



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

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CR-5365-2024 (O&M)**Date of Decision: 17.09.2024****MAYA DEVI**

...Petitioner

Versus

RAJ KUMAR AND ANOTHER

...Respondents

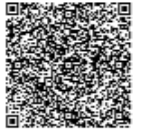
CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. C.R.Narwal, Advocate
for the petitioner.

VIKAS SURI, J. (ORAL)

1. Challenge in this petition under Article 227 of the Constitution of India is to order dated 16.08.2024 (Annexure P-1) passed by the learned Executing Court, whereby warrant of attachment of property of the petitioner has been issued.

2. Brief facts of the case emanating from the pleadings of the parties to the present petition are, that plaintiff had filed a suit for possession by way of specific performance of agreement to sell dated 03.08.2012 (Annexure P-5), executed by the petitioner herein, which was partly decreed vide judgment dated 06.03.2018 (Annexure P-3) passed by learned Civil Judge (Senior Division), Hisar and the plaintiff was held entitled to refund of earnest money of Rs.10,00,000/- with interest @ 8% per annum. The petitioner was directed to pay the balance decretal amount after adjusting the amount of Rs.5,00,000/-



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already deposited by him, within a period of two months. Seeking execution of the decree dated 06.03.2018 (Annexure P-3), an execution application dated 21.01.2019 (Annexure P-2) was filed by the decree-holder/respondent herein. The order dated 16.08.2024 (Annexure P-1) came to be passed in the said execution proceedings, whereby, warrant of attachment has been issued against the property of the petitioner.

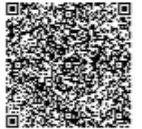
3. Learned counsel for the petitioner submits that the petitioner has already filed a statutory first appeal bearing No. CA-208-2018 against the aforesaid judgment and decree, which is pending adjudication before the learned Additional District Judge, Hisar. In the light of the pendency of the appeal, the executing Court ought not to have proceeded in the matter and rather should have stayed its hands in the execution proceedings.

4. Heard learned counsel for the petitioner and perused the record with his able assistance.

5. It would be apposite to notice the provisions contained in Order 41 Rule 5 CPC, which are extracted hereunder for reference:

“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.”

6. Undisputedly, the judgment and decree dated 06.03.2018 (Annexure P-3) has been passed against the petitioner, the execution of which has been sought by the plaintiff/decreed-holder. On a pointed query of the Court, learned counsel for the petitioner has very fairly submitted that till date no order has been passed by the first appellate Court on the application moved along with the appeal seeking stay of the operation of the impugned judgment and decree. However, the appeal is being adjourned on one ground or the other.

7. A perusal of the relevant extracted provisions (*ibid*), leads to an irresistible conclusion that mere factum of filing of an appeal would not operate as an automatic stay, unless an order has been passed by the appellate Court granting the specific relief of stay. Moreover, execution of a decree is not liable to be stalled for the sole reason that an appeal has been preferred against the said decree. In view of the aforesaid candid provision and considering that the first appellate Court has not granted any stay in the appeal preferred against the decree in question, it is not only lawful but also incumbent upon the executing Court to proceed to execute the decree, in accordance with the provisions of Order 21 read with Order 41 Rule 5 CPC.

8. In the light of the above discussion, this Court does not find any infirmity or illegality, much less perversity or jurisdictional error, in the impugned order dated 16.08.2024 (Annexure P-1) passed by the learned Executing Court.



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9. Accordingly, finding no merit in the present revision petition, the same is dismissed.

September 17, 2024

Varinder/shruti

**(VIKAS SURI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No