



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

CR-5000-2025(O&M)

Date of Decision: July 31, 2025

Sukhwinder Singh

...Petitioner

Versus

Malkiat Kaur and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Satvir Singh, Advocate
for the petitioner.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 01.07.2025 (Annexure P-11) passed by learned Executing Court in execution application No.3 of 2024, whereby, an application for stay of the execution proceedings of Civil Appeal No.225 of 2024 dated 29.01.2024 was dismissed.

In the fitness of the circumstances, as spelt out, from the material brought on record, it is appropriate to dispose of the revision petition, without issuance of notice to the respondents.

It is submitted by learned counsel that initially, respondent No.1-Malkiat Kaur had filed a suit for recovery of Rs.4.20 lakh, on account of use and occupation of the suit property and the said suit was decreed.



CR-5000-2025

-2-

Thereupon, an appeal was filed and along with the appeal, an application was also filed for stay of the proceedings. However, First Appellate Court, had not passed any effective order on the application under Order 41 Rule 5 CPC.

Learned counsel has drawn the attention of the Court to the copies of zimini orders placed on record, Annexure P-7. Furthermore, during the course of arguments, he has placed on record copies of the subsequent zimini orders passed till 15.05.2025. It is submitted that learned Appellate Court is not making any effort to decide the application under Order 41 Rule 5 CPC.

Keeping in view the aforesaid factual scenario, it is also submitted that in the minimum, the Executing Court, while resorting to Order 41 Rule 6 (2) CPC, which is mandatory in nature, should stay proceedings, relating to the auction/sale of the property, during the pendency of the appeal. In this regard, learned counsel for the petitioner has relied upon judgment passed by this Court in ***Krishan Kumar vs. State Bank of Patiala and others, 2005(4) RCR (Civil) 91***, wherein, it has been observed, as herein given:-

“5. A perusal of the aforesaid provision make it abundantly clear that where an order has been made for the sale of immovable property in execution of decree and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed, on such terms as to giving security or otherwise as the Court may deem appropriate. It is, thus, clear that the provisions of sub-rule (2) of the Code are mandatory and are quite independent and distinct from the power of the appellate Court to stay the execution of the decree under Order 41 Rule 5



of the Code. Whereas under Rule 5 of the Code it is for the appellate Court to stay the execution of the decree or not, during the pendency of the appeal, in a case where an order has been passed by the executing Court for sale of immovable property and when an appeal against the decree is pending, the executing Court is bound in law, on an application being made by the judgment-debtor, to stay the aforesaid sale. Of course, while ordering the stay of sale, the executing Court can impose such terms as to giving security or otherwise as the Court may deem appropriate. The language of the aforesaid Rule 6(2) of the Code also leaves an ample discretion with the Court to impose such conditions as the Court may deem appropriate and would leave a discretion with the executing Court even to insist upon the deposit of the entire decretal amount in a given case.

6. Even in a situation where the stay has been declined by the appellate Court under Rule 5 Order 41 of the Code, the executing Court is bound in law to stay the sale. The only discretion the execution Court enjoys is to impose such conditions, or insist upon the deposit of the entire decretal amount, as may be deemed appropriate.

7. A perusal of the impugned order clearly shows that the executing Court was clearly oblivious of the provisions of Rule 6(2) of Order 41 of the Code. It has completely lost sight of the fact that the aforesaid provision is mandatory in nature.”

In the backdrop of the aforesaid case law, it is pertinent to mention that in the application filed for grant of stay before the Executing Court, the mention is made to the provision of Order 41 Rule 6(2) CPC. However, the tone and tenor of the aforesaid provision has been overlooked by the Executing Court, while passing the impugned order. As held in ***Krishan Kumar’s case (supra)***, it is clearly evident that wherein, the order has been made for sale of property in execution of the decree and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the court, which made the order, be stayed, on such terms as to giving security or otherwise, as the Court may deem appropriate.

**CR-5000-2025****-4-**

The provision is mandatory in nature and is independent and distinct from the power of Appellate Court to stay the execution of the decree under Order 41 Rule 5 CPC.

In the light of the same, the Executing Court, ought not to have dismissed the application, solely, on account of appeal pending before the Court. Also, from the impugned order, it is evident that attached property of the petitioner-JD, has been put on sale.

Such being the position and mandatory nature of provisions of Order 41 Rule 6 (2) CPC, the revision petition is hereby accepted and the impugned order is set aside. The order of sale as fixed by the impugned order be recalled immediately. The Executing Court shall further adjudicate on the application under Order 41 Rule 6 (2) CPC, while taking into consideration, the mandatory nature of the said provision, after giving an opportunity of hearing to both the sides.

The petitioner is directed to make appearance before learned Executing Court within a period of seven days, from today onwards. After appearance of the petitioner and on receipt of copy of this order, the Executing Court shall issue notice to the other side and decide the application afresh.

July 31, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No