

ESA No.53 of 2013 (O&M)

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

ESA No.53 of 2013 (O&M)
Date of decision: 24.09.2019

Sh. Gopal Krishan

.....Appellant

versus

Smt. Surinder Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. M.L. Saini, Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

Through this appeal filed along with two applications for condonation of 381 days' delay in filing and 265 days' delay in its re-filing, appellant has laid challenge to order dated 12.08.2011 of the lower appellate Court, affirming order dated 13.09.2007 of the executing Court, dismissing his execution petition while accepting third-party-objections respondents No.2 to 5.

Briefly, appellant filed a suit for permanent and mandatory injunction against husband of respondent No.1, namely, Gurcharanjit Singh Nindra to restrain him from interfering into his possession over a small area measuring 4'x4' in front portion of SCO No.79, Sector 15-D, Chandigarh. During the pendency of suit, appellant was dispossessed. Therefore, he amended the suit to direct deceased Gurcharanjit Singh Nindra to put him back in possession.

After holding trial, suit of the appellant was decreed vide

judgment and decree dated 21.07.2003 only against Gurcharanjit Singh

ESA No.53 of 2013 (O&M)

Nindra. Pursuant thereto, appellant filed execution petition. During its pendency, respondents No.2 to 5 filed third-party objections, claiming that respondents No.2 to 4 had purchased demised SCO No.79, Sector 15-D, Chandigarh vide registered sale deed dated 16.04.2003 from its previous owner and respondent No.5 – Ramesh Chawla, was inducted as tenant, who was running his business in the name and style of M/s Panipat Handlooms. Therefore, judgment and decree dated 21.07.2003 in favour of appellant, without impleading them as party was not binding upon them.

Executing Court accepting the said plea of respondents No.2 to 5, dismissed execution petition of the appellant vide order dated 13.09.2007.

Being aggrieved, appellant approached, the lower appellate Court, but remained unsuccessful as his appeal too was dismissed vide order dated 12.08.2011.

Learned counsel for the appellant *inter alia* contends that both the Courts below failed to appreciate that respondents No.2 to 4 had purchased demised SCO during the pendency of suit of the appellant against deceased husband of respondent No.1. Therefore, their ownership was hit by doctrine of *lis pendens*.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

Admittedly, appellant in his suit against deceased Gurcharanjit Singh Nindra for permanent and mandatory injunction did not ever implead previous owner or respondents No.2 to 4 and subsequent purchasers of the demised SCO.

Appellant even did not implead respondent No.5, who was

ESA No.53 of 2013 (O&M)

inducted as tenant by respondents No.2 to 4 after purchasing the demised SCO, vide registered sale deed dated 16.04.2003.

Deceased Gurcharanjit Singh Nindra, who was tenant under the previous owner of the demised SCO, during the pendency of suit of the appellant made categorical statement that he has already surrendered possession to his landlords. Therefore, suit of the appellant should be dismissed against him having been rendered infructuous. However, trial Court instead of dismissing the suit at that very stage, unnecessarily went on continuing with the same and finally decreed it against deceased Gurcharanjit Singh Nindra, ignoring the fact that he had already surrendered possession to his landlords. Since, appellant was inducted as a sub-tenant by deceased Gurcharanjit Singh Nindra on a small area measuring 4'x4', therefore, it is apparent that as soon as he surrendered his tenancy rights, sub-tenancy of the appellant under him also stood extinguished inasmuch as deceased Gurcharanjit Singh Nindra-judgment-debtor, when appeared in the witness box testified that he had already vacated the demised SCO and had handed over possession of the same to his landlords on 01.03.1999. He was not cross-examined by the appellant. Therefore, decree obtained by the appellant against Gurcharanjit Singh Nindra has rightly been declared having no binding effect upon the rights of respondents No.2 to 5.

I have gone through impugned orders of both the Courts below and find no illegality or perversity in the same.

There is 381 days' delay in filing and 265 days' delay in re-filing the appeal.

It is well-settled proposition of law that each day's delay has to

ESA No.53 of 2013 (O&M)

appellant. No cogent reason or plausible explanation has been furnished by the applicant-appellant for condonation of such a inordinate delay of 381 days in filing and 265 days in re-filing the appeal

In view of discussion made above, appeal is dismissed on merits and on the ground of limitation as well.

(Ramendra Jain)
Judge

September 24, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No