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

CR-2112-2023 (O&M)

Date of Decision: 12.04.2023

Santosh

....Petitioner

Versus

Kanta Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 17.03.2023(Annexure P-1) passed by Ld. Additional District Judge, Bhiwani, whereby Ld. First Appellate Court dismissed the application, moved by petitioner/defendant, under Order 41 Rule 5 CPC for staying operation of impugned judgment and decree dated 30.01.2020 (Annexure P-2) during pendency of first appeal.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondents filed a suit for possession by way of specific performance of an agreement to sell dated 03.03.2010 allegedly executed by petitioner in favour of Ompal Singh, predecessor-in-interest of respondent/plaintiffs, agreeing to sell land measuring 12 Kanals. The suit was filed on 08.12.2017 i.e. after about 7 years from the alleged agreement. Ld. trial Court decreed the suit vide judgment and decree dated 30.01.2020 (Annexure P-2).

2.2. Aggrieved from judgment and decree dated 30.01.2020, petitioner/defendant preferred an appeal on 04.10.2021. Allegedly, due to pandemic, the appeal was filed after more than 1½ years. Along with the appeal, the petitioner also filed an application (Annexure P-3) under Order 41 Rule 5 CPC for staying operation of impugned judgment and decree dated 30.01.2020 during pendency of first appeal. However, vide impugned order (Annexure P-1), Ld. First Appellate Court dismissed the said application.

3. Learned counsel for petitioner, *inter alia*, argues that in the instant case, time was the essence of contract. In the present case, the date of alleged agreement is 03.03.2010 whereas the suit was instituted on 08.12.2017 i.e. after more than 7 years. Therefore, even if the target date is not mentioned, then also the period of limitation is three years, but Ld. trial Court had not considered this most crucial aspect and wrongly passed judgment and decree against petitioner. He relies upon the Supreme Court judgment rendered in ***Mool Chand Yadav and another vs. Raza Buland Sugar Company Limited, Rampur and others, (1982) 3 SCC 484*** and the judgment of this Court in ***Ashwani Kumar Bindra vs. Satish Kumar and another, 2018(2) Law Herald (P&H) 1253*** in support of his contention that during pendency of appeal, any order having serious civil consequences connected with appeal, ought to be stayed. Resultantly, the impugned order is liable to be set aside and operation of impugned judgment and decree has to be stayed during pendency of first appeal.

4. Given the nature of order being passed, there is no necessity to issue notice to respondents, as no serious prejudice would be caused to them. Notice to respondents is thus dispensed with.

5. Having heard learned counsel for petitioner, I am of the view that since the first appeal is *sub judice* and during pendency thereof if the decree is executed and petitioner is dispossessed from the suit property and/or title is transferred to plaintiff/respondents, the same would cause irreversible and irreparable damage *qua* rights of petitioner/defendant in the suit property. That apart, it transpires that petitioner/defendant has all throughout been in possession of the suit property.
6. In the premise, I am of the view that in order to balance the equities and to meet the ends of justice and to protect the suit property during pendency of first appeal, the Executing Court shall not insist for specific performance of the alleged agreement, subject of course to petitioner also being restrained not to alienate the suit property and to create any third party rights in any manner, during pendency of first appeal.
7. Disposed of in above terms.
8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 12, 2023
ashish

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