

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

CIVIL REVISION No.902 of 2020
DATE OF DECISION : 7th FEBRUARY, 2020

Avtar Singh

.... Petitioner

Versus

Harjinder Singh & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Karan Singh, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioner; under Articles 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure; for quashing the impugned order dated 23.01.2020 passed in Execution Petition No.57 of 2018 by Civil Judge (Junior Division), SAS Nagar (Mohali); vide which warrants of possession have been issued.

It is contended by the counsel for the petitioner that the petitioner had filed appeal against the decree under execution. In the appeal, with the consent of the parties, the lower appellate court had passed the interim order staying the execution proceedings. Thereafter, the appeal filed by the petitioner remained pending. However, on two-three dates, the counsel for the petitioner could not address the argument before the lower appellate court. Ultimately, due to absence of the counsel, the appeal was dismissed in default. Although the petitioner has filed application for restoration of the appeal to its original number as well, however, in the meantime the execution court has issued the

warrant of possession against the petitioner; qua the suit property. Accordingly, it is submitted that if the possession is taken away from the petitioner in execution proceedings, then the petitioner would be put to an irreparable loss; despite the fact that his appeal, on merits, is yet to be considered by the lower appellate court. The counsel has further submitted that the petitioner would ensure that his appeal is finally argued immediately, as and when the same is restored by the lower appellate court.

Having heard the counsel for the petitioner and perusing the file, this court finds that although the arguments addressed by the counsel for the appellant are not worth acceptance in their entirety. However, these cannot be ignored in their entirety, as well. The statutory appeal, filed by the petitioner, was dismissed in default, however, the petitioner has filed an application for restoration of the same. The counsel has also submitted that the petitioner would ensure the argument upon his appeal, immediately on the same being restored by the lower appellate court. Accordingly, it would not be unjustified to show some indulgence to protect the petitioner from being dispossessed, at least till his application for restoration of the appeal is decided by the lower appellate court, however, by putting him to appropriate financial burden.

In view of the above, the present petition is disposed of with a direction to the lower appellate court to take a decision on the application filed by the petitioner for restoration of the appeal; within a period of four weeks from the receipt of the certified copy of this order.

Till the lower appellate court takes decision in the

application pending before that court, the dispossession of the petitioner from the suit property shall remain stayed.

However, the above said directions are subject to the petitioner paying a cost of ₹10,000/-, to be deposited with the Institute for the Blinds, Sector 26, Chandigarh, within a period of ten days from today. It is further clarified that the lower appellate court shall entertain the application now, only when the receipt of the cost having been paid, as mentioned above, is produced before that court.

7th FEBRUARY, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No