

CR-2670-2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CR-2670-2017 (O&M)

Date of decision : 27.07.2023

Smt. Krishna and others

..... Petitioners

Versus

Bakhshish Singh and others

..... Respondents

CORAM : HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. N.K. Bansal, Advocate
for the petitioners.

Mr. Vishal Aggarwal, Advocate
for respondents No. 1 to 7.

AMARJOT BHATTI J. (ORAL)

CM-8187-CII-2017

This is an application filed under Section 151 of CPC for condonation of delay of 40 days in re-filing the present revision.

Heard.

In view of the averments made in the application and in the light of the settled position that a party should not be denied access to justice on hyper technical grounds and in the interest of justice, taking a lenient view, delay of 40 days in re-filing the revision is condoned.

The application stands disposed of accordingly.

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The petitioners have filed the present civil revision against impugned order dated 16.08.2016 (Annexure P-1) which was passed in the execution of preliminary decree dated 11.12.2006 and warrants of possession has been issued

without passing the final decree by the Court of learned Civil Judge (Junior Division), Ludhiana. It is pointed out that the plaintiffs had filed a suit for partition which was contested by the petitioners/defendants and ultimately a preliminary decree was passed on 11.12.2006, which is Annexure P-2. The aforesaid decree was challenged by filing appeal which was also dismissed by passing judgment and decree dated 16.10.2012 by the Court of learned Additional District Judge, Ludhiana, which is Annexure P-3. The petitioners filed RSA bearing No. 330 of 2014 in this High Court which was also dismissed on 03.12.2015. Copy of order is Annexure P-4. During this period, the Decree Holder filed an application on 22.02.2007 bearing CM No. 9 of 2007 for passing of final decree. The application is Annexure P-5. No final decree has been passed by the learned Court and the Court has passed the impugned order dated 16.08.2016 (Annexure P-1) vide which the warrants of possession has been issued. It is argued that without passing of final decree, the execution could not be initiated. He has relied upon the authority of **The Hon'ble Supreme Court of India** cited in **2007(2) SCC 355**, in case titled **"Hasham Abbas Sayyad Versus Usman Abbas Sayyad and Ors"**. It is prayed that the impugned order passed by the Court is unjustified and it is liable to be set aside.

On the other hand, learned counsel representing the respondents/plaintiffs pointed out that there is no illegality or irregularity committed by the Court in passing the impugned order dated 16.08.2016, Annexure P-1. The Court has availed the proper procedure. After the partition of the property among the co-sharers, final decree will be drawn. This civil revision has been preferred by the petitioners only to delay the proceedings of the final decree.

I have considered the arguments and have gone through the record. As referred above, it is clear that preliminary decree was passed by the Court of learned Civil Judge (Junior Division), Ludhiana way back on 11.12.2006, which is Annexure P-2. As per this preliminary decree for partition, the shares of the plaintiffs and the defendants were determined. The appeal preferred by the present petitioners was dismissed by the First Appellate Court as well as in Regular Second Appeal. The copies of judgment dated 16.10.2012 passed by learned Additional District Judge, Ludhiana and order dated 03.12.2015 in RSA are Annexures P-3 and P-4 respectively. The application for passing of final decree is pending since 22.02.2007, which is Annexure P-5. The perusal of impugned order Annexure P-1 clearly indicates that the report of Local Commissioner was received to which the objections were filed by defendant No. 2 and reply was also filed. As nobody had appeared on behalf of objector, the objections were dismissed for want of prosecution and warrants of possession were issued as per the report of Local Commissioner dated 01.04.2016. The proceedings of passing of final decree is in-fact the execution of preliminary decree for partition and to deliver the possession by way of partition as per shares determined therein. Therefore, I do not find any illegality or irregularity committed by the Court of learned Civil Judge (Junior Division), Ludhiana in passing of order dated 16.08.2016. Finding no merits in the present civil revision, the same is accordingly dismissed.

(AMARJOT BHATTI)
JUDGE

27.07.2023

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