

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

CR No.141 of 2018

Date of decision: 11.01.2018

Navdeep Singh

...Petitioner

Versus

Mohan Lal Sharma

...Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Namit Gautam, Advocate,
for the petitioner.

Ritu Bahri, J.

This petition has been filed for setting aside the order dated 01.12.2017 (Annexure P-10) passed by the Executing Court, whereby warrants of possession qua the shop in dispute has been issued for 12.01.2018.

Learned counsel for the petitioner contends that the eviction order dated 22.09.2017 has been passed by the Rent Controller on the ground of personal necessity. Against the said order, petitioner-tenant filed an appeal before the Appellate Authority on 07.10.2017. Along with the appeal, an application for staying the execution of order dated 22.09.2017 was also filed. Till date, the said application is pending consideration before the Appellate Authority. During the pendency of appeal, landlord-respondent has filed execution application, wherein warrants of possession has been issued vide impugned order dated 01.12.2017. It was also ordered that the warrants be got execution by breaking open the locks.

Learned counsel for the petitioner has referred to the judgment

Vs. Raza Buland Sugar Company Limited, Rampur and others, 1982 (3)

SCC 484, wherein while considering the object of Order 41 Rule 5 CPC, it has been observed that during the pendency of appeal, operation of order having serious consequences, must be suspended.

In the present case, application for staying of order dated 22.09.2017 has not been decided till date. In the absence of any stay, impugned order regarding issuance of warrants of possession has been passed. In such circumstances, this Court is of the view that non grant of stay by the Appellate Authority is not justified.

In view of the above, impugned order dated 01.12.2017 (Annexure P-10) is set aside and possession of petitioner-tenant is being protected till the decision of stay application pending consideration before the Appellate Authority, Jalandhar.

Disposed of accordingly.

11.01.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No