

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

Civil Revision No.3784 of 2017(O&M)

Date of decision: 24.05.2017

Prem Parkash Chugh

...Petitioner

Versus

Satish Kumar and another

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Vaibhav Sehgal, Advocate for the petitioner.

Mr. Rakesh Gupta, Advocate for the respondents.

G.S.SANDHAWALIA, J. (Oral)

Inter-alia contends that the eviction order was passed on 5.12.2016 (Annexure P/1) and the appeal against the same was filed on 18.1.2017 along with the stay application. The said stay application was kept pending by the Appellate Authority and even an application for mesne profits was filed on 20.2.2017 which was not pressed on 3.3.2017 by the landlord. Now the matter is fixed on stay application for 11.7.2017.

In the meantime, the Executing Court directed issuance of warrant of possession on 16.2.2017. An application for staying the execution proceedings till the final decision of the appeal was also filed before the Executing Court. It is pointed out that vide order dated 31.3.2017, request has been made to the District Judge, Ludhiana for obtaining police help for executing the warrant of possession.

Notice of motion.

Mr. Rakesh Gupta, Advocate accepts notice on behalf of respondents and has filed memo of appearance.

Counsel for the respondents points out that 3rd party objections

were filed and objections were also moved by the tenant which had been dismissed on 2.5.2017 and the execution proceedings had been fixed for 20.5.2017 for awaiting of police help. It is further pointed out that now the matter is pending before the Executing Court for 31.5.2017.

Counsel for the respondents could not dispute the fact that it is a first appeal before the Appellate Authority and record was received on 13.2.2017.

In such circumstances, this Court is of the opinion that non grant of stay as such by the Appellate Authority and granting adjournments and delaying the stay proceedings was not justified in the facts and circumstances of the case. Accordingly, the present revision petition filed under Article 227 of the Constitution of India is very much tenable and sustainable and irreparable loss would be caused if the tenant is dispossessed during pendency of appeal. If the stay is to be granted subsequently on the next date, it would only lead to an application being filed for restitution of possession during the pendency of appeal. The course which has been adopted by the Appellate Authority, Ludhiana is not justified in the facts and circumstances of the case.

Accordingly, the possession of the petitioner-tenant is protected till the conclusion on the application of stay pending before the Appellate Authority, Ludhiana.

With the aforesaid observations, the present revision petition is disposed off.

May 24, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No