

**CM-18652-CII-2023 &
CM-18653-CII-2023 in/and
SAO-48-2023 (O&M)
Date of decision : 19.07.2024**

...Appellant

...Respondents

Present: Mr. Rohit Mittal, Advocate
for the appellant.

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1. These applications are filed under Section 151 CPC for condonation of 529 days delay in re-filing the appeal and under Section 5 of Limitation Act for condonation of the delay of 09 days in filing the present appeal.
2. In view of the grounds taken in the applications, delay of 529 and 09 days in re-filing and filing the appeal respectively is condoned.
3. Civil Miscellaneous applications are allowed.

1. This second appeal has been filed by the decree-holder to challenge the correctness of the concurrent orders passed by the Executing Court as well as the First Appellate Court. The third party objection petition

filed by Sh. Raja Ram was allowed and the execution petition was dismissed. Both the Courts have come to the conclusion that there is no decree for delivery of possession in favour of the appellant. Moreover, the property is un-partitioned share in a joint property, hence, the possession cannot be delivered to the appellant in execution petition. The First Appellate Court has recorded various reasons including the reasons noted above. A detailed order has been passed by the District Judge, Narnaul.

2. Learned counsel representing the appellant contends that the Court could have protected the possession of Sh. Raja Ram while ordering delivery of possession to the appellant with respect to other part of the joint property.

3. This Court has considered the submission made by the learned counsel representing the appellant, however, finds no substance. First of all there is no decree for possession in favour of the appellant. Secondly, the appropriate remedy for the appellant is to seek possession by way of partition of the joint property.

4. Hence, no ground to interfere is made out.

5. Dismissed.

6. All the pending miscellaneous applications, if any, are also disposed of.

	(ANIL KSHETARPAL)	
	JUDGE	
19.07.2024		
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	Whether Reportable :	Yes No