IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

118 **Date of decision: 04.05.2023**

CR-2756-2023 (O&M)

Arun Kumar

...Petitioner(s)

Vs.

Bhim Singh

...Respondent(s)

***

CR-2762-2023 (O&M)

Arun Kumar

...Petitioner(s)

Vs.

Chander Singh (deceased) through LR

...Respondent(s)

***

CR-2767-2023 (O&M)

Arun Kumar

...Petitioner(s)

Vs.

Bhim Singh

...Respondent(s)

***

CR-2769-2023 (O&M)

Arun Kumar

...Petitioner(s)

Vs.

Chander Singh (deceased) through LR

...Respondent(s)

CORAM: **HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ashwani Gaur, Advocate
for the petitioner (in all cases).

***

NIDHI GUPTA, J.

Present Revision Petitions have been filed by the judgment debtor against dismissal of his objections by learned Additional Civil Judge (Senior Division), Kharkhoda vide impugned order dated 19.04.2023 (Annexure P8); as also against order of even date

SUNENA
2023.05.11 10:19
I attest to the accuracy and
authenticity of this document

19.04.2023 (Annexure P9) whereby Local Commissioner has been appointed to get the sale deed executed; as also a direction has been sought to the learned Additional District Judge/Appellate Court, Sonepat, to decide the application for grant of stay filed with the Appeal filed by the petitioner against judgment and decree dated 19.08.2019.

2. As pleadings, arguments, and issues in all four Revision Petitions are identical, all are being disposed of by common order; and for the sake of convenience facts are being referred to from CR No. 2756 of 2023.

3. Brief facts of the case are that the sole respondent/plaintiff had filed a Suit for Declaration with consequential relief of possession. Vide judgment and decree dated 19.08.2019 (Annexure P1), plaintiff's Suit was decreed. Subsequently, the plaintiff filed present execution petition (Annexure P6) on 07.04.2021 for execution of above said judgment and decree (Annexure P1). Thereafter, the petitioner filed an appeal on 05.09.2022 along with an application for condonation of delay, as well as stay application for staying operation of impugned judgment and decree dated 19.08.2019.

4. The petitioner also filed objections dated nil (Annexure P7) in the execution petition (Annexure P6) filed by the respondent/decree holder. Vide impugned order (Annexure P8), the petitioner's objections have been dismissed. Vide second impugned order (Annexure P9), Local Commissioner has been appointed to get the sale deed executed. A further direction has been sought to the learned

SUNENA
2023.05.11 10:19
I attest to the accuracy and
authenticity of this document

Lower Appellate Court to decide the application for stay filed by the petitioner along with his appeal. Hence, present Revision Petitions.

5. Learned counsel for the petitioner submits that the Suit of the plaintiff was not maintainable as proceedings initiated under Section 8 of the Bengal Regulation Act have not been instituted as per law. It is submitted that as per law, the petition under Section 8 of the Bengal Regulation Act was required to be presented before the District Judge whereas the same has been presented before the Superintendent of Sessions Judge, Sonepat and therefore, the same was not maintainable. It is further submitted that the plaintiff has failed to prove execution of the mortgage deed as well as mortgage amount, and has also failed to prove payment and mortgage amount of Rs.37,20,000/-. It is submitted that therefore, the judgment and decree dated 19.08.2019 is not valid and therefore, cannot be executed.

6. It is further submitted that the execution petition is not maintainable as the petitioner has preferred an appeal against the judgment and decree dated 19.08.2019. It is submitted that appeal is a substantive right of the party and it was incumbent upon the learned Executing Court to keep the execution in abeyance till the final outcome of the appeal. It is submitted that therefore, learned Executing Court is in error in proceeding with the execution during pendency of the appeal.

7. It is further submitted that the learned Appellate Court is in error in not proceeding with the appeal. It is also submitted that from the zimni orders (Annexure P3 to Annexure P5), it is apparent that

SUNENA
2023.05.11 10:19
I attest to the accuracy and
authenticity of this document

the petitioner/appellant therein, is not delaying the matter. It is submitted that vide order dated 06.04.2023, learned Appellate Court has adjourned the matter to 20.10.2023 and therefore, no delay can be attributed to the petitioner/appellant-applicant for adjournment.

8. No other argument is raised on behalf of the petitioner.

9. I have heard learned counsel for the petitioner.

10. As regards first argument of the learned counsel for the petitioner that Suit of the respondent-plaintiff was not maintainable under Section 8 of the Bengal Regulation Act, and that the plaintiff has failed to prove execution of the mortgage deed etc., the said submissions/arguments pertain to the merits of the matter which shall be decided by the learned Lower Appellate Court in the pending appeal filed by the petitioner. It is not open to this Court to entertain or address the said issues at this stage.

11. As regards the second contention of the petitioner/judgment debtor that execution petition is not maintainable as petitioner had filed an appeal against the judgment and decree under execution, I find no merit in the same. No doubt, filing of an Appeal is the substantive right of the judgment debtor, however, there is nothing to forbid the decree holder from seeking execution of the judgment and decree passed in his favor; especially as admittedly, no interim stay has been granted by the learned Appellate Court whereby operation of the judgment and decree under execution has been stayed. Therefore, I find no merit in this argument raised by the petitioner.

SUNENA
2023.05.11 10:19
I attest to the accuracy and
authenticity of this document

12. Another relevant factor is that in the present case the judgment and decree under execution was passed on 19.08.2019; and the respondent/decree holder had filed the execution petition only on 07.04.2021 i.e. the respondent/decree holder had waited for sufficient time before seeking execution of the judgment and decree dated 19.08.2019. Further, it has been rightly observed by learned Executing Court, that under Order 21 Rule 26 CPC, reasonable time is provided to the judgment debtor for applying to the superior Court. However, in the present case, appeal was filed by the petitioner only on 05.09.2022 i.e. over three years after passing of judgment and decree dated 19.08.2019, and almost one and half years after filing of execution petition by the respondent-decree holder. In my view, in these circumstances it is not open to the petitioner to seek abeyance of the execution proceedings as he has himself filed the appeal after considerable delay.

13. As regards third submission/prayer of the petitioner that learned Appellate Court be directed to decide the stay application filed by the petitioner along with his appeal, I find no reason to grant said prayer either. A perusal of the zimni orders (Anneuxre P3 to Annexure P5) reveal that vide order dated 05.09.2022 (Annexure P3), the first Appellate Court had registered the appeal and issued notice of the appeal, as well as application filed along with seeking condonation of delay, as also in the application for stay. On the next date of hearing 21.10.2022 (Annexure P4), respondent put in appearance and filed Power of Attorney and case was adjourned to 07.04.2023 for arguments.

SUNENA
2023.05.11 10:19
I attest to the accuracy and
authenticity of this document

Thereafter, matter was taken up on 06.04.2023 as 07.04.2023 was declared holiday on account of “Good Friday”; and vide order dated 06.04.2023 (Annexure P5), matter was adjourned to 20.10.2023 for arguments. Clearly, there is no delay on part of the learned Appellate Court in proceeding with the matter, and therefore, I see no occasion/reason is made out to issue the direction prayed for.

14. As regards impugned direction of the learned Executing Court for appointment of Local Commissioner, I find no error in the same for the reasons already enumerated hereinabove.

15. Dismissed.

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

04.05.2023 **(Nidhi Gupta)**
Sunena **Judge**

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

SUNENA
2023.05.11 10:19
I attest to the accuracy and
authenticity of this document