

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

(120)

CR-5884-2022

Date of Decision: 13.12.2022

Soran Singh

...Petitioner

Versus

Anuj Bansal and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Vikram Rathore, Advocate, for the petitioner.

HARKESH MANUJA, J.(ORAL)

By way of present revision petition, challenge has been made to an order dated 23.11.2021 passed by the Executing Court whereby objections filed at the instance of petitioner/judgment debtor have been dismissed.

A suit for possession by way of specific performance came to be filed at the instance of respondents No.1 and 2 based on an agreement to sell dated 02.06.2011. Learned Civil Judge (Senior Division) Kurukshetra vide its judgment and decree dated 13.12.2017 passed a decree for refund. Relevant Para No.14 thereof is reproduced here under:

“34. As a result of above, discussion, the present suit for specific performance is treated as suit for recovery and same is hereby decreed with costs to the effect that defendant No.1 is directed to refund the amount of Rs.15 Lacs with compound interest at the rate of 12% per annum. The rate of interest on amount of Rs.5 Lacs shall be calculated from the date of agreement, i.e. 02.06.2011 and rate of interest on amount of Rs.10 Lacs shall be calculated from the date 15.07.2011 till actual realization of the amount. However, it is clarified that in case defendant No.1 fails to make payment of decretal amount after due calculation within

a period of three months then the plaintiffs shall be entitled to recover entire decretal amount by way of filing execution. Decree sheet be drawn accordingly. File be consigned to the record room after due compliance.”

Based on the aforesaid judgment and decree, respondents No.1 and 2 filed an executing application. On the other hand, petitioner along with few others challenged the judgment and decree dated 13.12.2017 passed by the trial Court. The first appeal at the instance of petitioner was filed way back on 12.01.2018 wherein, notice was issued to the respondents for 25.01.2018. Respondents No.1 and 2 herein being the plaintiff appeared before the first appellate Court on 09.04.2018, however, hearing in appeal or even in the stay application has not been concluded so far. On the other hand, respondents No.1 and 2/decree holders have been pressing for execution application.

The petitioner filed his objections before the executing Court primarily on the ground that the appeal arising out of the impugned judgment and decree dated 13.12.2017 is pending along with an application for grant of stay, however, learned executing Court vide its order dated 23.11.2021 dismissed those objections and the same has now been impugned by way of present revision petition.

Having perused the impugned order, I do not find any reason to interfere with same, as mere filing of an appeal can't act as an impediment for the executing Court to execute the decree. At this stage, learned counsel for the petitioner submits that the appeal along with stay application, filed at the instance of petitioner herein is pending before first appellate Court for 20.12.2022 and in case the learned first Appellate Court is directed to dispose of the stay application, it would serve the cause of justice.

I have heard learned counsel for the petitioner and have gone through the paper book. I find substance in the submissions made on behalf of petitioner to the limited extent as aforesaid.

Considering that the first appeal filed at the instance of petitioner is pending for the last almost 5 years for now without there being any adjudication even on the application filed under Order 41 Rule 5 CPC, I deem it appropriate to request the first Appellate Court to take a final decision on the stay application filed at the instance of petitioner either on the date fixed i.e.20.12.2022 or any other date of its convenience preferably within a period of 3 weeks thereafter.

Disposed of accordingly.

Pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

13.12.2022
anil

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