

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5598 of 2023
Date of Decision:09.01.2024

Sandeep Kumar

....Petitioner

Versus

Desh Raj and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Raghav Sharma, Advocate,
for the petitioner.

SUDEEPTI SHARMA, J. (Oral)

1. The impugned in the present petition is order dated 29.08.2023 passed by the learned Additional District Judge, Ambala, whereby money decree has been stayed by the learned Appellate Court.

2. The brief facts of the case are that the petitioner/plaintiff filed a suit for recovery to the tune of Rs.36,00,000/- with interest @ 18% per annum with effect from 03.12.2002 till actual recovery against the respondents/defendants as the petitioner/plaintiff had sold about 1.75 acres of his land for the amount of Rs.1,07,00,000/- because petitioner/plaintiff wanted to purchase some other land for agriculture purpose at some other place and visited number of places to see the land but he was not satisfied due to one reason or the other. It was averred that on 03.12.2012 when the petitioner/plaintiff alongwith his friend Jasbir Singh son of Seo Ram, resident

of village Thol were taking meals at Bus-Stand Ismailabad, two persons namely Raghubir Singh Saini and Dr. Amrik Singh Kajal were sitting close to them and told them that they wanted to sell their land and the said land is situated in their village Roshanpur, Tehsil and District Ambala. It was further told that one Raghubir Singh Saini deals in sale and purchase of land and they will purchase about 3 acres of land. The petitioner/plaintiff along with his friend and Raghubir Singh on their motorcycle visited the land situated adjoining to revenue estate of village Ismailpur towards the canal and Dr. Amrik Singh disclosed that the land was owned by his brothers Gulzar Singh, Mukhtiar Singh and his father Desh Raj and there was no legal dispute on that land and his brothers wanted to sell the land due to their need. Thereafter, the petitioner/plaintiff and his friend visited the house of Raghubir Singh Saini who asked the petitioner/plaintiff for Rs.5 lacs with assurance that the paper formality would follow later on. It was submitted that the petitioner/plaintiff and his friend and his father visited the State Bank of India Branch Thol from where the father of the petitioner/plaintiff withdrew an amount of Rs.5 lacs from his A/c No.11582297371 and went to the house of Raghubir Singh Saini, where Dr. Amrik Singh Kajal, Raghubir Singh Saini and Gulzar Singh were present, in the meantime the petitioner/plaintiff also called his friend Satish Kumar son of Kaka Ram, resident of village Thol. Dr. Amrik Singh Kajal asked for money and money was handed over to them and a writing was scribed dated 03.12.2012 in the presence of Raghubir Singh, Satish Kumar and Dr. Amrik Singh Kajal & Gulzar Singh put their signatures in the capacity of vendors. They further told

the petitioner/plaintiff that they were in urgent need of more money and if an amount of Rs.10 lacs more be paid to them they will execute the agreement to sell on stamp paper. In the mean time, the petitioner/plaintiff and his friend brought an amount of Rs.10 lacs from the house of the petitioner/plaintiff and again visited the house of Raghubir Singh and the same was handed over to Dr. Kajal and Raghubir Singh. Thereafter, they took the petitioner/plaintiff and his friend to their father Desh Raj at Ismailabad where the stamp papers were purchased from Meena Devi, Stamp-Vendor and Gulzar Singh put his signatures on the agreement to sell and the receipt, where as Desh Raj put his thumb impression on stamp papers and Raghubir Singh and Satish Kumar signed the agreement to sell as witnesses. The date of execution of sale deed was mentioned as 20.02.2012 and said date was extended up to 10.01.2013 and same was endorsed by putting their signature by Raghubir Singh Saini and thumb impression by Desh Raj. After 10.01.2012 on verbally asking of the respondents/defendants, the petitioner/plaintiff was assured by the respondents/defendants and again one month time was extended by the petitioner/plaintiff. That on 04.02.2013 Dr. Amrik Singh Kajal came to the house of the petitioner/plaintiff and demanded Rs.11 lacs more saying that they are in urgent need of money and the petitioner/plaintiff keeping in view their urgent need of money went to State Bank of India Branch Thol with his father and withdrew an amount of 11 lacs and handed over the same to Dr. Amrik Singh Kajal at that time Kamal Sharma son of Satya Pal, resident of Ambala City was present at the house of the petitioner/plaintiff and Dr. Amrik Singh put his signatures on the receipt in presence of Kamal Sharma

and thereafter Dr. Amrik Singh Kajal went away by giving an assurance that he would get the sale deed executed in favour of the petitioner/plaintiff and entire amount will be adjusted at the time of execution of sale deed. That on 06.02.2013, Desh Raj informed through his son Dr. Amrik Singh Kajal that another amount of Rs.10,00,000/- be paid to them as they are immediately in urgent need of money, keeping in view the urgency of the respondents/defendants, the petitioner/plaintiff handed over Rs.10,00,000/- to Desh Raj defendant/respondent in the house of Raghubir Singh on the same day in village Roshanpur in the presence of Sukhvinder Singh son of Sh. Avtar Singh, village Thaska Miraji and Des Raj put his thumb impression on the agreement to sell endorsing that they have received an amount of Rs.36 lacs, on this, the petitioner/plaintiff asked them to get the documents attested from some Notary but Sukhwinder Singh and Desh Raj said that they had some urgent work and they will get the documents notarized within 1-2 days and on the agreement dated 06.02.2013, the date of execution of sale deed in favour of the petitioner/plaintiff was extended from 25.01.2013 to 30.05.2013. That on 28.05.2013 the petitioner/plaintiff visited the house of Raghubir Singh to collect the documents of the said land for the purpose of registration of sale deed. Raghubir Singh told the petitioner/plaintiff that documents would be given by Dr. Amrik Singh Kajal and his father from tehsil and assured the petitioner/plaintiff that there is no dispute in the above said land. That on 30.05.2013 friend of the petitioner/plaintiff namely Kamal Sharma told the petitioner/plaintiff that the respondents/defendants were neither the owners nor in possession of the suit land and the said land is

under litigation and the cases were pending in the Courts and a fraud was committed with the petitioner/plaintiff by the respondents/defendants as there was no *khewat*, *khatauni* number mentioned in the agreement to sell. That respondents/defendants told the petitioner/plaintiff that they will complete all the documents upto 28.07.2013 and would get the sale deed registered in favour of the petitioner/plaintiff or in the alternative they would return Rs.72 lacs, i.e. double amount of earnest money, but upto 28.07.2013 the respondents/defendants neither handed over any document to the petitioner/plaintiff nor found available for discussion with him. The respondents/defendants made a complaint against the petitioner/plaintiff and FIR No.5 dated 01.01.2014 was registered against him. At the time of entering into an agreement with the petitioner/plaintiff the respondents/defendants were neither owners nor in possession of the property in question which was agreed to sell by the respondents/defendants to the petitioner/plaintiff and the respondents/defendants took undue benefit of simplicity of the petitioner/plaintiff and committed fraud with the petitioner/plaintiff and usurped an amount of Rs.36 lacs.

3. Vide judgment and decree dated 31.08.2022, the suit was decreed in favour of the petitioner/plaintiff and against the respondents/defendants to the effect that the petitioner/plaintiff is entitled to recover an amount of Rs.36,00,000/- plus interest @ 9% per annum from the date of filing of suit till the date of actual realization.

4. The respondents/defendants filed an appeal against judgment and decree dated 31.08.2022 passed by the learned Civil Judge (Junior

Division), Ambala and vide the impugned order dated 29.08.2023, the Appellate Court stayed the operation of impugned judgment and decree dated 31.08.2022.

5. Learned counsel for the petitioner/plaintiff contends that the learned Court below could not stay the money decree without passing any reasoned order and without the deposit of decretal amount.

6. I have heard learned counsel for the petitioner and perused the impugned order and conclude as under:-

i) Before concluding, it would be appropriate to reproduce the impugned order:-

“Power of attorney on behalf of respondents filed. On request now to come up on 22.11.2023 for arguments on the main appeal. In the meantime, operation of impugned judgment and decree dated 31.08.2022 shall remain stayed. LCR be also summoned for the date fixed.”

ii) Order XLI Rule V of the CPC is reproduced as under:-

“5. Stay by Appellate Court.- (1) 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.

[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.]

(2) **Stay by Court which passed the decree.-** Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) [Subject to the provisions of sub-rule (3)], the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

[(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.]

iii) A perusal of the above shows that the learned Court below could not stay the operation of the impugned judgment and decree dated 31.08.2022 without deposit of decretal amount.

iv) In support of his contention, learned counsel for the petitioner/plaintiff has relied upon a judgment of the Hon'ble Apex Court in

M/s. Malwa Strips Pvt. Ltd. versus M/s. Jyoti Ltd. 2009(3) RCR (Civil)

211, wherein it was held that in appeal against money decree, stay of execution of decree cannot be granted if the appellant did not deposit the decreetal amount. However, Appellate Court has discretion to grant stay of decree if exceptional case is made out. The relevant paragraphs of the aforesaid judgment are reproduced as under:-

“7. In terms of sub-rule (5) of Rule 5 Order 41, the Court shall not make an order staying the execution of the decree notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1.

8.	xxxxx	xxxxx	xxxxx
9.	xxxxx	xxxxx	xxxxx

10. We may, however, notice that although the provisions of sub-rule (3) of Rule 1 Order 41 have been held not to be mandatory, this Court in **Kayamuddin Sharmshuddin Khan v. State Bank of India [(1998) 8 SCC 676]** opined that non-compliance of a direction to deposit the decreetal amount or part of it or furnish security therefor would result in the dismissal of the stay application but not the entire appeal, stating:

“8. This would mean that non-compliance with the direction given regarding deposit under Sub-rule (3) of Rule 1 Order 41 would result in the Court refusing to stay the execution of the decree. In other words, the application for stay of the execution of the decree could be dismissed for such non-compliance but the Court could not give a direction for the dismissal of the appeal itself for such non-compliance.

11. To the same effect is the decision of this Court in **Sihor Nagar Palika Bureau v. Bhabhlubhai Virabhai & Co., 2005(2) RCR (Civil) 672 : [(2005)4 SCC 1]**, wherein it was held:-

"6. Order [41](#) Rule [1](#)(3) of the Civil Procedure Code provides that in an appeal against a decree for payment of amount the appellant shall, within the time permitted by the Appellate Court, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit. Under Order [41](#) Rule [5](#)(5) a deposit or security, as abovesaid, is a condition precedent for an order by the Appellate Court staying the execution of the decree. A bare reading of the two provisions referred to hereinabove, shows a discretion having been conferred on the Appellate Court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the Appellate Court may think fit. Needless to say that the discretion is to be exercised judicially and not arbitrarily depending on the facts and circumstances of a given case. Ordinarily, execution of a money decree is not stayed inasmuch as satisfaction of money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party. Still the power is there, of course, a discretionary power and is meant to be exercised in appropriate cases."

To the same effect is the decision of this Court in ***B.P. Agarwal & anr. v. Dhanalakshmi Bank Ltd. & ors., 2008(1) RCR (Civil) 887 : 2008(1) RAJ 484 : [(2008) 3 SCC 397]***

The High Court in this case failed to notice the provisions of sub-rule (3) of Rule [1](#) Order [41](#).

The appellate court, indisputably, has the discretion to direct deposit of such amount, as it may think fit, although the decretal amount has not been deposited in its entirety by the judgment debtor at the time of filing of the appeal. But while granting stay of the execution of the decree, it must take into consideration the facts and circumstances of the case before it. It is not to act arbitrarily either way. If a stay is granted, sufficient cause must be shown, which means that the materials on record were required to be perused and reasons are to be assigned. Such reasons should be cogent and adequate.

The High Court, with respect, failed to notice that suit was one under Order 37 of the Code. Whether it was maintainable or not may fall for consideration in the appeal. Even assuming that the same was not maintainable, the question which should have been posed by the High Court was as to whether sufficient cause had been made out to reverse the decree passed in favour of the appellant. Even a decree could have been passed having regard to the defence raised by the respondent under Order [12](#) Rule [6](#) of the Code. We, therefore, see no justification at all as to why an order of stay of the nature was passed by the High Court.

12. Even if the said provision is not mandatory, the purpose for which such a provision has been inserted should be taken into consideration. An exceptional case has to be made out for stay of execution of a money decree. The Parliamentary intent should have been given effect to. The High Court has not said that any exceptional case has been made out. It did not arrive at the conclusion that it would cause undue hardship to the respondent if the ordinary rule to direct payment of the

decreetal amount or a part of it and/or directly through the judgment debtor to secure the payment of the decreetal amount is granted. A strong case should be made out for passing an order of stay of execution of the decree in its entirety.”

7. In view of the above, this Court finds merit in the present petition and allows the same. The impugned order dated 29.08.2023 passed by the learned Addl. District Judge, Ambala is hereby set aside.
8. Pending applications, if any, also stand disposed off.

(SUDEEPTI SHARMA)
JUDGE

January 09, 2024
dinesh

Whether speaking : Yes/No

Whether reportable : Yes/No