

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

145

CR No.8578 of 2017
Date of decision: 08.12.2017

Surjit Singh and others

..... Petitioners

Versus

Jasbir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.P. Vashisht, Advocate
for the petitioners.

ANIL KSHETARPAL, J. (ORAL)

Petitioner is a decree-holder. Grievance of the petitioner is that the Executing Court is not proceeding with the case only on the ground that the regular second appeal has been filed in this Court.

Learned counsel for the petitioner has submitted that the appeal has just been filed in this Court. Even notice has not been issued.

Order 41 Rule 5 Sub-rule (1) specifically provides that filing of an appeal shall not operate as a stay of proceedings under a decree or order appeal from. Order 41 Rule 5 is extracted as under:-

“Stay by Appellate Court – (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

[Explanation – An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the

receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.]

(2) Stay by Court which passed the decree – Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) [Subject to the provisions of sub-rule (3)], the Court may make an ex parte order for stay of execution pending the hearing of the application.

[(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of Rule 1, the Court shall not make an order staying the execution of the decree.]”

A look at the order dated 16.09.2017 shows that the case was adjourned only on account of pendency of the regular second appeal.

Taking into consideration these facts, learned Executing Court is requested to proceed with the execution petition unless there is any interim order passed by a competent Court in the regular second appeal.

Revision petition is disposed of.

08.12.2017

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No