

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

CIVIL REVISION No.8221 of 2019 (O&M)
DATE OF DECISION : 7th JANUARY, 2020

Jaswinder Singh

.... Petitioner

Versus

Manjit Kaur

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

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

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RAJBIR SEHRAWAT, J. (Oral)

This revision petition under Articles 226/227 of the Constitution of India has been filed by the defendant for setting aside order dated 13.12.2019 (Annexure P-8) passed by the Additional District Judge, Ludhiana, whereby an application under Order 41 Rule 5 of CPC; for staying the operation of the judgment and decree dated 21.07.2017 passed by the Additional Civil Judge (Senior Division), Jagraon, Ludhiana, was dismissed.

Referring to the pleadings of the petition and the orders passed by the court below, the counsel for the petitioner has submitted that the court below has wrongly recorded that it is the petitioner/appellant who is responsible for not finally arguing the appeal before the court below. In fact the appellant had taken adjournment only three times. For the rest of the times, it is either the situation arising due to the court proceedings or the request of the respondent before the court below, which has led to the adjournments. It is further contended that the

court below has also wrongly recorded that the stay application filed by the petitioner before the court below, was earlier dismissed vide order dated 06.07.2019. The counsel for the petitioner has submitted that, in fact; the said application was filed for seeking early hearing of the appeal and for decision on the stay application. It is that application which was earlier dismissed and not the application already filed by the petitioner for staying the operation of the judgment and decree passed by the trial court. Hence, the impugned order has been passed on wrong premise.

Still further, it is submitted that now warrant of possession qua the suit property has been issued by the executing court and if either the appeal is not finally decided or the stay application is not decided by the court below, then the petitioner would suffer irreparable loss and injury, making the appeal itself irrelevant and infructuous. Hence, it is submitted that the trial court be directed to decide the stay application filed by the petitioner before the court below, at the earliest.

In view of the nature of the order, which is being passed herein below, this court does not consider it necessary to issue the notice to opposite side, at this stage.

Having heard, the counsel for the petitioner and having perused the case file, this court is of the opinion that the entire blame for the adjournment of hearing of the appeal, cannot be attributed to the appellant-petitioner herein. The very fact that earlier the petitioner had filed an application before the court below for early decision of the appeal, would negate the intention on the part of the petitioner to delay the decision of the appeal. Otherwise also, the petitioner is not going to

get any benefit in any manner by delaying the final decision of the appeal as such.

Still further, this court finds substance in the argument of the counsel for the petitioner that the earlier application, which was earlier declined by the court below, was for early hearing of the appeal or the stay application and that was dismissed. However, the stay application, as such, was not considered on merits and was not decided at all. Hence, the reason given by the court below, that the application already stands dismissed, also does not seem to be appropriate.

The counsel for the petitioner has also pointed out that the next date of hearing fixed in the appeal before the court below is 08.01.2020 and the executing court has already issued warrants of possession qua the property which is the subject matter of this suit and the appeal. Hence, if either the stay application is not considered or the appeal is not decided, this would cause immense prejudice to the case of the petitioner. Therefore, irrespective of any consideration upon legality of the order passed by the court below, it would not be unjustified if the trial court is directed to decide the appeal itself within a time bound frame, by protecting the petitioner against adverse orders till then, particularly, in view of the fact that the petitioner has submitted that he is always ready to finally argue his appeal before the court below.

In view of the above, the present petition is disposed of with a direction to the court below to fix a date for final hearing of the appeal, within next one month from 08.01.2020. The parties shall be specifically intimated that the appeal is fixed for final arguments. On the said date, the court below shall not entertain any request from either of the parties,

for adjournment, for any reason whatsoever. It is further ordered that till next date, to be fixed by the court below in the appeal filed by the petitioner, the dispossession of the petitioner of the suit property, shall remain stayed.

However, it is further clarified that if the petitioner herein does not argue the appeal on the date, to be so fixed by the court below, then the interim protection being granted by this court today, shall be deemed to have been vacated automatically; without any further reference to this court.

With the above said directions, the present petition stands disposed of.

7th JANUARY, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>