

[115] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.38 of 2023

Date of Decision :11.01.2023

Harish Chander and another ...Petitioners

versus

Surinder KaurRespondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Randeep Singh Waraich (Rana), Advocate
for the petitioners.

B.S. Walia, J. (Oral)

[1] Challenge in the instant petition is to order (Annexure P-6) dated 24.11.2022 passed by the learned Addl. Civil Judge (Senior Division), Nakodar, dismissing the application under Order 21 Rule 26 read with Section 151 CPC for stay of proceedings of execution till the decision of the Appellate Court against order (Annexure P-1) dated 03.02.2020, ordering the ejectment of the petitioners.

[2] A perusal of order (Annexure P-6) reveals that an application under Order 21 Rule 26 read with Section 151 CPC was filed for stay of the execution proceedings till the decision of the Appellate Court against order dated 03.02.2020 pending before the District Judge-cum-Appellate Court under the Rent Act, Jalandhar.

[3] The same was opposed on the ground that the petitioners-JD was resisting the delivery of possession by putting lock on the property in question to prevent execution of the warrant of possession.

[4] Learned Addl. Civil Judge (Senior Division), Nakodar, dismissed the application on the ground that no order of the Appellate

other order and keeping in view that the execution fell under the category of Action Plan, the application was dismissed.

[5] A perusal of Order 21 Rule 26 CPC reveals that the court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an Order to stay execution, or for any other order relating to the decree or execution which might have been made by such court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

Order 21 Rule 26 CPC reads as under:-

“ 26. When court may stay execution.- (1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an Order to stay execution, or for any other order relating to the decree or execution which might have been made by such court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto,

(2) Where the property or person of the judgment debtor has been seized under an execution, the court which issued the

execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Power to require security from, or Impose conditions upon, judgment debtor:—Before making an order to stay execution or for the restitution of property or the discharge of the judgment debtor, the court shall require such security from, or impose such conditions upon, the judgment debtor as it thinks fit. ”

[6] Learned counsel contends that although application for stay had been moved before the Appellate Authority, yet only notice had been issued in the appeal and the case is now listed for final arguments on 02.02.2023, therefore, if stay is not granted till the decision of the appeal, great prejudice would be caused to the petitioners in the eventuality of the appeal being allowed.

[7] Learned counsel relies upon the decision of a co-ordinate Bench of this Court dated 13.12.2017 in CR No.8745 of 2017 in case titled as ‘Ashwani Kumar BindraversusSatish Kumar and another’.

Relevant extract of the same is reproduced as under:-

“ 2. It is not proper exercise of jurisdiction to entertain an appeal against a eviction order and keep appellant on tenterhooks by refusing to pass an order immediately on the application traceable to power under Order 41 Rule 5 of the CPC. In appeal when entertained, the settled law is that once an appeal is put in motion and opposite party summoned to defend the appeal and the case requires judgment on law and facts and cannot be summarily dismissed, then a stay order should follow otherwise the appeal will be rendered infructuous upon execution or the unsuccessful tenant/party left in a volatile and intractable position hanging fire with litigant not knowing what to do

and be compelled to approach this court for interim protection.

3. *The learned Appellate Authority would do well in reading the short and crisp judgment of the Supreme Court in Mool Chand Yadav & another Vs. Raza Buland Sugar Company, (1982) 3 SCC 484 for future guidance.”*

[8] Although, present revision petition is not against the refusal of the Appellate Authority to grant stay yet in the facts and circumstances of the case, I am of the considered view that ends of justice would be met, in case, stay of the execution proceedings before the learned Addl. Civil Judge (Senior Division), Nakodar is granted till the decision of the appeal, which is stated to be pending for final arguments for 02.02.2023. Accordingly, in the light of the position noted above and without issuing notice to the respondent, as issuance of summons would unnecessarily delay the matter and no useful or practical purpose would be solved thereby, the instant petition is *disposed of* by granting stay of the execution proceedings pending before the learned Addl. Civil Judge (Senior Division), Nakodar for 12.01.2023, till the decision of rent appeal No.26 of 2020 (Annexure P-2) by the learned District Judge-cum-Appellate Authority under the Rent Act, Jalandhar against order dated 03.02.2020, while directing the learned District Judge-cum-Appellant Authority under the Rent Act, Jalandhar, to hear arguments in the appeal, which is stated to be pending for said purpose on 02.02.2023 and to take a decision in respect thereto in accordance with law.

[9] Revision petition *disposed of* with the aforementioned

[10] Copy of the order be also sent to the learned District & Sessions Judge, Jalandhar for compliance.

(B.S. Walia)
Judge

11.01.2023
'Rajneesh'

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