

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

**CR No.8347 of 2017 (O&M)
Date of Decision : 07.12.2018**

Krishan Kumar Malhotra

.....Petitioner

Versus

Mehma Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Ramandeep, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

CM No.26887-CII of 2018

Allowed as prayed for.

CR No.8347 of 2018

The petitioner happens to be the Judgment Debtor in the Execution Case pending in the Court of the Ld. Additional Civil Judge (Senior Division), Kharar.

2. He was ordered to be evicted from the demised shop/decretal property wherein he was earlier a tenant, on 16th August, 2016. He filed an appeal against the order of his eviction which according to him is now pending in the Court of Ld. Additional District Judge, Mohali.

3. The petitioner filed his objections against the Execution which were however dismissed vide the impugned order. One of the

grounds raised on his behalf was that the Ld. Court below was proceeding in execution inspite of pendency of his appeal. Another ground was that there were errors in the calculation of the decretal dues, and lastly that possession of the specific khasra number could not be delivered to the Decree Holder as the property was held by the Decree Holder jointly with the other co-sharers.

4. All the above objections were overruled by the Ld. Executing Court which rightly held that there is no bar to proceeding with execution in the absence of any specific stay order by an Appellate Court; that there were no major anomalies in the calculation of the decretal figures arrived at by the Decree Holder as found on scrutiny, and lastly that the plea regarding impracticability of delivering possession of the particular Khasra to the Decree Holder was untenable, since eviction of the petitioner had been sought from a shop having specified dimensions.

5. This Court finds no illegality or impropriety in the reasons recorded by the Ld. Court below in rejecting the petitioner's objections.

6. In answer to the Court's query, Ld. Counsel for the petitioner submits in all fairness that due to incorrect advice of Ld. Counsel in the Lower Appellate Court, no stay application was filed simultaneously with the appeal, which is as yet pending.

7. If that be so, then, in the given circumstances, while upholding the validity of the impugned order the matter is disposed off

with liberty to the petitioner to file an application for stay before the Ld. Appellate Court if not already done, within 07 days, over which the Ld. Appellate Court shall pass its own order independently on merits without in any manner being influenced by any observation made in this order by this Court.

December 07, 2018

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No