

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 117

CR-7357-2019 (O&M)

Date of decision : 22.11.2019

Gurdev Singh and others

..... Petitioners

VERSUS

Amarjit Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Amit Arora, Advocate, for the petitioners.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 13.11.2019, passed by the Civil Judge (Senior Division), Tarn Taran (for short, the Executing Court), dismissing an application filed by the petitioners seeking stay of execution proceedings on the ground that the decree of which execution was being sought had been challenged by the petitioners in a suit which was pending and that such decree in any case was unexecutable.

After hearing learned counsel for the petitioners and going through the record of the case, the noticeable facts which have emerged are that the respondents filed a suit seeking therein possession of a house detailed and described in the head note of their plaint (for short, the suit property). On being put to notice, the petitioners, who were the defendants, appeared before the Trial Court and contested the suit. The Trial Court through judgment and decree dated 04.03.2015 decreed the respondent's suit and resultantly, they were held entitled to seek possession of the suit property. The petitioners were further restrained from raising any construction over the suit property except in due course of law.

The petitioners filed an appeal against the aforesaid judgment and decree of the Trial Court which on their request, on 16.11.2017, was adjourned *sine*

die.

In the meanwhile, the petitioners filed a suit seeking therein to challenge the aforesaid judgment and decree of the Trial Court dated 04.03.2015 in which suit *ex parte ad interim* injunction which was prayed for by the petitioners was not granted. Such suit remains pending without there being any interim stay in the petitioners' favour.

The respondents sought execution of the judgment and decree of the Trial Court dated 04.03.2015 which proceedings were sought to be stayed by the petitioners on the ground of pendency of their aforesaid suit and appeal. The Executing Court dismissed the petitioners' objections through the order under challenge in the present proceedings.

Learned counsel for the petitioners has been heard.

The respondents' suit for possession was decreed by the Trial Court on 04.03.2015. The petitioners filed an appeal against such dismissal in which appeal no stay was granted by the Appellate Court. In fact, on the petitioners' request, such appeal was adjourned *sine die*.

The petitioners also filed an independent suit seeking therein to challenge the aforesaid judgment and decree of the Trial Court dated 04.03.2015 in which suit *ad interim* stay prayed for by the petitioners was specifically declined and thereafter no interim stay was granted.

In the light of the above facts, no error is found in the order of the Executing Court in rejecting the petitioners' prayer for stay of execution proceedings launched by the respondents seeking possession of the suit property in terms of the decree of the Trial Court dated 04.03.2015 which decree was challenged by the petitioners through two different proceedings in neither of which they were granted any stay. Rather, the petitioners' prayer for *ad interim* stay in their suit filed by them to challenge therein judgment and decree of the Trial Court dated 04.03.2015 was specifically declined by the Trial Court through its order

dated 14.08.2017 which order remains unassailed by them till date. The petitioners are also not put to any prejudice as in the eventuality of their aforesaid suit or appeal being finally accepted, they would always have the remedy for restitution of possession under Section 144 CPC.

Dismissed.

22.11.2019
shamsher

[DEEPAK SIBAL]
JUDGE

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