

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****123****CR-1306-2025 (O&M)****Date of decision: 03.03.2025****Nasar Ali****...Petitioner(s)****Vs.****Parveen****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Imran Farooqi, Advocate for the petitioner.

NIDHI GUPTA, J.

The present petition has been filed by the plaintiff under Article 227 of Constitution of India read with Section 151 CPC seeking directions to the Ld. District Court, Malerkotla to expedite and conclude the proceedings arising out of the appeal No.CMA/45/2024 titled as 'Parveen v. Nasar Ali', pending before the Ld. District Court, Malerkotla, (ANNEXURE P-4) within a time-bound period, in the interest of justice.

2. Ld. Counsel for the petitioner/plaintiff inter-alia submits that the respondent/defendant had executed an Agreement to Sell dated 24.10.2016 in favour of the petitioner for total sale consideration of Rs.8 lacs, out of which plaintiff paid Rs.3,50,000/- as earnest money. It was mutually agreed that Sale Deed would be executed and registered on 24.10.2017. Plaintiff remained present in the Tehsil, but the respondent failed to appear to execute the sale deed as agreed. As such, the plaintiff instituted suit for specific performance; in which the respondent was proceeded ex-parte. The suit was decreed ex-parte in favour of the plaintiff



vide judgment dated 15.10.2022 (Annexure P-1). No appeal was filed against the said judgment.

3. Then the plaintiff initiated execution proceedings to enforce decree dated 15.10.2022 (Annexure P-2). However, the respondent kept on delaying the plaintiff's lawful rights and filed an application under Order 9 Rules 7 and 13 read with Section 151CPC to recall the ex-parte decree. The said application was dismissed by the learned trial Court vide order dated 20.02.2024 (Annexure P-3).

4. The respondent preferred an appeal (Annexure P-4) against the said order dated 20.02.2024, and vide order dated 30.4.2024, obtained ex-parte stay halting the executing proceedings. Ld. Counsel submits that pursuant to the decree, the Sale Deed for the suit property was executed on 02.04.2024 rendering the appeal infructuous. Despite this, appeal remained pending with arguments yet to commence. It is submitted that due to the stay of execution proceedings granted in the appeal, the petitioner is being deprived of the fruits of decree and possession of property. It is accordingly prayed that a direction be issued to the learned District Court, Malerkotla to expedite and conclude the proceedings arising out of the appeal (Annexure P-4) expeditiously.

5. Heard.

6. I find merit in the submissions advanced on behalf of the petitioner. The suit of the petitioner was decreed ex-parte vide judgment and decree dated 15.10.2022 (Annexure P-1). Thereafter, the petitioner had filed an Execution Application dated nil (Annexure P-2) seeking execution of



the above said judgment and decree. It was the case of the respondent/defendant before the learned Courts below that the respondent came to know about the decree dated 15.10.2022 only on 12.05.2023 when the petitioner openly stated to her that he has got the ex-parte decree from the Court; whereafter the respondent immediately moved an application for engaging legal aid counsel, which was approved on 13.05.2023. Thereafter, the respondent moved application dated 26.05.2023 under Order 9 Rules 7 and 13 read with Section 151 CPC for setting aside the ex-parte order dated 01.11.2021 and decree dated 15.10.2022. The said application of the respondent was dismissed by the learned Civil Judge (Junior Division), Malerkotla vide order dated 20.02.2024 (Annexure P-3) holding that the respondent *“was having due knowledge regarding the pendency of the original suit, as her summons reached at her house and the same were received back duly served. Thus, the applicant/defendant has been properly served in the civil suit. Hence, she was rightly proceeded against ex-parte by this Court vide order dated 01.11.2021 and judgment and decree dated 15.10.2022 has been rightly passed. Resultantly, it is clear that present application is not maintainable. Issues No. 1 and 2 are decided accordingly against the applicant/defendant and in favour of respondent/plaintiff”*.

7. The respondent then filed appeal dated Nil (Annexure P-4) against the said order dated 20.02.2024 passed by learned Civil Judge (Junior Division), Malerkotla.



8. Perusal of the zimni orders (Annexure P-5) reveals that the Civil Appeal of the respondent stood admitted vide order dated 14.03.2024 and notice was issued to the petitioner for 08.04.2024. On 08.04.2024, notice issued to the petitioner was received back unserved with the report that he was not residing at the given address. Accordingly, fresh notice was issued to the petitioner for 30.04.2024. On 30.04.2024, dasti summons were given to the respondent/defendant for 17.05.2024; and further proceedings before the Executing Court were directed to be stayed till the next date of hearing as it was stated by learned counsel for the respondent/defendant before the learned District Judge, Sangrur that execution is pending for 05.05.2024. On 18.05.2024, learned counsel for the petitioner put in appearance and the matter was listed for 05.07.2024 for filing reply by the petitioner; and so forth. It is the prayer of the petitioner/plaintiff that the said appeal of the respondent be heard and decided expeditiously. It has also been pointed out that in fact Appeal is rendered infructuous as Sale Deed already stands executed in favour of the petitioner on 02.04.2024.

9. Hence, keeping in view the entirety of the facts as noted above, the present civil revision petition is hereby **allowed**. The learned Additional District Judge, Malerkotla is directed to decide the appeal bearing No. CMA/45/2024 filed by the respondent expeditiously, preferably within 6 months from today.

10. Pending applications, if any, stand disposed of.

03.03.2025

Divyanshi

(NIDHI GUPTA)

JUDGE

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