

Major Singh

....Petitioner

versus

Mohinder Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Dilpreet Singh Gandhi, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Present revision petition is under Article 227 of the Constitution of India read with Section 151 of Code of Civil Procedure, 1908 seeking issuance of directions to learned District Judge, Moga for expeditious disposal of application under Order 41 Rule 5 of the CPC filed by petitioner in Civil Appeal bearing No.CA/3/2022 titled "Major Singh versus Mohinder Singh".

2. Learned counsel for petitioner contends that respondent had filed a civil suit for recovery of Rs.14,28,000/- on the basis of pronote and receipt dated 01.03.2017 allegedly executed by petitioner. On 02.12.2021, said suit was decreed with costs in favour of respondent vide judgment and decree (Annexure P-1) and accordingly, he was held entitled to recover principal amount of Rs.10,50,000/- along with interest of 6% per annum from the date of execution of pronote and receipt till the date of its actual realization. Aggrieved, petitioner filed an appeal bearing CA/03/2022 seeking setting aside of aforesaid judgment/

decree. Along with the same, petitioner had moved an application under Order 41 Rule 5 CPC for staying operation of aforesaid judgment/ decree. Respondent, in the meanwhile, also filed execution proceedings. Pursuant thereto, learned Executing Court below has not only proceeded *ex parte* against petitioner but ordered to execute warrants of sale of property of petitioner without considering pendency and/ or awaiting outcome of first appeal filed by petitioner. Said fact was brought to the knowledge of learned lower Appellate Court, but vide order dated 17.12.2022 (Annexure P-7), matter has been simply adjourned to 14.03.2023.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent as no prejudice would be caused to him. Notice to respondent is thus dispensed with.

4. Heard.

5. Ordinarily this Court would have refrained to interfere in the matter. However, on one hand learned Executing Court herein is proceeding to recover decretal amount by way of attachment of property as well as issuance of warrants of auction, while on the other hand stay application filed in the pending first appeal is yet to be finally decided, despite having been pending for more than a year and is now slated for hearing on 14.03.2023. Given the peculiar circumstances, as a one-time measure, it is expected of learned Executing Court to adjourn matter pending before it beyond the date fixed in learned lower appellate Court.

Alternatively, petitioner is also at liberty to file an application for preponement before learned lower appellate Court, pursuant whereto

pending appeal may be taken up for hearing by learned first Appellate Court and appropriate orders be passed on the stay application therein in accordance with law.

- 6. Disposed of, accordingly.
- 7. Needless to say that limited interference granted by this Court is not to be construed as any expression of opinion on merits of pending stay application and same shall be decided on its own merits after hearing arguments from both sides by the learned First Appellate Court.
- 8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 07, 2023
mahavir

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