

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

CR No.6515 of 2015

Date of decision: 01.10.2015

Ajay Mehra

...Petitioner

versus

Smt. Salochna Sharma

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. K.S. Rekhi, Advocate,
for the petitioner.

RITU BAHRI, J.

Challenge in this petition is to the order dated 27.08.2015 (Annexure P-3) passed by the District Judge, Amritsar, whereby on an application filed by the petitioner under Order 41 Rule 5 CPC, execution of the judgment and decree dated 27.02.2015 has been stayed subject to furnishing bank guarantee of 50% of the decretal amount and further subject to furnishing of security as regards the remaining 50% of the decretal amount to the satisfaction of the executing Court.

Learned counsel for the petitioner has argued that as per Order 41 Rules 5 and 6 CPC, the appellate Court could only pass an order with regard to give security and it had no power to give direction for furnishing bank guarantee of 50% of the decretal amount. The petitioner has right to give security for the entire decretal amount.

For reference, Rule 6 of Order 41 CPC is reproduced as under:-

6. Security in case of order for execution of decree appealed from.- (1)

Where an order is made for the execution of a decree from which an appeal

is pending, the court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may or like cause direct the court which passed the decree to take such security.

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment debtor to the court which made the order, be stayed on such terms as to giving security or otherwise as the court thinks fit until the appeal is disposed of.”

As per clause (2) above, the decree of the Court can be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

After going through the impugned, in the light of Order 41 Rules 5 and 6 CPC, no illegality, much less irregularity, has been found in the impugned order, warranting interference by this Court in exercise of its revisional jurisdiction.

Dismissed.

01.10.2015
ajp

(RITU BAHRI)
JUDGE