

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

Sr. No.115 (2 cases)

1. **C.R. No.3515 of 2019**

Sukhdev SinghPetitioner

versus

Surjit SinghRespondent

2. **C.R. No.3517 of 2019**

Sukhdev SinghPetitioner

versus

Surjit SinghRespondent

Date of decision: 27.05.2019

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Kartik Gupta, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The respondent filed a suit seeking therein possession of plot No.31 measuring 12 marlas, the details and description of which were given in the head note of the plaint (for short – the suit property). On being put to notice, the petitioner, who was defendant in the suit, appeared before the Additional Civil Judge (Senior Division), Hoshiarpur, (for short - Trial Court) and contested the respondent's claim. Considering the evidence led by both parties as also submissions made on their behalf, through judgment and decree dated 24.07.2018, the Trial Court decreed the respondent's suit against which the petitioner, within the period of limitation, on 20.08.2018

filed an appeal. Alongwith his appeal, he also filed an application seeking stay of the judgment and decree dated 24.07.2018 impugned by him. Notice in the petitioner's appeal as also his application for stay was issued by the Appellate Court. The respondent appeared before the Appellate Court and filed a reply to the stay application filed by the petitioner. Thereafter, the matter has been adjourned and is now listed for arguments before the Appellate Court on 11.07.2019. In the meanwhile, the respondent filed an application before the Executing Court seeking execution of the aforesaid judgment and decree dated 24.07.2018 in which warrants of possession have been issued primarily for the reason that there was no interim order in favour of the petitioner staying the operation of the judgment and decree dated 24.07.2018, the execution of which has been sought by the respondent.

Aggrieved by the issuance of the warrants of possession, the petitioner has preferred two petitions before this Court under Article 227 of the Constitution of India. CR-3515 of 2019 – Sukhdev Singh vs. Surjit Singh has been filed for setting aside the order dated 15.05.2019 passed by the Trial Court through which warrants of possession have been issued. Through the other petition - CR-3517 of 2019 – Sukhdev Singh vs. Surjit Singh, a prayer is made for the issuance of a direction to the Additional District Judge, Hoshiarpur (for short – the Appellate Court) to take a final decision on the petitioner's appeal or at least adjudicate upon his stay application in a time bound manner and till such decision is taken, the execution proceedings be stayed.

It is true that the respondent's suit had been decreed and till such decree is reversed, modified or stayed by a superior Court, the same is

required to be executed. However, in the facts of the present case, on 20.08.2018, within the period of limitation, the petitioner has availed of his statutory remedy of appeal to challenge therein the aforesaid judgment and decree. Alongwith the appeal, he has also filed an application seeking interim stay. For the last about eight months, the petitioner's appeal as also his stay application is pending adjudication before the Appellate Court. The pendency of such a decision is putting the petitioner to prejudice as, in the meanwhile, the Executing Court, in execution of the judgment and decree appealed against by the petitioner, has issued warrants of possession. This should not and cannot be permitted.

In view of the above, both the petitions are disposed of with a direction to the Appellate Court to take a final decision on the petitioner's appeal or at least the application for stay filed by him on the next date fixed before it or within a fortnight thereafter in accordance with law. Till such decision is taken, the proceedings before the Executing Court shall remain stayed.

If the respondent is aggrieved by the passing of the present order he is at liberty to approach this Court by filing an appropriate application.

(DEEPAK SIBAL)
JUDGE

May 27, 2019
Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No