

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(207)

CR No.2650 of 2022 (O&M)

Date of Decision:25.07.2023.

Sukhmander Singh

.....Petitioner

Versus**Basant Lal**

..... Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWALPresent: Mr. Narender Singh Kamboj, Advocate
for the petitioner.Mr. Rajinder Partap Singh, Advocate for
Mr. P.S. Jammu, Advocate
for the respondent.

VIKRAM AGGARWAL, J. (ORAL)

1. The present revision petition has been preferred under Article 227 of the Constitution of India assailing the order dated 25.05.2022 (Annexure P-1) passed by the Executing Court, vide which objections raised by the present petitioner-judgment Debtor were dismissed.

2. The facts, as emanating from the paper book and from the arguments addressed by learned counsel for the parties are that the respondent-plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 16.01.2014 excuted with regard to land measuring 16 Kanals situated at Village Panniwala Ruldu, Tehsil Dabwali, District Sirsa. The said suit was decreed by the Civil Judge (Jr. Division), Dabwali, vide judgment and decree dated 20.07.2018.

An appeal is stated to have been preferred by the defendant, who is the present petitioner and the same is still stated to be pending. However, there was no stay as

a result of which execution petition was filed. An objection petition (Annexure P-3) was preferred by the present petitioner only on the ground that since the appeal was pending, the decree was not liable to be executed. The said objections were dismissed by the Executing Court by way of the impugned order leading to the filing of the present revision petition.

3. Learned counsel for the petitioner submits that since the appeal is pending, the decree cannot be executed.

4. On the other hand learned counsel for the respondent contends that mere pendency of the appeal would not operate as a stay of execution.

5. I have considered the arguments addressed by learned counsel for the parties.

6. Admittedly, the suit filed by the respondent-plaintiff was decreed by way of judgment and decree dated 20.07.2018. It is further an admitted fact that though an appeal was filed by the defendant, no stay of execution was granted. The Executing Court dismissed the objection petition on this ground alone as the only ground raised in the objection petition was the pendency of the appeal. Order 41 Rule 5(1) lays down as under:-

“5. Stay by Appellate Court.—(I) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

1 [Explanation.—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the

Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.”

7. A perusal of the aforesaid provision shows that mere pendency of an appeal would not amount to stay of execution. The Executing Court, therefore, did not commit any illegality in rejecting the objection petition.

In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed.

July 25th, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

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