

CR-1279-2023

Date of Decision :27.02.2023

Harminder Pal Singh

...Petitioner

versus

Palvinder Singh

....Respondent

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

Present: Mr. Saleem Malik, Advocate for the petitioner.

B.S. Walia, J. (Oral)

1. Prayer in the instant petition is for the issuance of directions to the learned Appellate Authority-IX, Jalandhar, to decide appeal bearing CNR No.PBJL01049962022C, CIS No.RA/106/2022, titled as Harminder Pal Singh vs. Palwinder Singh etc., within a stipulated period of time and in the meantime to stay the operation of order Annexure P/5 dated 09.11.2022, passed by the learned Rent Controller, Jalandhar.

2. A perusal of order Annexure P/5 reveals that ejectment petition filed against the petitioner was allowed vide order dated 09.11.2022 and the petitioner was directed to vacate the demised premises within one month from the date of order. Learned counsel contends that thereafter the petitioner filed appeal, Annexure P/6 before the learned District Judge, Jalandhar, on 18.11.2022, in which, notice was issued. Learned counsel contends that the main appeal is listed for final arguments on 14.03.2023 while the execution proceedings are pending before the learned Executing Court for 02.03.2023, but till date no orders have been passed on the application for stay filed by the petitioner by the

learned Appellate Authority-IX, Jalandhar.

3. 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. ”

4. Learned counsel contends that although perusal of zimni order dated 01.12.2022, reveals that the learned Appellate Authority-IX, Jalandhar, while receiving the appeal by entrustment recorded that there were arguable points in the appeal and admitted the same for hearing subject to all just exceptions, yet no order was passed on the application for stay filed along with the appeal and since the appeal is now listed for final hearing on 14.03.2023, therefore, if stay is not granted, great prejudice would be caused to the petitioner, in the eventuality of the appeal being allowed.

5. Learned counsel relies upon the decision of Hon'ble the Supreme Court in **Mool Chand Yadav and another vs. Raza Buland Sugar Company Ltd. Rampur and others 1982 (3) SCC 484**, to contend that the order of the learned Rent Controller directing the petitioner to handover vacant possession of the demised premises entails serious civil consequences and once the appeal has been admitted, the order of ejectment was required to be stayed during the pendency of the appeal. Relevant extract of the decision in Mool Chand Yadav's case (supra) is reproduced as under:-

“But judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended. More so when appeal is admitted. Previous history of litigation cannot be overlooked. And it is not seriously disputed that the whole of the building, Hari Bhawan, except one room in dispute is in possession of the Corporation. We accordingly suspend the operation of the order dated 6th August 1982 directing the appellants to handover the possession of the room to the respondents till the disposal of the first appeal against that

order pending in the High Court of Allahabad. Mr. Manoj Swarup requests that both the earlier and later Appeals should be heard together as early as possible, We order accordingly and request the High Court if it considers proper in its own discretion to hear both the appeals as expeditiously as possible in order to avoid the continuance of the boiling situation. The appeal stands disposed of. There shall be no order as to costs.”

7. Learned counsel also relies upon the decision of Hon’ble the Supreme Court in **Ratan Lal Bansal vs. Mohad. Javed and others 2002**

(2) ARC 675. Relevant extract of the same is reproduced as under:-

“1. This is a writ petition filed by petitioner/tenant against the rejection of the application for stay during the pendency of appeal. The Word filed an application before the Prescribed Authority/Civil Judge (Junior Division), Kotdwar District Pauri Garhwal under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 for release of the disputed premises. The application has allowed against which the petitioner/tenant has filed appeal under Section 22 of the U.P. Act No. 13 of 1972 which is pending for disposal, but the Appellate Court did not protect the right of the petitioner during the pendency of the appeal.

2. The learned Counsel for the petitioner submits that in case the petitioner is evicted, it will create further litigation and petitioner will have' to claim to be put back in possession in case the appeal is allowed which will multiply the proceedings. Therefore, he submitted that in the interest of justice the Appellate Court may be directed to decide the appeal within a period of one month from today and till then the petitioner/tenant may not be evicted from the disputed premises.

3. I find force in the contention of the learned Counsel for the petitioner. Therefore, I direct the Appellate Court to

decide the appeal of the petitioner/ tenant within a period of one month from today and for one month the petitioner/ tenant shall not be evicted from the disputed premises.

4. With the above observation, the petition is disposed of finally.”

8. Learned counsel also relies upon the decision of a coordinate Bench of this Court in CR No.8745 of 2017 in case titled as ‘Ashwani Kumar Bindraversus Satish Kumar and another’ decided on 13.12.2017, wherein stay of execution was granted while directing the learned Appellate Authority before whom the appeal was pending to decide the appeal in a time bound manner. 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.”

9. In the circumstances, I am of the considered view that the

ends of justice would be met in case execution of the order of ejectment passed by the learned Rent Controller dated 09.11.2022, is stayed till the decision of the appeal which is stated to be pending for final arguments before the learned Appellate Authority-IX, Jalandhar, for 14.03.2023. 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 ejectment of the petitioner during the pendency of Civil Appeal before the learned Appellate Authority-IX, under the Rent Act, Jalandhar against order dated 09.11.2022, 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 14.03.2023 and to take a decision in respect thereto in accordance with law on said date or soon thereafter.

10. Revision petition disposed of with the aforementioned directions.

(B.S. Walia)
Judge

27.02.2023
rajesh

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