

114

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ESA-02-2023 (O&M)
Reserved on : 24.05.2023
Date of decision : 29.05.2023

Pokhar Das ... Appellant(s)

Versus

Deva Singh (now deceased) through LRs and Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ivan Singh Khosa, Advocate for the appellant.

ALKA SARIN, J.

CM-259-C-2023

This is an application for condonation of delay of 31 days in filing the appeal.

For the reasons stated in the application, delay of 31 days in filing the appeal is condoned. CM stands disposed off.

ESA-02-2023

1. The present appeal has been filed impugning the order dated 17.01.2019 in Execution No.41 of 15.10.2014 and order dated 23.08.2022 passed by learned Additional District Judge, Patiala vide which the execution filed by the appellant herein was dismissed and the objections

filed by Mohinder Singh (respondent No.2 herein) were allowed.

2. The brief facts relevant to the present *lis* are that in the year 1983, one Deva Singh filed a suit against the present appellant. In the said suit, Deva Ram prayed for a declaration to the effect that he was in possession of the Wakf land as tenant instead of the appellant herein. The suit was dismissed vide judgment and decree dated 24.11.1984. The appeal preferred by Deva Singh was also dismissed vide judgment and decree dated 04.12.1987. Aggrieved by the said judgments and decrees, a regular second appeal being RSA-710-1988 was filed, which was also dismissed by this Court vide order dated 01.05.2014. Thereafter, the appellant herein, who was the defendant in the civil suit, filed the execution petition and one Mohinder Singh (respondent No.2 herein), who was stated to be in possession of the property in dispute, filed his objections. Vide impugned order dated 17.01.2019 the execution petition filed by the appellant herein was dismissed and the objections filed by Mohinder Singh (respondent No.2 herein) were allowed. Aggrieved by the said order, an appeal was preferred by the appellant herein and the same was also dismissed vide impugned order dated 23.08.2022. Subsequently, the appellant herein filed a contempt petition being COCP-1704-2019 and the same was dismissed as withdrawn vide order dated 10.12.2019. It has also come on the record that the appellant herein has filed a suit for mandatory and permanent injunction against the Punjab Wakf Board and others. Aggrieved by the dismissal of the execution petition, the present appeal has been preferred.

3. Learned counsel for the appellant would contend that since the

suit filed by Deva Singh was dismissed and there was a finding in his favour by this Court in the order dated 01.05.2014 in RSA-710-1988, hence, the appellant was entitled to file an execution petition. It is further the contention that keeping in view the age of the appellant, the execution ought to have been allowed.

4. I have heard learned counsel for the appellant.
5. In the present case, the suit filed by Deva Singh was dismissed so were the appeal and the regular second appeal. On a query put by this Court as to whether there was any decree ever passed in favour of the appellant herein, learned counsel for the appellant has candidly admitted that there has never been a decree in favour of the appellant. Learned counsel for the appellant has not been able to convince this Court that without there being any decree in his favour, an execution petition could have been filed.
6. In view of the above, I do not find any merit in the present appeal which is accordingly, dismissed. Pending applications, if any, also stand disposed off.

29.05.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO