

2024:PHHC:029265

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
136**

CR-1292-2024

Date of decision: 29.02.2024

SANJEEV KUMAR AND ANOTHER

.....PETITIONERS

Versus

MANDEEP KAUR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Viren Jain, Advocate,
for the petitioners.

RITU TAGORE, J. (ORAL)

1. This revision petition has been filed by the petitioners with a prayer to direct the learned Additional District Judge, First Appellate Court, Ludhiana to expeditiously decide the stay application (Annexure P-4) filed along with First Appeal (Annexure P-3) bearing No. CA/47/2020 dated 14.01.2020 titled as Sanjeev Kumar and others vs. Mandeep Kaur and another filed by the petitioners, seeking stay of operation of judgment and decree dated 20.11.2019 passed in Civil Suit bearing No. CS/938/2014 titled as Mandeep Kaur and another vs. Sanjeev Kumar and others, with a further prayer for staying the further proceedings in execution bearing No. EXE/128/2020 arising out of the judgment and decree dated 20.11.2019 passed in CS/938/2014 titled as Mandeep Kaur and another vs. Sanjeev Kumar and others, during the pendency of this case.

2. Keeping in view the limited scope of prayer, issuance of notice to the respondents is dispensed with.

3. Learned counsel submits that the petitioners had filed a suit

bearing No. CS/510/2014 titled Sanjeev Kumar and others vs. Mandeep Kaur and another, challenging the sale deed dated 26.03.2012 registered vide Vasika No. 28055 dated 30.03.2012 with respect to the suit property i.e. a residential house detailed in the plaint, as illegal, null and void, outcome of misrepresentation, fraud and not binding upon their rights with further prayer to cancel and set aside the sale deed. The respondent No. 1 and 2 also filed a suit bearing No. CS/938/2014 titled Mandeep Kaur and another vs. Sanjeev Kumar and others for grant of decree of possession of the house in dispute, having purchased the same vide sale deed bearing Vasika No. 28055 dated 30.03.2012. The suit filed by the petitioners was dismissed and suit filed by respondents No. 1 and 2 was decreed (Annexures P-1 and P-2 respectively).

4. Learned counsel for the petitioners submits that the petitioners being aggrieved with the above-said judgments, preferred two statutory appeals bearing No. CA/46/2020 and CA/47/2020 respectively before the First Appellate Court, Ludhiana. Along with the aforesaid appeal bearing No. CS/47/2020, they also filed an application for stay of operation of the judgment and decree dated 20.11.2019 passed in Civil Suit No. CS/938/2014. Learned counsel submits that the learned Appellate Court admitted and registered both the appeals (Annexures P-3 and P-4) on 17.02.2020 and issued notices to respondents No. 1 and 2 for 12.05.2020.

5. Learned counsel further contends that respondents No. 1 and 2 had put in appearance in the aforesaid appeals through their counsel and the appeals have been continuously adjourned, though requests were made by the petitioners through their counsel to hear the stay application but till date, the application for stay has yet not been decided. Learned counsel submits

that taking advantage of the same, the respondents No. 1 and 2 filed execution proceeding bearing EXE/128/2020 titled Mandeep Kaur and another vs. Sanjeev Kumar and others arising out of the judgment and decreed dated 20.11.2019 passed in Civil Suit bearing No. CS/938/2014 and the learned Executing Court had issued warrant of possession (Annexure P-5) for 04.03.2024 in the absence of any stay order from the First Appellate Court.

6. Learned counsel further submits that the petitioners moved another application for stay in the wake of issuance of warrant of possession before the learned Appellate Court but again, the request for stay has not been entertained and learned Appellate Court has simply put the application (Annexure P-7) on notice for 02.03.2024. It is stated that main appeal is pending for 08.05.2024. While referring to the observations made by the Hon'ble Supreme Court in a case **Mool Chand Yadav and another vs. Raza Buland Sugar Co. Ltd. Rampur and others**, (1982) 3 SCC 484. Learned counsel submits that if the proceedings before the Executing Court are not stayed, the very purpose of filing of the appeal would be defeated. A prayer is made that the learned Appellate Court be directed to decide the applications for stay (Annexure P-4 and P-7) and till the decision on the aforesaid applications, the proceedings before the Executing Court arising out of the judgment dated 20.11.2019 passed in CS/938/2014 titled Mandeep Kaur and others vs. Sanjeev Kumar and others be stayed.

7. I have heard the learned counsel for the petitioners and with his able assistance, have gone through the paper-book.

8. It is a matter of record that petitioners' first statutory appeals arising out of the judgment and decree (Annexures P-1 and P-2) are pending

before the learned Appellate Court for adjudication. It is also a matter of record that along with the appeal bearing No. CA/47/2020, an application for stay of the operation of the impugned judgment and decree dated 20.11.2019 passed in Civil Suit No. CS/938/2014 was filed. It is also a matter of record that notices in the said appeals have been issued to the respondents, who have put in appearance in the appeals. It is also a matter of record that the application for stay of the operation of the impugned judgment and decree dated 20.11.2019 passed in Civil Suit CS/938/2014 (Annexure P-4) is still pending for adjudication and another application (Annexure P-7) was also filed by the petitioners before the learned Appellate Court for passing appropriate orders on the application, by bringing to the notice of the learned Appellate Court, regarding issuance of warrant of possession with respect to the suit property by the learned Executing Court. The aforesaid application has also been simply put to notice for 02.03.2024 by the learned Appellate Court.

9. In authority titled **Mool Chand Yadav (supra)**, the Hon'ble Supreme Court has observed that during the pendency of the appeal, the operation of an order having serious consequence must be suspended.

10. In wake of the order (Annexure P-5), downloaded copy from the website of the District Court, Ludhiana, shows that in execution proceedings “next purpose” is “warrant of possession” and “next date of hearing” is “04.03.2024”. In view of the above, the Executing Court is directed to suspend the order of issuance of warrant of possession and postpone it for another fifteen days. Furthermore, learned Appellate Court is directed to decide the stay applications (Annexures P-4 and P-7) moved by the petitioner-appellants, on the date already fixed, or any other date

convenient to the Court but not beyond fifteen days thereafter.

- 11. Petition stands disposed of accordingly.
- 12. In view of the disposal of the main petition, pending applications, if any, stand disposed of accordingly.

February 29, 2024
pj

(RITU TAGORE)
JUDGE

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