

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

130

CR-4522-2023

Date of Decision : 17.08.2023

Bikram Batta @ Vikram Batta

.....Petitioner

Versus

Anoop Khullar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Rakesh Chopra, Advocate
for the petitioner.

Mr. Rakesh Sobti, Advocate
for the respondents.

NAMIT KUMAR, J. (ORAL)

CM-14494-CII-2023

Prayer in the instant application is for placing on record the detailed order dated 25.07.2023 passed by learned Civil Judge (Junior Division), Amloh as Annexure P-18.

Allowed as prayed for subject to all just exceptions.

CR-4522-2023

1. The instant revision petition has been filed by the petitioner/defendant No.2 seeking appropriate directions for staying the execution of the judgment and decree dated 30.07.2022 (Annexure P-3) passed by learned Civil Judge (Junior Division), Amloh against which the petitioner has filed Civil Appeal No.113 of 2022 (Annexure P-2) which is pending before the Court of Learned Additional District Judge Fatehgarh Sahib.

2. Alternative prayer has also been made for issuance of directions to the Lower Appellate Court to consider and decide the stay application filed by the petitioner under Order 41, Rule 5 CPC.

3. Learned counsel for the petitioner, inter alia, contends that the petitioner has filed a statutory appeal before the Lower Appellate Court in which notice has been issued and the respondent/plaintiff has appeared as caveator and the same is still pending consideration before the said Court. He further submits that along with the appeal an application under Order 41, Rule 5 of CPC has also been filed, however, the said application has not been considered and decided by the said Court and on the other hand the Executing Court is proceeding with the execution to the prejudice of the petitioner.

4. It has been pointed out by learned counsel for the parties that another revision petition has been preferred by defendant No.1-Kawaljit Singh (respondent No.2 herein) bearing CR No.4590 of 2023 challenging the initiation of proceedings under Order 21, Rule 66 of CPC and in the said revision petition Co-ordinate Bench of this Court has issued notice of motion for 17.10.2023 and the Executing Court has been directed to adjourn the matter beyond the date fixed before this Court. The said order dated 11.08.2023 passed in CR No.4590 of 2023 is as under:

“The counsel for the petitioner submits that the appeal filed by the petitioner against the impugned judgment and decree dated 30.7.2022 is pending before 1st Appellate Court on 18.8.2023 and in the said appeal, respondent has already put in appearance before the said Court and the case is fixed for consideration on

application under Order 41 Rule 5 CPC. The counsel further submits that however, the Executing Court is in hurry to execute the impugned decree and has already initiated proceedings under Order 21 Rule 66 CPC without following the procedure.

Notice of motion for 17.10.2023.

The Executing Court is directed to adjourn the matter beyond the date given by this Court.”

5. Without going into the merits of the claim raised by the parties in the present revision petition, it would be appropriate to direct the Court of learned Additional District Judge, Fatehgarh Sahib to consider and decide the application filed by the petitioner under Order 41, Rule 5 of CPC within a period of 03 months.
6. Learned counsel for the respondent has no objection if the above-said directions are issued to the Lower Appellate Court.
7. Learned counsel for the parties undertake that they shall not take any unnecessary adjournments before the Lower Appellate Court.
8. Consequently, the present petition is disposed of with a direction to the Court of learned Additional District Judge, Fatehgarh Sahib to consider the application filed by the petitioner under Order 41 Rule 5 C.P.C and decide the same within a period of 03 months.
9. Copy of this order be sent to concerned Court for necessary compliance.

17.08.2023

Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No