

2024:PHHC:172926



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

128

CR-5751-2024 (O&M)
Date of decision: 01.10.2024

Gurdeep Singh

...Petitioner

Versus

Kuldeep Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Saurav Kanojia, Advocate for the petitioner.

VIKAS SURI, J.

1. Prayer in this petition under Article 227 of the Constitution of India is for directing the learned first Appellate Court to decide the appeal (Annexure P-2) as well as the stay application (Annexure P-8) filed by the petitioner in the said appeal, as expeditiously as possible and further for directing the learned Executing Court not to issue sale warrants, in execution of the decree, which has been assailed before the first Appellate Court.

2. Briefly, a suit for recovery of Rs.7,42,500/-, i.e. Rs.5,50,000/- as principal loan amount and Rs.1,92,500/- as interest @ 1% per month on the basis of pronote and receipt executed by the defendant on 09.06.2016, and future interest @ 6% per annum till realization, was decreed vide judgment and decree dated 18.04.2024. The respondent-DH filed an execution application on 04.05.2024, wherein notice was issued to the JD.



2.1 The petitioner-JD, on 17.05.2024, preferred an appeal before the learned District Judge, Ludhiana, impugning the judgment and decree dated 18.04.2024. The said appeal is stated to be pending for 24.10.2024.

2.2 In the meanwhile, in the execution proceedings instituted on 04.05.2024, petitioner-JD was proceeded against *ex parte*, vide order dated 08.07.2024 and warrants of attachment of the property of the JD were ordered to be issued.

2.3 On the subsequent hearing, i.e. 14.08.2024, the proclamation of sale was drawn and the auction was scheduled to be held on 03.10.2024. The petitioner-JD moved an application for stay on 25.09.2024, in the pending appeal and another application on 27.09.2024, before the learned Executing Court, for setting aside the *ex parte* proceedings.

3. In the backdrop of the aforesaid factual matrix, the petitioner has the invoked jurisdiction of this Court, seeking directions as noticed hereinabove.

4. I have heard learned counsel for the petitioner and with his able assistance perused the record.

5. Admittedly, a money decree has been passed against the petitioner after due contest. The JD has shown to have appealed against the said judgment and decree within the time stipulated by law. However, no material has been placed on record to show whether any application under Order 41 Rule 5 of the Code of Civil Procedure, 1908,



(for short, 'CPC'), seeking stay of execution of the judgment and decree, had been moved along with the aforesaid appeal. It is only after the proclamation of sale had been drawn subsequent to the attachment of the JD's property, that the application for stay was moved in the appeal, and thereafter, another application for setting aside the *ex parte* proceedings was filed before the Executing Court.

6. The urgency in the matter, shown before this Court, is on account of the Court auction, which is scheduled for 03.10.2024.

7. Concededly, the application for seeking stay of operation of the impugned judgment and decree dated 18.04.2024 and for staying the execution proceedings, is still pending before the first Appellate Court, for 24.10.2024. It is noticed that the Court auction is scheduled for 03.10.2024 and the proceedings are pending for 25.10.2024 for submitting the report.

8. It is a well settled principle of law that the Appellate Court, in an appeal against a money decree, ordinarily requires the appellant to deposit the amount disputed in the appeal or furnish adequate security in respect thereof and that stay of execution is not be granted as a matter of course. The power to grant stay of execution even without deposit of security is subject to judicial discretion, which is to be exercised sparingly and only in exceptional cases. The instant case is not one that falls within such exception.

9. In view of the aforesaid and the provisions contained in Order 41 Rules 1(3) and 5(5) CPC and keeping in view that the



application seeking stay, pending first appeal, is listed before the appellate Court a day prior to the date fixed before the Executing Court, the present petition is disposed of with the observation and direction that in case the petitioner presses his application before the Appellate Court concerned on 24.10.2024, the same be taken up for consideration and the prayer for ad-interim stay be also considered on the same day, if for any reason, disposal of the stay application, is not possible.

10. The revision petition is disposed of in the aforesaid terms.

October 01, 2024
sumit.k

(VIKAS SURJ)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No