

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 1469 of 2019
Date of decision: 1.3.2019

Krishna Devi through LRs and others

.. Petitioners

v.

Sita Rani and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Charanpreet Singh, Advocate for the petitioners.

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AVNEESH JHINGAN, J. (Oral)

The present petition has been filed being aggrieved of the order dated 13.2.2019 passed by the Additional District Judge, Ludhiana (hereinafter described as 'Appellate Court') dismissing the application filed by the petitioners-defendants (hereinafter described as 'the petitioners') under Order XLI Rule 5 of the Code of Civil Procedure, 1908 (for short, 'CPC').

The brief facts are that the respondents-plaintiffs (hereinafter described as 'the respondents') filed a suit for permanent injunction for restraining the petitioners from interfering in their peaceful possession of the property bearing No. 77/1, situated at Jawahar Nagar, Ludhiana on the ground that petitioners No. 1 to 5 had mortgaged one room of the said property on the ground floor vide agreement/mortgage deed dated 1.11.2011 to the husband of respondent No.1. On notice, the petitioners filed written

statement. The suit was decreed vide judgment and decree dated 10.5.2018 by the Civil Judge (Junior Division), Ludhiana. The suit was decreed as the petitioners never cross-examined the witnesses of the respondents despite the opportunities given to them and moreover two witnesses, namely, DW1 and DW2 appearing for the petitioners never came present for cross-examination. Aggrieved of the said judgment and decree, an appeal was filed along with the application under Order XLI Rule 5 CPC. The said application was dismissed vide order dated 13.2.2019, hence the present civil revision petition.

Learned counsel for the petitioners contends that the Civil Court erred in decreeing the suit and the appeal against the said judgment and decree is pending. He argues that during the pendency of the appeal, stay be granted.

The contention raised by learned counsel for the petitioners lacks merit.

Grant of temporary injunction is governed by three basic principles, i.e. prima facie case; balance of convenience and irreparable loss or injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case.

In **Pankaj Kumar v. State of U. P. and 3 Others**, 2017(2) RJ 900, Allahabad High Court has held as under:

“26. In **Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.** [AIR 1999 SC 3105], this Court observed that the other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunction are as below:

- “(i) Extent of damages being an adequate remedy;
- (ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor;
- (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;
- (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible;
- (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;
- (vi) ***Balance*** of ***convenience*** or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;
- (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”

Order XLI Rule 5 CPC is reproduced below:

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ORDER XLI

APPEALS FROM ORIGINAL DECREES

XX XX XX

5. 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.

(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.”

The Supreme Court in M/s Atma Ram Properties (P) Ltd. v. M/s Federal Motors Pvt. Ltd., 2005 (1) R.C.R. (Civil) 212, has observed as under:

“8. It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the appellate Court and the appellate Court has discretion to grant an order of stay or to refuse the same.”

In the present case, the Appellate Court while dismissing the stay application has recorded the finding that during the pendency of the suit also, injunction was granted in favour of the respondents which continued for four years. As on date, there is a decree in favour of the respondents for permanent injunction only. No evidence was led by the petitioners before the Civil Court and even the witnesses produced by the respondents were not cross-examined.

No ground is made out for granting any stay during the pendency of the appeal. None of the conditions mentioned in Pankaj Kumar's case (supra) is fulfilled in the present case.

No interference is called for in the impugned order.
The civil revision petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

1.3.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No