

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

CWP-13255-2023

Date of decision: 09.06.2023

NIRMAL SINGH

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

CORAM:- HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Ishnoor Singh, Advocate for
Mr. Vikram Singh, Advocate for the petitioner.

HARKESH MANUJA, J.(ORAL)

By way of present writ petition filed under Articles 226/227 of the Constitution of India, prayer has been made for issuance of writ in the nature of mandamus for staying the operation of the order dated 16.05.2023, passed by the respondent No.3, till the adjudication of stay application filed by the petitioner which is pending before respondent No.2.

2. In the present case, the dispute relates to the estate to Gurdev Singh and the petitioner, being nephew, relying upon registered Will dated 15.03.2018, claims succession as against the private respondents. The dispute regarding mutation was sent to the Court of respondent No.3 being contested one. Vide order dated 16.05.2023, respondent No.3 ordered to sanction mutation in favour of private respondents.

3. Aggrieved thereof, the petitioner filed appeal dated 01.06.2023 before respondent No.2 which was presented on 02.06.2023.

4. Learned counsel for the petitioner submits that the appeal was presented along with an application for interim stay, however, the same could not be taken up for hearing as the learned Collector i.e. respondent No.2 has not been holding Court up to 18.06.2023.

5. By way of present petition, learned counsel for the petitioner submits that till the time, the application for grant of interim stay, preferred by the petitioner is not heard by the Appellate Authority, the impugned order dated 16.05.2023 passed by respondent No.3 be kept in abeyance.

6. Upon advance notice, Mr. Ramesh Kumar Ambavta, AAG, Haryana, submits that once an order has been passed by the competent authority and the same has been impugned by way of appeal, it is the prerogative of the Appellate Authority to consider and deal with the stay application and at this stage, no prima facie case is made out in favour of petitioner.

7. I have heard learned counsel for the parties and have gone through the paper-book.

8. In the given facts and situation, I find substance in the submissions made on behalf of counsel for the petitioner. Once the order dated 16.05.2023 passed by respondent No.3 has been challenged by way of first appeal along with the stay application before respondent No.2, which is

not being taken up for hearing for no fault of petitioner, it would be in the interest of justice that the operation of the order dated 16.05.2023 passed by respondent No.3 is kept in abeyance till the application for stay filed along with the first appeal, at the instance of petitioner, pending before respondent No.2 is dealt with.

9. Accordingly, the present petition is disposed of with a direction to respondent No.2 to consider and decide the stay application filed by the petitioner along-with his first appeal, within a period of six weeks from today, till then the operation of order dated 16.05.2023 shall remain in abeyance, however, nothing expressed hereinabove shall be treated to be an expression of opinion on the merits of the controversy in hand.

10. Disposed of in the aforesaid terms.

(HARKESH MANUJA)
JUDGE

09.06.2023
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |