

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 115

Case No. : C. R. No. 1579 of 2019

Date of Decision : March 06, 2019

Mubassar Ali Khan .... Petitioner

vs.

Anwar Jahan and another .... Respondents

**CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.**

\* \* \*

Present : Mr. Imran Farooqi, Advocate  
for the petitioner.

\* \* \*

**DEEPAK SIBAL, J. (Oral) :**

The present petition is directed against the order dated 01.02.2019 passed by the Civil Judge (Junior Division), Malerkotla (for short – the Executing Court), through which the petitioner's evidence has been closed. Also under challenge is the order dated 08.02.2019 passed by the Executing Court dismissing an application filed by the petitioner seeking recalling of the aforesaid order dated 01.02.2019.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition, are that respondent no. 1 filed a suit against respondent no. 2 seeking therein possession of land situated in Malerkotla (for short – the suit property). Recovery of mesne profits was also sought. On 19.02.2014, the Trial Court decreed respondent no.1's suit.

Since no appeal was filed, such decree attained finality. Since respondent

no. 2 failed to execute the aforesaid decree dated 19.02.2014, respondent no. 1 filed an application seeking execution of the aforesaid decree in her favour. In such execution proceedings, the petitioner filed third-party objections. When despite availing of several opportunities, the petitioner failed to lead his entire evidence, through order dated 01.02.2019, the Executing Court ordered closure of his evidence. The petitioner then filed an application seeking review of the order dated 01.02.2019, which was also dismissed by the Executing Court on 08.02.2019.

Learned counsel for the petitioner submits that due to a communication gap between the petitioner and his counsel as also the witnesses he intended to produce, there was some delay in leading his evidence. He further prays for grant of one more effective opportunity to conclude his entire evidence.

The interim orders passed by the Executing Court reveal that the petitioner has already availed of a number of opportunities to lead his evidence. However, in line with the principles of natural justice and also for the reason that the petitioner may not be precluded from raising his entire defence at the threshold of the execution proceedings, subject to payment of Rs.25,000/- as costs to be paid by the petitioner to respondent no.1, the impugned order is set aside and the petitioner is granted one effective opportunity to lead his entire evidence at his own risk and responsibility.

The petition is allowed in the above terms.

It is further directed that the Executing Court shall dispose of the execution proceedings within one month from the date of receipt of a

certified copy of this order.

If the respondents are aggrieved by passing of the present order, they are at liberty to approach this Court by filing of an appropriate application.

( DEEPAK SIBAL )  
JUDGE

March 06, 2019  
*monika*

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|------------------------------------|----------------|
| <i>Whether speaking/reasoned ?</i> | <i>Yes/No.</i> |
| <i>Whether reportable ?</i>        | <i>Yes/No.</i> |