



In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1415 of 2025

Date of Decision: 10.03.2025

Rajmata Sahiba Educational Society, Buria and Another

... Petitioner(s)

Versus

Sushila Devi (Since Deceased) through her Legal Representative

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ravi Malik, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. The petitioner herein is a tenant who has been ordered to be evicted by the Rent Controller. Its appeal is pending before the Appellate Authority for the last three years. Initially, the petitioner filed an application for stay which was dismissed as not pressed on 18.04.2022. Thereafter, the petitioner did not file any fresh application for stay all this while. After a period of three years, the petitioner filed a fresh application which was dismissed by the Appellate Authority with the following observations:-

“5. The record reflects that the applicant had previously filed a similar application alongwith the appeal. However, the application was not pressed by the him and it was dismissed as not pressed vide order dated 18.04.2022 by the Predecessor Presiding Officer of this Court. Thereafter, the appeal remained pending. Now fresh application has been filed by the applicant-

appellant to seek the same relief. Though there is no res-judicata in filing the similar application on fresh cause of action but at the same time, it is apt to note that the present application has been filed after about three years of filing the appeal. The learned counsel for respondent is ready to argue appeal on merit. On asking, the learned counsel for appellant-applicant if he is ready to argue on main appeal on merits, has stated that firstly, he requires his application for stay only to be decided. It appears that the applicant-appellant only wants to delay the decision of appeal. It has also been pointed out that the applicant-appellant is also in arrears of rent and has not paid rent since long. The applicant has not been able to point out anything on merit warranting the stay of the impugned judgment passed by the learned Rent Controller except the fact that the Executing Court has issued warrant of possession. Unless, the applicant-appellant is unable to show prima facie case in his favour coupled with irreparable loss and balance of convenience, this Court do not find any reason to stay the impugned judgment.”

2. Subsequently, the warrants of possession were issued by the Executing Court. The petitioner filed an objection petition and prayed to the Executing Court to stop execution of the warrants of possession which has been rejected by the Court after analyzing the order passed by the Appellate Authority on 11.02.2025.

3. The learned counsel representing the petitioner contends that

since the appeal of the petitioner is pending, hence, the Executing Court should have stayed the execution proceedings.

4. This Court has considered the submissions of the learned counsel representing the petitioner.

5. Order XLI Rule 5 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) reads 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 provision 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.”

6. Hence, there is no substance in the arguments of the learned counsel representing the petitioner. Moreover, it is the petitioner who is delaying the disposal of the appeal. The Appellate Authority has offered to hear the arguments in the main appeal, which the petitioner’s counsel refused.

7. It is evident that the petitioner is abusing the process of the

Court. Hence, the revision petition is dismissed with special costs of ₹50,000/-.

7. The learned counsel representing the petitioner submits that the exams of the students are being held. The learned counsel admits that the next academic session is likely to begin from 01.04.2025. The Executing Court will proceed to execute the warrants of possession on the day the exams are over.

(Anil Kshetarpal)
Judge

March 10, 2025
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No