accepting what learned counsel has stated at the bar to be absolutely correct, upon specific query to him as to whether any complaint was made against the counsel who had appeared for the petitioner in the

appeal, on the ground that he had incorrectly stated that he had no instructions from the petitioner to pursue the appeal and that even documents had not been given to him, learned counsel fairly submits that no such complaint has been made.

Obviously therefore, as regards the appeal which is now sought to be got restored, which was dismissed on 05.10.2016 for non-prosecution, the petitioner actually had not given any instructions and documents to his counsel (even after engaging a new counsel), thereby showing that he was only interested in delaying proceedings to ensure that the decree issued in favour of the respondents did not get implemented in a hurry.

Hence, at this stage, for him to now come up with all kinds of excuses by blaming two different counsel, i.e. one who appeared in the appeal with his instructions incomplete, and the second who appeared in the execution proceedings, is also again a ploy to ensure that the decree does not get executed.

Hence, finding no merit in these petitions, they are dismissed.

(AMOL RATTAN SINGH)
JUDGE

28.2.2019
pk/dinesh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No