

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

CR 321/2023 (O&M)

Date of decision: 18.01.2023

Jagsir Singh

.....Petitioner

Vs.

Jasveer Singh and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Hitesh Verma, Advocate for the petitioner.

Nidhi Gupta, J.

Prayer in this revision petition is for setting aside the order dated 27.2.2020 (Annexure P-4) passed by Ld. Addl. Distt. Judge, Bathinda to the limited extent it refused to grant ex-parte stay on an application under Order 41 Rule 5 CPC in Appeal bearing CA 88/2020 dated 24.2.2020 (Annexure P-2) preferred by the petitioner and respondent no.2 against the judgment and decree dated 29.1.2020 (Annexure P-1) passed by Ld. ACJ(SD) Phul, Bathinda.

Brief facts of the case are that the respondent no.1/plaintiff filed a suit for possession by way of specific performance, and permanent injunction against the petitioner and respondent no.2 herein. Vide judgment and decree dated 29.1.2020 (Annexure P-1) the said suit was decreed in favour of respondent no.1. Aggrieved of the same petitioner and respondent no.2 herein, preferred aforesaid appeal titled as 'Manjit Kaur v Jasveer Singh' CA 88 of 2020. Along with the appeal they also filed an application under Order 41 Rule 5 CPC dated 24.2.2020 seeking stay of the abovesaid judgment and decree in appeal. The said appeal was admitted for hearing. However, stay in favour of the

petitioner/ appellant was not granted though notice of the said application was issued to respondent no.1.

It is submitted by the learned counsel for the petitioner that the application under Order 41 Rule 5 CPC was moved almost 3 years ago on 24.2.2020 and the same has not been decided till date. It is further submitted that perusal of the zimni orders reproduced in the body of the petition shows that the matter has been adjourned time and again since the past three years without any decision being taken on the petitioner's application for grant of stay of the judgment and decree in appeal. It is further submitted that now respondent no.1 has moved Execution Application on 29.4.2021 (Annexure P-5) before the Trial Court in which the Id. Trial Court vide it's order dated 19.12.2022 (Annexure P-5), has directed the execution of sale deed. It is accordingly submitted that if the petitioner's application under Order 41 Rule 5 CPC is not decided in time bound manner, great injustice and hardship will be caused to the petitioner and the very purpose of preferring the appeal will be frustrated.

In view of the facts as canvassed above, as also borne out from the record, this petition is disposed of without issuance of Notice of Motion as that will only further delay the matter. Ld. Appellate Court concerned is directed to decide the application dated 24.2.2020 filed by the petitioner under Order 41 Rule 5 CPC in a time bound manner and preferably within a period of two months from the date of receipt of copy of this order especially in view of the fact that execution petition is pending before the Trial court.

Disposed of.

(Nidhi Gupta)
Judge

18.01.2023
Joshi