

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

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**CR No. 888 of 2020
Date of decision : 7.2.2020**

Naresh Kumar

.....Petitioner

Vs.

Subhash Chander and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Article 227 of the Constitution of India praying for setting aside the order dated 3.12.2019, passed by Additional Civil Judge (Senior Deivision), Mukerian. It is further prayed that directions be issued to the lower Appellate Court to decide the application dated 21.1.2020 moved by the petitioner for extension of status quo order, within a time bound manner.

It is contended by learned counsel for the petitioner that although the decree was passed against the petitioner, however, he had challenged the same before the lower Appellate Court. The lower Appellate Court had directed the parties to maintain the status quo with regard to the possession and alienation of the suit property; in the meanwhile.

However, in the execution, the Executing Court has issued warrants of possession so as to dispossess the petitioner from the suit property by interpreting the interim order passed by the lower Appellate Court as to be operative, till the next date of hearing fixed before the lower Appellate Court

only. Therefore, the petitioner is on the verge of dispossession due to the order passed by the Executing Court.

Faced with this situation, the petitioner had moved an application before the lower Appellate Court for clarification of the interim order that the same was not limited to next date of hearing only. However, the said application has also not been decided so far. Although, notice was issued in the said application, but the respondents/decreed holders are frustrating the decision on the same, by seeking adjournment or by not appearing before the lower Appellate Court despite notice. Hence, the petitioner is put in a situation where his appeal is pending and there is an order of status quo in his favour, but on the other hand, the Executing Court is dispossessing the petitioner through warrants of possession. It is further submitted that even if the Executing Court is interpreting the order passed by the lower Appellate Court, in a manner different than it is expressed in the language of the order, still the application filed by the petitioner before the lower Appellate Court for clarification of the same is already pending. Hence, the petitioner deserves to be protected against his dispossession till the interim order passed in his favour is clarified by the lower Appellate Court.

This Court finds substance in the argument of learned counsel for the petitioner. The issuance of warrants of possession is based upon the interpretation by the Executing Court, of an interim order which has been passed by the lower Appellate Court. The petitioner is already before the lower Appellate Court for seeking clarification qua the ambit and scope of that interim order. Hence, it would not be unjustified if the petitioner is protected against dispossession, till the lower Appellate Court takes decision on the

application moved by the petitioner; for seeking clarification of the said interim order.

In view of the above but without expressing any opinion on the merits of the case, the present petition is disposed of with a direction to the lower Appellate Court, to take a final decision on the application moved by the petitioner; within a period of 4 weeks from the date of receipt of certified copy of this order. It is further directed that till the final decision on the application is taken by the lower Appellate Court, the dispossession of the petitioner and the execution of the warrants of possession shall remain in abeyance.

(RAJBIR SEHRAWAT)
JUDGE

7.2.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No