IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-4277-2025 (O&M)
Date of Decision: 16.07.2025

Rukmesh and others

...Petitioners

Versus

M/s Sant Dass Nilesh Kumar Commission Agent

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Anupal Singh, Advocate for
Mr. Abhimanyu Singh, Advocate, for the petitioners.

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VIKAS SURI, J. (ORAL)

1. Prayer in this petition under Article 227 of the Constitution of India is for setting aside the order dated 26.05.2025 (Annexure P-5) passed by learned Additional District Judge, Kaithal. The instant petition has been instituted by the judgment-debtors.

2. Briefly stated that the respondent-M/s Sant Dass Nilesh Kumar Commission Agent filed a suit for recovery of Rs.11,76,910/- alongwith interest against the petitioner-defendants. Vide judgment and decree dated 20.01.2023, the said suit was decreed with costs along with interest @ 8% per annum from the date of filing the suit till its realisation. The petitioners filed an appeal under Section 96 of the Code of Civil Procedure, 1908 (for short ‘the CPC’) along with an application under Order 41 Rule 5 CPC seeking stay of the money decree. On 26.05.2025, the first Appellate Court

passed a conditional order staying the operation of the impugned judgment and decree. The present petition has been filed raising challenge to the aforesaid order dated 26.05.2025.

3. Learned counsel for the petitioners submits that the petitioners are a young widow and her three children and they have no independent source of income and as such, they are not in a position to deposit the sum of Rs.18,00,000/- with the learned Executing Court.

4. I have heard the submissions advanced on behalf of the petitioners and am afraid the same is not acceptable in law.

5. The provisions of Order 41 Rule 5 (3) CPC read as under:-

> "(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."

6. Admittedly, the money decree dated 20.01.2023 has been passed against the petitioners, which has been assailed before the first Appellate Court. Upon consideration of the matter, on an application seeking stay of operation of the impugned judgment and decree, in the light of the provision of Order 41 Rule 5(3)(c) CPC, the first Appellate Court

conditionally stayed the operation of the impugned judgment and decree vide order dated 26.05.2025 with the following observations:-

> "Heard on the application dated 2.5.2024 filed by the appellants on 3.5.2024 for staying the operation of impugned judgment and decree dated 20.1.2023. Vide judgment dated 20.1.2023, a decree of recovery of Rs.11,76,910/- (Rs.08,05,000/- as Principal and Rs.3,71,910/- as interest) @ 8% per annum per annum from the date of filing of suit till its realization was passed against the appellants. The application for execution of impugned judgment and decree is now pending for 27.05.2025 before learned Executing Court.
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> In view of Order 41 Rule 5 (3)(c) CPC and subject to the condition that the appellant shall furnish security in the shape of bank guarantee for the sum of Rs.18 Lacs for the due performance of money decree, within 15 days, before the learned Executing Court to its satisfaction. The operation of impugned judgment/decree is stayed. In case of non-compliance, this order shall be deemed to vacate automatically. Application stands disposed accordingly.
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> Adjourned to 17.10.2025, for arguments on merits of the appeal.
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> Copy of this order be sent to learned Executing Court for requisite compliance."

7. Indisputably, the petitioners have not submitted the bank guarantee, within the stipulated time. Noticing the aforesaid fact in the interlocutory order dated 10.06.2025, learned Executing Court has proceeded with the execution proceedings.

8. It is well settled that the earning capacity and financial status or the lack of resources of the judgment-debtor, is not a lawfully acceptable consideration, for staying the operation of a money decree. It is notable that the suit for recovery was instituted on 12.09.2018 and after a full trial, was decreed on 20.01.2023. Despite the same, the decree-holder has not been able to enjoy the benefits of his money decree, till date. The first Appellate Court has balanced the scales and equity while passing the order dated 26.05.2025.

9. Learned counsel for the petitioners has failed to point out any illegality or perversity in the impugned order nor the same suffers from any jurisdictional error warranting interference.

10. In view of the aforesaid, there is no merit in the instant revision petition and the same is dismissed.

11. Pending application(s), if any, also stand disposed of.

(VIKAS SURI)
JUDGE

July 16, 2025
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No