

In the High Court of Punjab and Haryana at Chandigarh

240

**CR No.2102 of 2017(O&M)
Date of decision: 02.08.2017**

ANIL KUMAR

.....petitioner

Versus

BHAGWAN DASS AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mohd.Yousaf, Advocate,
for the petitioner.

Mr.Vikas Jain, Advocate
for the respondents.

Raj Mohan Singh, J.(oral)

Petitioner has assailed the order dated 17.3.2017 passed by the Additional District Judge, Ludhiana, vide which prayer for interim stay in terms of Order 41 Rule 5 CPC was declined.

Plaintiff-petitioner filed a suit for permanent injunction against the defendants-respondents seeking to restrain them from interfering in the suit property. Trial Court dismissed the suit. In the appeal filed against the judgment and decree dated 27.2.2015, lower Appellate Court refused to grant injunction.

That is how, present revision petition came to be filed.

On 23.3.2017, following order was passed Court:-

“Present revision is directed against the order passed by Appellate Court whereby application for staying execution proceedings during the pendency of appeal before the lower appellate court has been dismissed.

It is contended before the court that Additional District Judge is seized of the first appeal against the judgment and decree dated 27.2.2015 passed by the trial court. During the pendency of the appeal, executing court directed police help for handing over the possession without appreciating the fact that in case possession is handed over to the respondents, appeal filed by the petitioner would be rendered infructuous. Appellate court having rejected the prayer for stay, he has preferred instant revision petition. According to him, order is totally vitiated as it is based on non appreciation of parameters which govern the grant of interim relief during pendency of first appeal.

Notice of motion for 24.5.2017.

Execution proceedings qua the petitioner shall remain stayed in the meanwhile.”

Today, learned counsel for the respondents made a categorical statement that the prayer for interim injunction during pendency of first appeal before the lower Appellate Court be allowed and the respondents will not execute the decree passed in their counter claim till disposal of the appeal before

the lower Appellate Court.

In view of aforesaid understanding, this revision petition is allowed. Impugned order dated 17.3.2017 is set aside. There shall be interim stay during pendency of the appeal before the first Appellate Court. Lower Appellate Court shall make every endeavour to decide the appeal at the earliest in accordance with law.

(RAJ MOHAN SINGH)
JUDGE

August 02, 2017

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Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No