

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 103

Civil Revision No.5932 of 2022 (O & M)

Date of Decision: December 21, 2022

Jiwan Dass

..... PETITIONER(S)

VERSUS

Gurcharan Kaur (since deceased) through LR's & others

..... RESPONDENT(S)

...

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

...

PRESENT: - Mr. Abhijeet P.S. Chaudhary, Advocate, for the petitioner.

. . .

Tribhuvan Dahiya, J (Oral)

CM No.18213-C of 2022

Application is allowed.

Zimni orders of the appeal filed before the lower Court are taken on record as Annexure P-9, subject to all just exceptions.

Main Case

This is a revision petition filed under Article 227 of the Constitution of India for setting aside order dated 22.11.2022 (Annexure P-6), by which the petitioner-judgment debtor's application for staying the execution proceedings has been dismissed.

2. The facts of the case in brief are, an *ex parte* decree was passed against the petitioner on 01.09.2011. He filed an application under Order IX Rule 13 CPC for setting aside the same on 03.09.2013. The application was, however, dismissed by the trial Court vide order dated

28.04.2014. Instead of filing an appeal against the same, petitioner approached this Court by filing a revision petition, which was dismissed as withdrawn vide order dated 11.04.2016 with liberty to file an appeal against the order dated 28.04.2014 alongwith an application for condonation of delay. It was also observed that the said application shall be considered sympathetically by taking aid of Section 14 of the Limitation Act, 1963.

3. In these circumstances, the petitioner filed an appeal before the lower appellate Court on 18.04.2016 (Annexure P-9) alongwith an application for condonation of delay as well as an application for staying the execution proceedings till decision of the appeal. The case was adjourned for filing reply to the application of condonation of delay and the one for staying the execution proceedings vide order dated 15.10.2016. The reply to both the applications was filed on 01.12.2016. Ever-since both the applications remained pending before the lower appellate Court and no decision thereupon could be taken. It is apparent from the order dated 04.11.2022 that the case was adjourned to 01.12.2022 for consideration on delay application as well as on the main appeal. Now the case stands adjourned to 04.01.2023 for the same purpose.

4. Learned counsel for the petitioner submits that on the one hand, his application for staying execution proceedings is not being decided by the lower appellate Court, on the other hand, executing Court is proceeding against him, and has dismissed the application for staying the proceedings vide impugned order dated 22.11.2022.

5. In view of the aforesaid, without going into the reasons for rather long delay in deciding the applications, this Court deems it appropriate to direct the lower appellate Court to consider and decide the

petitioner-defendant’s applications for condonation of delay as well as for staying execution proceedings on the next date of hearing, i.e., 04.01.2023.

Till then, the execution proceedings shall remain stayed.

7. The petition stands disposed of in the above terms.

(Tribhuvan Dahiya)
Judge

December 21, 2022
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No