IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.17724-CII of 2016 in/and
CR No.4309 of 2016
Date of Decision: 06.09.2016

M/s Silver Oaks Rehabilitation Centre and others

......Petitioners

Vs

Anand Chhibar and another

.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Amar Vivek, Advocate
for the petitioners.

Mr. Amit Jhanji, Advocate
for respondent No.1.

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<u>RAJ MOHAN SINGH, J.</u>

<u>CM No.17724-CII of 2016</u>

This civil miscellaneous has been listed in urgent supplementary list. Keeping in view the urgency shown by the learned counsel for the petitioners and with the concurrence of both the parties, the main case is being taken up after preponing the date from 07.09.2016 for today i.e. 05.09.2016.

CM is accordingly disposed of.

CR No.4309 of 2016

[1]. Petitioners have assailed order dated 24.05.2016 passed by Additional District Judge, Chandigarh whereby operation of judgment and decree dated 12.04.2016 passed by Civil Judge (Junior Division), Chandigarh was stayed subject to furnishing open bank guarantee of the decretal amount along with upto date interest by the judgment debtor within one month from the date of passing of the order.

[2]. Plaintiff-respondent No.1 filed a suit for recovery of Rs.54,55,369.86/- (Rs.32,50,000/- as principal and Rs.22,05,369.86 as interest @ 18% per annum w.e.f. 4.12.2009 to 10.09.2013) on the basis of cheques issued by the plaintiff along with pendente lite and future interest @ 18% per annum from the date of filing of suit till its realisation. Suit was partly decreed and plaintiff was held entitled to recover Rs.32,50,000/- from defendants No.1 to 4 along with interest @ 9 % per annum from March 2013 till filing of the suit and *pendente lite* interest as well as future interest @ 6 % per annum from the date of filing of the suit till final realisation of the amount. Defendants No.1 to 4 were jointly and severely held liable for making good the decretal amount.

[3]. Feeling dissatisfied with the judgment and decree dated 12.04.2016 passed by Civil Judge (Junior Division), Chandigarh,

judgment debtors filed appeal before the lower Appellate Court along with an application under Order 41 Rule 5 CPC for stay of operation of the judgment and decree of the trial Court.

[4]. The application was contested by the plaintiff-respondent and it was prayed that the judgment debtor be asked to deposit the amount or furnish the security for the decretal amount for consideration of interim relief.

[5]. At the time of arguments on the application, learned counsel for the plaintiff stressed that he has no objection if the operation of the judgment and decree of the trial Court is stayed subject to furnishing the bank guarantee equal to the decretal amount plus interest awarded by the trial Court by the judgment debtor.

[6]. The Additional District Judge by taking note of the statement made by learned counsel for the decree holder considered the prayer for grant of interim order and stayed the operation of the judgment and decree dated 12.04.2016 passed by the trial Court subject to furnishing the open bank guarantee of the decretal amount along with upto date interest within one month from the date of passing of the order i.e. 24.05.2016.

[7]. I have heard learned counsel for the parties.

[8]. Learned counsel for the petitioners vehemently submitted that in view of Order 41 Rule 1(3) CPC, the Appellate

Court can allow the appellant to deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit. In support of his contention, learned counsel for the petitioners relies upon ***Sihor Nagar Palika Bureau Vs. Bhabhlubhai Virabhai and Co., (2005) 4 SCC 1.*** In terms of Order 41 Rule 1(3) and Order 41 Rule 5 (5) CPC, discretion has been conferred upon the Appellate Court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof as may be directed by the Appellate Court. The discretion has to be exercised by the Appellate Court in a judicious manner depending upon the facts and circumstances of the case.

[9]. In the aforesaid precedent i.e. ***Sihor Nagar Palika Bureau's case (supra)***, first appeal was filed in the High Court of Gujarat, therein an application was also filed under Order 41 Rule 5 CPC for stay of execution of the decree. High Court admitted the appeal and granted stay subject to condition that the appellant shall deposit in the Court a certain amount with interest on or before the specified date. Appellant moved an application for variation in the order on the ground that the appellant was facing financial difficulty on account of abolition of octroi and was badly in need of money for carrying out its multifarious public utility services and activities. He offered to

furnish security to the satisfaction of the trial Court and also appealed to the Court to suitably modify its earlier order so as to dispense with the requirement of depositing the amount with interest as earlier ordered by the Court. The Court declined the prayer, but extended the time for making deposit in view of earlier order passed.

[10]. The Hon'ble Apex Court in the facts and circumstances of the case granted the prayer even by observing that ordinarily execution of a money decree is not to be stayed as the satisfaction of money decree does not amount to irreparable injury. In the event of appeal being allowed, the remedy of restitution is always available to the successful party. The discretionary power can be exercised by the Appellate Court in appropriate cases. In the facts and circumstances of the said case, the Hon'ble Apex Court interfered with the order of the High Court.

[11]. Learned counsel for the petitioners also relied upon ***B.P. Agarwal Vs. Dhanalakshmi Bank Ltd and ors., (2008) 3 SCC 397***. In the aforesaid judgment, an order passed by the Kerala High Court in exercise of jurisdiction under Order 41 Rule 1(3) CPC was impugned wherein appellant was directed to deposit a specified amount in the trial Court within a particular period. The basic challenge was made against the correctness

of the order on the ground that High Court could not have referred to Order 41 Rule 1(3) CPC in the absence of any application of stay. Since there was no application, the Hon'ble Apex Court therefore observed that the High Court could not have passed the order for deposit and the direction given was accordingly vacated. The Court also observed that in the event of praying for stay of execution of the decree by the appellant or for any order by way of interim relief during pendency of the appeal, it was open for the Court to oppose any condition as it may think fit in the facts and circumstances of the case. Since there was no such application, therefore, imposition of a condition for depositing the amount was considered inadequate. Apparently, the aforesaid precedents were based on the facts involved therein.

[12]. Thirdly, learned counsel for the petitioners relies upon ***Management of M/s Devi Theatre Vs. Vishwanath Raju, 2004(7) SCC 337*** to contend that imposition of condition of deposit of money is not legally sustainable without consideration of plea of the petitioner by the lower Appellate Court. In the aforesaid case, the appeal was admitted subject to condition of depositing certain amount within a particular period, failing which appeal was ordered to be dismissed without further orders. The amount was not deposited and an application for

extension of time remained indisposed of. The inevitable consequences in the form of dismissal of the appeal in the event of not depositing the amount was the subject matter of consideration before the Hon'ble Apex Court. The said case was also based on its own facts and circumstances.

[13]. On the other hand, learned counsel for the respondent has submitted that it is true that in reply to the application for grant of interim relief, the decree holder made a stress for deposit of the amount or for furnishing the security of the decretal amount in the event of passing interim order by the lower Appellate Court. However during course of arguments, learned counsel for the decree holder made a specific statement that he has no objection if the operation of the judgment and decree of the trial Court is stayed subject to furnishing bank guarantee equal to the decretal amount plus interest awarded by the trial Court. It was on this statement, the lower Appellate Court considered the application for grant of interim relief and ultimately passed the order dated 24.05.2016.

[14]. Learned counsel for the respondent by relying upon ***Malwa Strips Private Limited Vs. Jyoti Limited, (2009) 2 SCC 426*** contends that although Order 41 Rule 1 (3) CPC is not mandatory, but by relying upon ***Sihor Nagar Palika Bureau's case (supra)*** and ***B.P. Agarwal's case (supra)*** contends that

discretion has to be exercised by the Court judicially and not arbitrarily depending on the facts and circumstances of the case. Ordinarily, execution of money decree is not stayed inasmuch as that the satisfaction of money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party. Still the power is available, the same is discretionary and the same is meant to be exercised in appropriate cases.

[15]. In view of aforesaid, the discretion was left to be exercised in an appropriate manner based on facts and circumstances of the case. For granting interim relief, an exceptional case has to be made out. Execution of money decree cannot be stayed in normal circumstances. In the application for grant of interim relief, no circumstances have come forth on record to show that any undue hardship it would cause if the ordinary rule to direct the payment of the decretal amount is granted.

[16]. Perusal of the application would reveal that the pleadings contained therein are only general in nature. As per requirement, a strong case should be made out for passing an order of stay of execution of money decree. The Hon'ble Apex Court in the aforesaid case in its facts and circumstances

directed the respondent to deposit a quantified sum within a particular period along with furnishing adequate security for the rest of the amount. Even the decree holder was allowed to withdraw the sum so ordered without furnishing any security in lieu thereof. The ratio as contained in the precedents is only to the effect that the indulgence can be granted in view of the fact and circumstances of each case, if strong case is made out for grant of stay of execution of the money decree.

[17]. Learned counsel for the respondent also pointed out that notice of motion was issued in the revision petition on 13.07.2016 and in due course, the case was adjourned for 04.08.2016 from intervening dates i.e. 15.07.2016 to 21.07.2016, 21.07.2016 to 01.08.2016, 02.08.2016 to 03.08.2016 and 03.08.2016 to 04.08.2016. On 04.08.2016, there was a written request on behalf of learned counsel for the petitioners and the case was adjourned to 08.08.2016. Thereafter, the case was further adjourned to 31.08.2016. On 31.08.2016, none appeared on behalf of the petitioners and the case was adjourned for 07.09.2016. In the intervening period, the trial court passed an order dated 24.08.2016 to the following effect:-

"Present: Arvind Goel, counsel for the decree holder.

Pardeep Bedi, counsel for the judgment debtor no.1 to 3.

Today, Sh. Pardeep Bedi, learned counsel for the judgment debtors has shown to the court that the file have been registered in the Hon'ble High Court vide CR No.16917 of 2016. But, still no stay order has been shown to the court. Whereas, he has also suffered a separate statement to the effect that "we have filed the civil revision in the Hon'ble High Court of Punjab and Haryana which is fixed for 31.08.2016 and if no stay order will be brought on or before 05.09.2016 then we undertake to furnish the bank guarantee as per the orders of the Hon'ble Additional District and Sessions Judge Sh. S.K. Sachdeva on or before 05.09.2016". Therefore, in view of the statement suffered by learned counsel for judgment debtors, case is adjourned to 05.09.2016 for placing on record any stay order otherwise for furnishing bank guarantee as per the orders of the Learned Additional District and Sessions Judge, Chandigarh.

Sd/-

(Ashish Thathai)
CJ(JD)/CHD/24.08.2016."

[18]. Apparently a statement was suffered by the learned counsel for the judgment debtor that the present civil revision was fixed for 31.08.2016 and if no stay order was produced on or before 05.09.2016 then the judgment debtor would furnish bank guarantee as per order of the Additional District Judge on or before 05.09.2016. On the aforesaid premise, an application for preponing the date has been moved along with grant of interim protection.

[19]. Learned counsel for the respondent also highlighted that a wrong affidavit has been filed by Dr. Anil Bajaj partner of petitioner No.1 wherein in the affidavit dated 23.08.2016 it was incorporated that the revision petition was listed for 24.08.2016. Perusal of the orders on record reveals that no such listing of the case was there on 24.08.2016.

[20]. Since this Court on concurrence of both the learned counsel for the parties proceeded to hear the arguments on merits after preponing the date, therefore, this Court does not wish to comment upon these issues for the purpose of deciding the present controversy.

[21]. Having taken note of the facts and circumstances involved in the present revision petition, this Court is of the considered view that for granting stay of execution of money decree, a strong *prima facie* case has to be made out. Nothing

could be pointed out as to with the furnishing of bank guarantee the petitioner would suffer irreparable loss inasmuch as that the same could not be compensated. Rather, execution of money decree is not to be stayed as the satisfaction of money decree does not amount to irreparable injury. In the event of acceptance of the appeal, remedy of restitution is always available to the successful party, therefore, balance of convenience and suffering of irreparable loss in the event of non grant of interim relief would not be available to the petitioner. So far as existence of *prima facie* case is concerned, the same cannot be found in favour of the petitioner inasmuch as that the trial Court has decreed the suit and no exceptional case has been pleaded in the application for grant of interim relief. Even in the reply to the application for grant of interim relief, the respondent adverted to the prayer for deposit of the amount or furnishing the security of the decretal amount, the same has to be read in conjunction with the statement made by learned counsel for the respondent-decree holder at the time of hearing of the application. The petitioner cannot take benefit of any qualified words used at different intervals.

[22]. Taking into consideration the fact and circumstances of the case, this Court is of the considered view that no exceptional case is made out to interfere in the impugned order

dated 24.05.2016 passed by Additional District Judge, Chandigarh. The revision petition is accordingly dismissed.

06.09.2016 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No