

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

131

CR-2488-2024 (O&M)

Date of decision:25.04.2024

Firm M/s Jaswant Singh & Co. & others

... Petitioners

Vs.

Vipan Kapoor

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. V.K. Sandhir, Advocate for the petitioners.

...

SUKHVINDER KAUR, J.

1. Instant revision petition has been filed by the petitioner/tenants for grant of stay of the operation of ejectment order dated 18.07.2023 (Annexure P-1) passed by the Rent Controller, Amritsar, already challenged by way of appeal which is pending before the Appellate Authority, Amritsar along with an application for grant of stay with a further prayer to direct the Appellate Authority to decide the stay application in a time bound manner.

2. Brief facts leading to filing of the present revision petition are that the respondent filed an ejectment petition under Section 13 of the East Punjab Rent Restriction Act, 1949 for ejectment of the petitioners from the demised premises on the ground of *bonafide* necessity. The said ejectment application was contested by the petitioners, but the Rent Controller ordered eviction of the petitioners from the demised premises vide order dated 18.07.2023. The aforesaid ejectment order was challenged before the Appellate Authority by way of filing an appeal on

28.08.2023 along with an application for stay of operation of the impugned order dated 18.07.2023. The respondent appeared and the appeal was adjourned to 26.10.2023. On 26.10.2023, respondents' counsel filed Power of Attorney and an application for assessment of mesne profits was also filed. Appeal was adjourned to 01.12.2023 for filing of reply to the application for mesne profits and the matter stands adjourned to 23.04.2024. In the meanwhile, respondent filed an execution application for execution of order dated 18.07.2023 to which the objections were filed by the petitioners which were dismissed vide order dated 05.03.2024 and warrants of possession were issued by the Executing Court. These warrants could not be executed, therefore, the Executing Court issued warrants of possession with the police help vide order dated 01.04.2024 and these are to be executed before 01.05.2024. As stay application is not being decided by the Appellate Court, the respondent is likely to take physical possession of the gun house/demised premises with the help of police as the Executing Court has issued warrants of possession to be executed with the police help. Hence, aggrieved against the same, the revision petitioners/tenants have knocked the doors of this Court by way of filing of the present revision petition.

3. Learned counsel for the petitioners has contended that due to the general elections, more than 100 private weapons are lying deposited in the petitioners' gun house/demised premises by private weapon holders. So it would not be possible to immediately install large safe of standard protection of holding large scale of weapons/arms and ammunitions. The Appellate Court has not recorded any reason for delaying the stay

application. While relying upon the decision of the Apex Court in **Mool Chand Yadav & another Vs. Raza Buland Sugar Company Ltd, Rampur & others, 1982 (3) SCC 484**, and **Ashwani Kumar Bindra Vs. Satish Kumar & another, 2018 (2) Law Herald 1253**, he has argued that during pendency of the appeal, the operation of an order having serious consequences, must be suspended and that it is not proper exercise of jurisdiction to entertain an appeal against an 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. He has submitted that the Appellate Court may be directed to decide the stay application filed by the petitioner within a time bound manner.

4. I have heard learned counsel for the petitioners and have perused the record.

5. Keeping in view the above, the present revision petition is disposed of with a direction to the Appellate Court, Amritsar to decide the stay application filed by the petitioners expeditiously as per law, preferably within a period of one month from the date of receipt of a copy of this order.

6. However, till the disposal of the stay application by the

Appellate Court concerned, the order dated 01.04.2024 passed by the Executing Court shall be kept in abeyance.

7. Disposed of in the aforesaid terms.

8. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

25.04.2024

harjeet

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No