

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

CR-1193-2023(O&M)

Date of Decision :22.02.2023

Kashmira Singh ...Petitioner

versus

M/s Mohinder Singh Kahlon& SonsRespondent

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

Present : Mr. Amit Kumar Saini, Advocate for the petitioner.

B.S. Walia, J. (Oral)

[1] Challenge in the instant petition is to order (Annexure P-7) dated 07.11.2022 passed by the learned Civil Judge (Junior Division), Samrala, dismissing the application filed by the petitioner/Judgment debtor for staying execution in view of pendency of appeal filed by the petitioner against judgment and decree dated 19.03.2019 in Civil Suit No.52 of 2016 wherein the suit for recovery filed by the respondents-plaintiffs was decreed.

[2] A perusal of order (Annexure P-7) reveals that the application for stay of execution till the decision of the appeal pending before the Court of the learned Addl. District Judge, Ludihana, was dismissed by the learned Civil Judge (Junior Division), Samrala, on the ground that mere pendency of the civil appeal was no ground for staying the proceedings.

[3] Learned Counsel relies upon the decision of this Court in 'Harish Chander and anotherversusSurinder Kaur', CR No.38 of 2023, decided on 11.01.2023.

[4] I have considered the submission of learned counsel.

[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 learned Addl. District Judge, Ludhiana, yet notice was issued in the appeal only and the case is now listed for final arguments on 11.04.2023, 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] Reference on the point in issue can be made to the decision of a co-ordinate bench of this Court in case titled as ‘Ashwani Kumar BindraversusSatish Kumar and another’ dated 13.12.2017 in CR No.8745 of 2017. 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.”

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 Civil Judge (Junior Division), Samrala is granted till the decision of the appeal, which is stated to be pending for final arguments for 11.04.2023. 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 impugned order is set aside and the instant petition is *disposed of* by granting stay of the execution proceedings pending before the learned Civil Judge (Junior Division), Samrala for 28.03.2023, till the decision of CivilAppealNo.432 of 2019 (Annexure P-2) by the learned Addl. District Judge, Ludhiana against judgment and decree dated 19.03.2019 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Samrala in Civil Suit No.52 of 2016 in case titled as ‘M/s Mohinder Singh Kahlon and sonsversusKashmira Singh’, while directing the learned Addl. District Judge, Ludhiana, to hear arguments in the appeal, which is stated to be pending for said purpose on 11.04.2023 and to take a decision in respect thereto in accordance with law.

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

(B.S. Walia)
Judge

22.02.2023
'Rajneesh'

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