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

CR-5507-2024

Date of decision: 23.09.2024

Prabhdeep Singh @ Pravdeep Singh Sekhon

...Petitioner

Versus

Amritpal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Naveen Batra, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for quashing/setting aside the impugned order dated 29.08.2024 (Annexure P-6) passed by the Civil Judge (Junior Division), Ludhiana filed in EXE/12/2022 registered on 05.01.2022 titled as “Amritpal Singh Vs. Prabhdeep Singh” whereby the objections filed by the petitioner have been dismissed.

2. Learned counsel for the petitioner has submitted that the petitioner, who is a Judgment Debtor, had filed the objections to the execution and his primary objection was that his appeal filed against the judgment dated 28.10.2021 is pending and thus, till the time the said appeal is pending, the judgment dated 28.10.2021 should not be executed and the petitioner should not be dispossessed. Learned counsel for the petitioner has prayed that till the time his appeal is not decided the judgment of the trial



Court be not implemented and his dispossession be stayed.

3. This Court has heard learned counsel for the petitioner and has perused the paper book and finds that the argument raised by the learned counsel for the petitioner is meritless and the revision petition deserves to be dismissed.

4. The respondent-plaintiff had filed a suit for possession of the shop in question in the year 2014. Further prayer was made in the said suit for recovery of Rs.14,000/- being arrears of lease amount along with interest at the rate of 18% per annum till realisation. The trial Court vide judgment dated 28.10.2021 had decreed the said suit and had observed that the respondent was entitled to possession of the shop in question and was also entitled for recovery of Rs.14,000/- being arrears of lease amount along with interest at the rate of 18% per annum from the date of filing of the suit till actual realisation. It is the case of the petitioner that he had filed an appeal against the said judgment. The zimni orders passed in the said appeal have been fairly annexed by the learned counsel for the petitioner. A perusal of the zimni order dated 24.04.2023 would show that an application under Order 41 Rule 5 CPC, filed by the petitioner, was disposed of as being not pressed with the understanding that the main case be preponed to 08.05.2023 and the Executing Court was directed not to execute the warrants of possession till 08.05.2023 and it was further made clear that if, due to any reason, the appeal is not be heard on 08.05.2023, then the decree holder/respondent would be at liberty to get the warrants executed. The zimni order dated 24.04.2023 is reproduced hereinbelow:-

“Present: Sh.S.K Bawa, Advocate, counsel for



applicant/appellant.

Sh.A.S Rai, Advocate, counsel for respondent.

*Pursuant to notice, Sh.A.S Rai, Advocate has appeared on behalf of respondent, and stated that his regular power of attorney is already attached with the main file. Main file also put up by the Ahlmad with this application, which is also perused. He also suffered a separate statement that in the ld.lower Court the date is fixed 26.4.2023 in the execution in which the warrants of possession has already been issued, and he undertook not to pursue the execution in the ld.lower Court till next date of hearing, **however he reserves his right to insist the same if other Counsel for the appellant will not argue the matter on merits and he has no objection if the present appeal may be preponed. Pursuant to it, ld.Counsel for appellant has suffered a statement that he has heard the statement of ld.Counsel for respondent, and in view of the statement, he withdrew the present application dated 17.4.2023 and he undertook to argue the matter on the next date of hearing whichever will be fixed by preponing the appeal.***

*In view of the above circumstances, and in view of above statements of ld.Counsels for the parties, **the present application for passing the stay order on application under Order 41 Rule 5 CPC, moved by applicant/appellant, is disposed off being not pressed, and the main appeal bearing CIS No.CA/252/2021 is preponed to 08.5.2023 for main arguments, which will be heard positively on that date. Reader of this Court is directed to do needful in CI System. Both the parties are directed to remain bound by their above statements.***

*Ld.Lower Court is directed not to execute the warrants of possession till the next date of hearing i.e. 08.5.2023. **It is made clear that if due to any reason this appeal will not be heard on 08.5.2023 then DH/respondent is at liberty to get the warrants executed and ld.lower Court is also directed to get the***



execution proceeded, as per law, after the next date of hearing. Intimation be sent to the concerned ld.lower Court forthwith by the Ahlmad. Process in this regard may also be taken dasti as requested.

Dt., 24.04.2023

(Manoj Kumar)

*Addl., District Judge,
Ldh., UID No.PB0174”*

5. The above said order is neither under challenge before this Court nor is stated to be under challenge before any other Court. On 08.05.2023, the case was adjourned to 09.05.2023 for arguments. On 09.05.2023, however, instead of arguing the case, the counsel for the petitioner (appellant therein) sought an adjournment and thus, accordingly, as per the order dated 24.04.2023, which had attained finality, the respondent/decreed holder was entitled to proceed with the execution. Zimni orders dated 08.05.2023 and 09.05.2023 are reproduced hereinbelow:-

“ORDER DATED 08.05.2023:-

Present: Sh.S.K Bawa, Advocate, counsel for appellant.

Sh.A.S Rai, Advocate, counsel for respondent.

At request of ld.Counsel for parties, case is now adjourned to 09.5.2023 for main arguments, as per last order.

dt., 08.5.2023

(Manoj Kumar)

*Addl., District Judge,
Ldh., UID No.PB0174*

ORDER DATED 09.05.2023:-

Present: Sh.S.K Bawa, Advocate, counsel for appellant.

Sh.A.S Rai, Advocate, counsel for respondent.

At request of ld.Counsel for appellant, case is now adjourned to 22.5.2023 for main arguments, which will be heard positively on that date.



dt., 09.05.2023

(Manoj Kumar)

Addl., District Judge,

Ldh., UID No.PB0174”

6. Even on 22.05.2023, an adjournment was sought on behalf of counsel for the appellant and accordingly, the case was adjourned to 27.07.2023 and it was clarified that the Executing Court was at liberty to proceed further in the execution proceedings. The said orders dated 24.04.2023 and 22.05.2023 have neither been challenged before this Court nor have been challenged before any other Court, as has been fairly stated by the learned counsel for the petitioner. Since, no stay was operating thus, the Executing Court vide impugned order dated 29.08.2024 had rejected the objections filed by the judgment debtor to the effect that the warrant of possession be not issued till the time the appeal is pending. In the said order, reference was made to the earlier order passed by the First Appellate Court which has been reproduced hereinabove and the Executing Court had observed that there was no stay operating against the execution of the judgment and decree dated 28.10.2021 and thus the execution proceedings cannot be stayed. It was further observed that in case the appeal of the petitioner is allowed then he has a right under Section 144 of CPC for restoration. The said proceedings/orders are in accordance with law and does not call for any interference and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

23.09.2024

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No