

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

**CR-5691-2022
Decided on:-16.12.2022**

Surinder Pal Singh Virk

...Petitioner.

vs.

Surinder Pal Saini

....Respondent.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Bhupinder Kumar Gupta, Advocate,
 for the petitioner.

 Ms. Bhavna Kapur, Advocate,
 for the respondent.

HARKESH MANUJA J. (Oral)

By way of present revision, challenge has been made to an order dated 30.09.2022 (Annexure P-7) passed by the court of learned Civil Judge (Junior Division), Phagwara, whereby an application for grant of stay of execution proceedings, filed at the instance of petitioner-tenant, has been dismissed.

2. The facts of the present case are that the respondent-landlord filed an eviction petition against the petitioner-tenant before the learned Rent Controller, Phagwara, invoking Section 24 of the Punjab Rent Act, 1995. Consequently, an application for seeking permission to leave to appear and contest the eviction petition was moved at the instance of petitioner-tenant, which came to be dismissed by the learned Rent Controller vide order dated 30.01.2019.

3. Aggrieved against the aforesaid order dated 30.01.2019, petitioner-tenant filed first appeal alongwith an application for grant of stay

before the appellate authority. On appearance, the respondent-landlord moved an application for grant of mesne profit, besides filing an execution application based on the eviction order dated 30.01.2019. During pendency of the first appeal, stay application as well as the application for grant of mesne profit, petitioner-tenant moved an application dated 25.02.2021 before the executing court for grant of stay of execution proceedings, which was dismissed vide order dated 30.09.2022 and now, the same has been challenged by way of present revision petition.

4. I have perused the impugned order passed by the learned executing court and find no ground to interfere with the same. Mere pendency of an appeal cannot be taken to be a ground for grant of any stay upon the execution of the decree in question by the executing court. The power to grant stay the execution proceedings by the executing court itself is derived from Rule 26 to Order 21 of CPC, which on a bare reading, appears to be merely an enabling provision, so as to provide a remedy to the judgment debtor to approach the executing court for grant of stay, merely, for the intervening period required by him to approach the appellate court or even the same court, which passed the impugned decree for the purposes of challenging the same, which can thereafter stay the execution for a reasonable time upon being shown sufficient cause.

5. In the present case, once, the first appeal filed at the instance of petitioner-tenant was already pending before the appellate authority along with an application for grant of stay, no such application for grant of interim stay by the executing court, under exercise of Rule 26 to Order 21 of CPC was thus maintainable.

6. In view of the discussion made herein above, I do not find any

merit in the present revision petition and the same is hereby dismissed.

7. Pending application(s), if any stand disposed of.

16.12.2022

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(HARKESH MANUJA)
JUDGE

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