



CR No.5154 of 2024 (O&M) -1-

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

(130)

**CR-5154-2024(O&M)
Date of Decision: 21.11.2024**

Darshan Singh

.....Petitioner

Versus

Balwinder Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Vivek Sharma Vats, Advocate for the petitioner.

VIKAS SURI, J. (Oral)

1. The petitioner/decreed-holder (Darshan Singh), by way of the present revision petition under Article 227 of the Constitution of India, assails the order dated 10.05.2024 (Annexure P-3) passed by the learned Additional District Judge, Chandigarh, directing the executing Court not to issue the warrants of possession till further orders.

2. Briefly stated, the plaintiff-petitioner filed a suit for possession, permanent injunction and for damages/mesne profits, which was decreed in his favour vide judgment and decree dated 28.02.2024 (Annexure P-1). Aggrieved thereagainst, two of the defendants preferred statutory first appeal. The said appeal came up for hearing on 02.04.2024 and notice of the appeal along with stay application was ordered to be issued to the respondents for 15.05.2024. It is pleaded that on an application seeking preponement of the appeal, the petitioner entered appearance and stated that he would not press for issuance of warrant for possession before the executing Court and he would argue the case on the date already fixed in the



main appeal. The trial Court record was also summoned for the said date and in view of statement suffered by learned counsel for the petitioner before the first appellate Court, vide order dated 10.05.2024, the executing Court was directed not to issue the warrant for possession. On the date fixed, i.e. 15.05.2024, as the trial Court record had not been received, it was again summoned and the arguments in the main appeal were not heard on the said date. A fresh direction was issued not to issue warrant for possession till further orders.

3. Learned counsel for the petitioner submits that the interim order was passed in favour of the respondents without affording ample opportunity to the petitioner to argue the stay application. Reliance has been placed upon the judgment of Rajasthan High Court, rendered in **Anand Chordiya vs. Village Panchayat Tamkor and others, 2015 (53) RCR (Civil) 407.**

4. Heard learned counsel for the petitioner and perused the record with his able assistance.

5. Admittedly, a decree has been passed in favour of the petitioner in a suit filed for possession, permanent injunction and for damages/mesne profits. Two of the defendants aggrieved thereagainst have preferred an appeal along with an application under Order 41 Rule 1 of the Code of Civil Procedure, 1908 (for short 'CPC'). Notice of the appeal as well as of the stay application was issued to the petitioner. It is not disputed that aggrieved by the judgment and decree passed by the trial Court, the respondents/appellants have availed their statutory right of appeal under Section 96 CPC, which is the final Court of facts. Initially, a statement was suffered on behalf of the petitioner that he will not press for issuance of



warrant for possession before the executing Court, till the then next hearing.

6. Learned counsel for the petitioner has contested the aforesaid by suffering a statement on affidavit that no such instructions were given by the petitioner to the Advocate. Thereafter, the petitioner changed his Lawyer and a fresh Power of Attorney was filed on 15.05.2024 before the first appellate Court.

7. Perusal of the case file would show that the application under Order 41 Rule 1 CPC is still pending adjudication and arguments on the appeal as well as stay application are yet to take place. The proceedings are now pending for 19.02.2025. It is also noticed that the trial Court record has yet not been received by the first appellate Court. It is very strange that the said record was first requisitioned vide order dated 15.05.2024 and thereafter, has been repeatedly summoned on each subsequent hearing on 29.05.2024, 31.07.2024 and 23.08.2024 but the same has yet not been received. The said dereliction of duty and insubordination has been taken note of. It also transpires from the record that no reply to the application under Order 41 Rule 1 CPC has been filed till date. Learned counsel for the petitioner undertakes to file the reply before the date fixed.

8. Keeping in view the aforesaid, this petition is disposed of with a request to the learned District and Sessions Judge, Chandigarh, to look into the matter and ensure that the summoned record is remitted to the first appellate Court before the date fixed, i.e. 19.02.2025. On receipt of the record, the first appellate Court would proceed with the matter, in accordance with law and dispose of the application under Order 41 Rule 1 CPC, expeditiously. However, this order would not be an embargo upon the



first appellate Court to hear and decide the main appeal along with the application as well.

9. The revision petition is disposed of in the aforesaid terms.

November 21, 2024

d.gulati/sumit.k

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

(VIKAS SURI)
JUDGE