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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4050-2022 (O&M)

Date of Decision:22.09.2022

Baldev Singh

.. Petitioner

Vs.

Jagroop Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Lakhwinder S. Sidhu, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

Petitioner (defendant) has filed this revision petition under Article 227 Constitution of India for setting aside the order dated 05.09.2022 (Annexure P-47) passed by Addl. District Judge, Amritsar in CM-371-2022 in CA-163-2020 titled as "*Baldev Singh Vs. Jagroop Singh*" pending for 19.10.2022 along with a prayer for expeditious disposal of his stay application under Order XLI Rule 5 CPC.

Learned counsel for the petitioner (defendant) submits that the plaintiff/respondent had filed a suit for possession by way of specific performance of agreement to sell dated 05.04.2012 in respect of the suit property and in alternative, prayed for recovery of double the amount of earnest money along with interest @ 12% p.a., which was partly decreed, holding that plaintiff is entitled for recovery of earnest money of Rs.75,00,000/-along with interest @ 6% vide judgment and decree dated 12.03.2020. According to learned counsel, aggrieved against the said decree, petitioner/defendant preferred first appeal before Additional District Judge, Amritsar and also filed an application seeking interim stay of the impugned decree, but the same is still pending adjudication. He submits

also been dismissed vide order dated 05.09.2022.

Further, learned counsel has drawn the attention of the Court to the execution proceedings being pressed by decree-holder against him, as vide order dated 12.07.2022 (Annexure P-45), warrants of attachment have been issued against the petitioner. He prays that the direction be issued to the appellate Court to decide the application for stay filed by the petitioner.

Heard.

A perusal of the case file reveals that the decree holder had filed a caveat before the first appellate Court in anticipation of filing of appeal by the petitioner/judgment debtor against the judgment and decree dated 12.03.2020. A perusal of order dated 05.09.2022 shows that the appellate Court has even dismissed the application for preponement of the stay application only on the ground that the applicant/appellant has failed to place on record material reflecting the filing of the execution petition by decree holder. Once the opposite party is already appearing before the appellate Court, this fact could be easily ascertained, without insistence for placing on record such material. The order dated 12.07.2022 passed by Addl. Civil Judge (Sr. Divn.), Ajnala also indicates that the Executing Court is proceeding with the execution because the appellate Court has not passed any order on the said stay application.

The judgment and decree dated 12.03.2020 under execution by plaintiff is yet to attain finality as the appeal against said decree is pending before first appellate Court. In the event of execution of impugned decree, the appeal would be rendered meaningless, therefore, interference by this Court is warranted.

However, considering the limited relief prayed by the

petitioner, this Court is not inclined to issue notice to the respondent, as it may cause unnecessary burden upon him, but at the same time, he shall be at liberty to seek recalling of this order, in case, he feels that the petitioner has concealed material facts from this Court.

Resultantly, the petition is disposed of with a direction to the appellate Court to expeditiously decide the application for stay filed along with the appeal against the judgment and decree dated 12.03.2020 preferred by petitioner/defendant, preferably within a period of four weeks.

Till the decision of the application, the operation of the impugned judgment and decree dated 12.03.2020 (Annexure P-2) shall remain stayed.

22.09.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No