



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

CR-3256-2023 (O&M)

Date of Decision: February 21, 2025

Vinod Kumar

...Petitioner

Versus

Sukhchain Lal

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sunil Chadha, Senior Advocate with
Ms.Taanvi Dhull, Advocate
for the petitioner.

Mr.Hitesh Ghai, Advocate
for the respondent.

ARCHANA PURI, J.

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India, thereby, seeking modification of the order dated 25.04.2023 (Annexure P-3) passed by learned Addl. District Judge, whereby, while allowing an application filed by the petitioner under Order XLI Rule 5 CPC, vis-a-vis, staying the operation of the judgment and decree dated 14.10.2021 passed by learned Addl. Civil Judge (Sr. Divn.), a direction was given to the petitioner to deposit 50% of the decretal amount, within a period of one month, from the date of receipt of the said order.

Upon notice, the respondent made appearance through counsel.



Learned counsel for the parties heard.

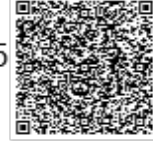
The facts germane, to be noticed, are as follows:-

That, respondent-plaintiff, who is real brother of the petitioner-defendant had filed a suit for recovery of Rs.14,00,000/-, along with interest @ 12% per annum, pendente-lite from the date of suit, till the passing of the decree, along with future interest, vis-a-vis, the property, as detailed in the plaint, towards occupation charges/mesne profits, on account of alleged usage of the shop in question, by the petitioner-defendant. The said suit was decreed vide judgment dated 14.10.2021 by learned Addl. Civil Judge, Ludhiana, copy whereof is Annexure P-1.

Being aggrieved by the aforesaid judgment and decree, the petitioner-defendant had filed an appeal and along with the same, an application under Order XLI Rule 5 CPC was filed for seeking stay of the execution and operation of the impugned judgment and decree dated 14.10.2021. Upon this, vide order dated 25.04.2023 (Annexure P-3), learned Addl. District Judge, had allowed the application of the petitioner-defendant and the order so passed, is reproduced, as herein given:-

“Heard on an application U/o 41 Rule 5 read with Sec. 151 CPC for staying execution and operation of judgment and decree dated 14.10.2021 passed by the court of Mr. Sumit Makkar, Additional. Civil Judge, Senior Division, Ludhiana, till disposal of the appeal.

2. It has been averred in the application that the impugned judgment and decree have not assumed finality and are appealable and the appeal lies before this court. The appellant has a right to o in for against the impugned judgment and



decree of Ld. Lower Court. It has been further averred that in case the execution and operation of the impugned judgment and decree under appeal are not stayed, then the very purpose of filing the present appeal shall stand frustrated. Finally, prayer for staying the execution and operation of the impugned judgment and decree, has thus, been made.

3. *Upon notice of the application, the respondent caused appearance through his counsel and filed written reply, wherein, he opposed the averments put in the application and prayed for dismissal of the same.*

4. *After giving my thoughtful consideration to the rival submissions, contents of the application, reply filed thereto, coupled with due assistance rendered, the court finds merit in the submission of learned counsel for the applicant/appellant. The applicants took specific plea that they will suffer an irreparable loss, which shall not be compensated in terms of money, if the operation of impugned judgment and decree is not stayed till the disposal of the appeal. In my opinion, in order to avoid multiplicity of litigation, the application on hand deserves to be allowed and accordingly, the same is allowed and execution and operation of judgment and decree dated 14.10.2021 passed by the court of Mr. Sumit Makkar, Additional Civil Judge, Senior Division, Ludhiana, is hereby stayed till the final decision of the appeal, subject to make the payment of 50% of the amount in question i.e. Rs.14,00,000/- by the appellant to the respondent Sukchain Lal within a span of one month from the receipt of this order. It is further made clear that in case of any violation thereof, this order shall cease to have effect qua the same.*

5. *For main arguments, now to come upon 19.05.2023”*

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The petitioner-defendant, now seeks modification of the aforesaid order, to the extent of directing the petitioner to deposit half of the amount of Rs.14 lakh.

Learned counsel for the petitioner submitted that the suit has been illegally decreed vide judgment dated 14.10.2021. It is not even maintainable, in view of the judgment dated 09.08.2016, earlier passed by the trial Court, between the parties to the lis and which is still under challenge, as the appeal was dismissed by the lower Appellate Court and RSA is stated to be pending.

In the light of the same, it is submitted that there are seriously debatable questions, which are required to be adjudicated, with regard to the maintainability of the false assertions of seeking possession raised by the respondent-plaintiff and the same are to be adjudicated in RSA and therefore, there was no justification for seeking recovery and precisely, on this account, the deposit of half of the amount of Rs.14 lakh, for which the suit was filed, ought to not have been directed.

In the case in hand, there was recovery sought of Rs.14 lakh along with interest and the same was decreed vide judgment dated 14.10.2021. An appeal had been filed and in the appeal, the operation of the impugned judgment was stayed, subject to deposit of 50% of Rs.14 lakh. Though, it is claimed that the questioned judgment and decree is based on the judgment and decree dated 09.08.2016, which was between the parties to the lis and which is under challenge in RSA, but however, the contention for the modification of condition of the deposit, as raised by learned counsel



for the petitioner, is not tenable.

All the submissions aforesaid, with regard to the maintainability of the suit, keeping in view the judgment and decree dated 09.08.2016, passed earlier between the parties to the suit, which is under appeal, as such is the matter, which requires consideration, in the main appeal. Till such time, while granting stay of operation of the judgment and decree dated 14.10.2021, the trial Court was justified in directing the deposit of 50% of Rs.14 lakh. Exercise of this discretion by trial Court, cannot be said to be an illegality, which in exercise of jurisdiction, vested under law, warrants interference by this Court.

Hence, the present revision petition sans merit and the same is hereby dismissed.

February 21, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No