

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 13.12.2017****CR No.8745 of 2017 (O&M)**

Ashwani Kumar Bindra

...Petitioner

Vs.

Satish Kumar & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

RAJIV NARAIN RAINA, J. (ORAL)

1. Having heard Mr. Sehgal on the petition and without putting the respondents on motion through issuance of summons and put them to delay and expense, as it would serve no useful or practical purpose, the instant petition is disposed of by allowing the application for stay pending before the Appellate Authority, Ludhiana. The stay of dispossession of the petitioner from the demised premises issued by this order will continue till the disposal of the statutory appeal in Ludhiana without prejudice to the case of the parties on merits.

2. It is not proper exercise of jurisdiction to entertain an appeal against a eviction order and keep appellant on tenterhooks by refusing to pass an order immediately on the application traceable to power under Order 41 Rule 5 of the CPC. In appeal when entertained, the settled law is that once an appeal is put in motion and opposite party summoned to defend the appeal and the case requires judgment on law and facts and cannot be summarily dismissed, then a stay order should follow otherwise the appeal will be rendered infructuous upon execution or the unsuccessful tenant/party left in a volatile and intractable position hanging

fire with litigant not knowing what to do and be compelled to approach this court for interim protection.

3. The learned Appellate Authority would do well in reading the short and crisp judgment of the Supreme Court in Mool Chand Yadav & another Vs. Raza Buland Sugar Company, (1982) 3 SCC 484 for future guidance.

13.12.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*