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

**CR No.14338 of 2018
Date of Decision: 09.01.2019**

Hardeep Singh

Petitioner

Versus

Ram Karan

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. H.P.S. Ghuman, Advocate
for the petitioner.

Mr. Aman Dhir, Advocate
for the respondent.

AVNEESH JHINGAN, J (Oral):

The present civil revision petition has been filed being aggrieved of the order dated 31.10.2018 passed by learned Additional District Judge, Patiala [hereinafter referred to as 'District Judge'] granting stay pending the appeal subject to furnishing bank guarantee amounting to ₹6,50,000/- alongwith interest upto date and further ordering that the attachment of land of the petitioner be kept intact till then. The further grievance is to the order dated 12.11.2018 passed by the Executing Court issuing sale warrants of the share of the land of the petitioner attached in the execution proceedings.

The facts in brief are that the respondent filed a suit for specific performance on the basis of agreement to sell dated 21.01.2011. Another suit was filed by the petitioner seeking permanent injunction restraining the respondent from taking physical possession of 8 *bighas* of land mentioned in the agreement to sell dated 21.01.2011. Both the suits were consolidated. Learned trial Court vide judgment and decree dated 09.11.2017 decided both the issues and held that the respondent was entitled to alternative relief of recovery of earnest money of ₹6,50,000/- alongwith interest @ 9% per annum from the date of attaining majority of the petitioner till the actual date of realization of the amount.

Aggrieved of the judgment and decree, the petitioner preferred an appeal alongwith a statutory stay application. Pending the appeal, the respondent filed execution proceedings. The Execution Court vide order dated 16.02.2018, issued warrants of attachment of the share of the land of the petitioner as reflected in the *jamabandi* of the year 2011-12 of village Ranno, Tehsil Bhadson, District Patiala. Thereafter, the petitioner moved an application under Section 151 of Code of Civil Procedure, 1908 [for brevity 'CPC'] seeking stay of operation of the impugned judgment and decree dated 09.11.2017 pending the appeal. Learned District Judge vide order dated 31.10.2018 stayed the operation of the impugned judgment and decree, subject to petitioner's furnishing bank guarantee to the tune of ₹6,50,000/- alongwith interest upto date and it was further ordered that attachment of land shall be kept intact till then.

The petitioner failed to furnish the bank guarantee and the Executing Court vide order dated 12.11.2018, after considering that the stay was subject to petitioner's furnishing bank guarantee, ordered issuance of sale warrants. Aggrieved of the orders, the present civil revision petition has been filed.

Learned counsel for the petitioner contends that the share of land of the petitioner had already been attached in the execution proceedings, hence, there was no occasion for the Appellate Court to ask for bank guarantee. His grievance is that on one hand stay is granted subject furnishing of bank guarantee, inspite of that the attachment of 8 *bighas* land has been kept intact. He further states that the attachment of land was a sufficient security to secure the interest of the respondent.

Learned counsel for the respondent argues that the order passed by the learned District Judge is in accordance with Order XLI Rule 6 of CPC and as such no interference is called for. He further argues that in the suit for specific performance, only alternative relief has been granted which has resulted into issuance of direction to the petitioner to pay back the earnest money received alongwith interest, the interest of the Decree Holder is to be secured.

For granting stay to the operation of the judgment and decree, the relevant provisions are Order XLI Rules 5 and 6 of CPC, the same are quoted below:

“Order XLI : Appeals from Original Decrees

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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.*

[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*

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(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 provision 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.

(6) Security in case of order for execution of decree appealed from.—(1) *Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.*

(2) Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.”

The main defence of the petitioner in the suit for specific performance was that he was minor on the date when agreement to sell was entered into. It would be pertinent to note that while passing the judgment and decree, the trial Court came to the conclusion that the petitioner was 17 years and few months old when agreement to sell was entered. By furnishing certificate of class 5th, the respondent was made to believe that the petitioner was major at that time. Further, it was held that the earnest money of ₹6,50,000/- was paid

by the respondent. In such circumstances, at the time of granting of stay to the operation of impugned judgment and decree, the amount of ₹6,50,000/- alongwith interest needs to be secured as per provisions of Order XLI Rule 6 of CPC.

It would be pertinent to mention here that it was only after the attachment of the share of the petitioner by the Executing Court that an application under Section 151 of CPC was moved. While dealing with the application, learned District Judge secured the interest of the respondent by granting stay subject to petitioner's furnishing bank guarantee amounting to ₹6,50,000/- alongwith interest, till then attachment of land was to be kept intact. The attachment of the land was ordered to be kept intact only till the furnishing of the bank guarantee. In such circumstances, the apprehension of the petitioner that he has been made to give double security is not well founded.

The next aspect of the matter is as to whether attachment of land itself would be sufficient to secure the interest of the respondent.

Learned counsel for the petitioner fairly contends that land in question is part of the joint estate in which the petitioner is co-sharer and till date joint estate has not been partitioned by metes & bounds. In such circumstances, attachment of share of the petitioner in the joint estate itself may not be sufficient. Moreover, as per Sub-Clause 2 of Order XLI Rule 6 of CPC, the discretion is given to the Court to grant stay on such terms and on giving security as the

Court thinks fit.

The petitioner has failed to point out that the discretion exercised by the District Judge while granting stay was arbitrary and felonious. No interference is called for in the stay order passed by the District Judge so far as stay is made subject to bank guarantee of ₹6,50,000/- alongwith interest upto date.

At this stage, learned counsel for the petitioner prays that the petitioner be granted more time to furnish bank guarantee in pursuance of the order dated 09.11.2017.

The petitioner is given six weeks' time from today to furnish the bank guarantee of ₹6,50,000/- alongwith upto date interest.

It is clarified that nothing stated herein shall be construed as an expression on the merits of the case.

The civil revision petition is disposed of.

[AVNEESH JHINGAN]
JUDGE

January 09th, 2019
pankaj baweja

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| 1. Whether speaking/reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |