

118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-57-2023

The Gurdaspur Central Cooperative Bank Ltd. and another Petitioners

Versus

Jaspal Singh and others Respondents

CR-58-2023

The Gurdaspur Central Cooperative Bank Ltd. and another Petitioners

Versus

Jaspal Singh Respondent

Date of Decision: 09.01.2023

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Ms. Paramjit Deol, Advocate,
for the petitioners.

RAJBIR SEHRAWAT, J. (ORAL)

This shall dispose of two Civil Revision petitions, i.e. CR-57-2023 and CR-58-2023, filed by the petitioners-Bank against the similar order dated 29.10.2022 (Annexure P-3) passed by the Executing Court in the two execution petitions, whereby the objection filed by the petitioners-Bank and for staying the execution proceedings were rejected.

It is submitted by the learned counsel for the petitioners that the relevant material was duly placed before the Trial Court during the proceedings of the suit. However, the same was not considered by the Trial Court. Not only that certain materials could not be placed on record during

the proceedings of the trial. Therefore, the petitioners have filed the appeal against the judgment and the decree under execution. However, on account of suspension of the Presiding Officer of the Appellate Court and there being no substitute Judicial Officer to take up the appeal for hearing, no order in favour of the petitioners could be passed by the Appellate Court. Therefore, the petitioners had approached the Executing Court for staying the proceedings of execution, as well as, for bringing to the notice of the Executing Court the facts which should have been decided by the Executing Court on merits. However, the said application has been rejected by the Court below. Hence, the present petitions have been filed.

Learned counsel for the petitioners has further submitted that since the petitioners have already filed an application for leading the additional evidence before the Appellate Court, therefore, unless the said application was decided by the Appellate Court, the execution could not have been taken further by the Executing Court. Learned counsel has relied upon the provisions under the Order 21 Rule 26(1) of the Code of Civil Procedure to submit that the Executing Court should have stayed the execution in view of the facts and circumstances of the case.

Having heard the learned counsel for the petitioners and having perused the case file, this Court does not find any substance in the arguments raised by the learned counsel for the petitioners. The petitioners had been granted due opportunities of hearing and they were at liberty to raise all the possible pleas and to lead the relevant evidence qua the pleadings taken by them during the proceedings of the Trial Court. After completing the trial,

in accordance with law, the decree stands passed by the Trial Court. The Executing Court is not supposed to go beyond the decree during the execution proceedings. Hence, the Executing Court could not have re-assessed the merits of the argument raised by the petitioners during the execution on the points which were part of the controversy of the civil suit. If the petitioners were not satisfied with the decree passed by the Trial Court, then the remedy available to the petitioners is to file the appeal. Undisputedly, the appeal already stands filed by the petitioners. Therefore, the Executing Court can no more entertain the plea on merits on the issues which are subject matter of the appeal. Therefore, the Trial Court has rightly rejected the objections raised before it. So far as the stay of execution proceedings is concerned, it is obvious that the appeal already stands filed by the petitioners, therefore, the provision of the law as contained in Clause 1 of Order 21 Rule 26(1) CPC would not be attracted in the present case. The only remedy which could have been available to the petitioners is to make any kind of application or prayer, as deemed it appropriate by them before the Appellate Court and it is for the Appellate Court to take the decision thereon, in accordance with law. Therefore, the Executing Court was not even required to stay the proceedings of execution.

Needless to say that the decree passed in the present case is of the year 2020 in a suit filed in the year 2016, therefore, the plaintiff/decreed holder has already waited for sufficient time. Therefore, he could not be made to suffer for further period; unless the Appellate Court comes to a conclusion qua his case contrary to the decree passed by the Trial Court.

In view of the above, finding no merit in the present petitions, the same are hereby dismissed. However, the petitioners would be free to avail any other alternate remedy for expediting the proceedings of the appeal, but in accordance with law.

(RAJBIR SEHRAWAT)
JUDGE

09.01.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No