



**In the High Court of Punjab and Haryana, at Chandigarh**

**1. Execution Second Appeal No. 8 of 2017 (O&M)**

Jaswant Kaur (Deceased) through her Legal Representative

... Appellant(s)

Versus

Jaswinder Singh (Deceased) through his Legal Representatives and Others

... Respondent(s)

**AND**

**2. Civil Revision No. 3701 of 2022**

Jaswinder Singh (Deceased) through her Legal Representatives

... Petitioner(s)

Versus

Jaswant Kaur (Deceased) through his Legal Representatives and Others

... Respondent(s)

**DATE OF DECISION: 03.03.2025**

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal.**

Present: Mr. Ajaivir Singh, Advocate  
for the appellant (In ESA-8-2017) and  
for respondent No.1 (In CR-3701-2022).

Mr. S.K.Jain and Mr. Anubhav Singla, Advocates  
for respondent No.1 (In ESA-8-2017) and  
for the petitioner (In CR-3701-2022).

Mr. Sherry K. Singla, Advocate  
for respondent No.3 (In CR-3701-2022).

Mr. Sukhdeep Singh Chhatwal, Advocate  
for respondents No.3 and 4 (In ESA-8-2017) and  
for respondents No.2 and 4 (In CR-3701-2022).

**Anil Kshetarpal, J.**

**CM-3702-C-2023 IN ESA-8-2017**

In view of the prayer made in the application, which is supported by an affidavit, the same is allowed, subject to all just exceptions. The proposed legal representatives, named in para 2 of the application, are the Class-I heirs of respondent No.1-Jaswinder Singh, who is stated to have died on 19.09.2021. They are permitted to be brought on record as the legal heirs of the respondent No.1-Jaswinder Singh, for the purpose of defending the appeal.

**ESA-8-2017 And CR-3701-2022**

1. With the consent of the learned counsel representing the parties, Execution Second Appeal No. 8 of 2017 and Civil Revision No. 3701 of 2022 shall stand disposed of by a common order.
2. The facts, in brief, are required to be noticed in order to comprehend the issues involved in the present case. Jaswinder Singh filed a suit for possession by way of specific performance of the agreement to sell against Jaswant Kaur. The plaintiff has failed to prove his readiness and willingness to perform his part of the contract, however the Trial Court ordered refund of earnest money of ₹25,00,000/- along with interest vide judgment and decree dated 11.08.2015. The decree holder filed an execution petition in which the judgment debtor No.3 entered appearance on 21.01.2016, whereas the judgment debtors No. 1 and 2 entered appearance on 18.03.2016. The objection petition filed by the judgment debtors was dismissed on 08.09.2016, which, in appeal, was affirmed on 14.12.2016. The judgment debtors filed Execution Second Appeal No. 8 of 2017. They also filed civil appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) against the judgment and decree dated 11.08.2015 along with an application for

condonation of delay of 520 days which has been allowed by the First Appellate Court.

3. Jaswinder Singh has filed Civil Revision No. 3701 of 2022. The learned counsel representing the parties are *ad idem* that the decision in the aforesaid revision petition shall decide the fate of these two cases.

4. The First Appellate Court has found that the judgment debtors were not advised properly by their counsel. It has been found that the learned counsel representing the judgment debtors by filing the objection petition challenged the decree as if it were a first appeal. Technically, he was to file an appeal against the judgment and decree passed on 11.08.2015. When the judgment debtors filed an execution petition in the High Court, they were advised to file an appeal against the judgment and decree which was promptly filed and delay has been condoned.

5. The learned counsel representing the petitioner (decree holder) relies upon the judgments passed in *Union of India and Another v. Jahangir Byramji Jeejeebhoy (D) Through His Lr 2024 SCC Online SC 489* and *Abhay Dabra v. Pyare Ram and Others 2023 SCC Online 92*.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. Before condoning the delay, the Court is required to examine as to “whether sufficient explanation for condoning the delay has been furnished or not?” In this case, the First Appellate Court has found that the judgment debtors/defendants have furnished sufficient and plausible explanation while condoning the delay. The First Appellate Court has also seen merits of the appeal because the Trial Court ordered refund of the earnest money despite recording a finding that the plaintiff was never ready and willing to perform his

part of the contract. In such circumstances, it would not be appropriate to throw the meritorious appeal only on the question of limitation. Moreover, from the perusal of the objections, it is evident that the previously engaged counsel has failed to make a distinction between the appeal against the money decree and the objection petition. Furthermore, the First Appellate Court has already exercised its discretion which is not proved to be perverse.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order. Hence, Civil Revision No. 3701 of 2022 is dismissed.

9. The Execution Second Appeal has been filed against the dismissal of the objection petition filed by the judgment debtors against the warrants of attachment. Now, the civil appeal under Section 96 CPC will have to be decided first in point of time. Once that appeal is decided, the decree passed by the Trial Court will merge into the same. If the decree is affirmed by the First Appellate Court, the decree holder shall be entitled to file a fresh execution petition.

10. In view of the observations made above, Execution Second Appeal No. 8 of 2017 stands disposed of.

11. The miscellaneous application(s) pending, if any, in the Execution Second Appeal shall also stand disposed of.

**(Anil Kshetarpal)  
Judge**

**March 03, 2025  
“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No