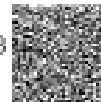


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2025:PHHC:149888



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

CR-7109-2025

DECIDED ON: 31.10.2025

GURWINDER SINGH

.....PETITIONER

VERSUS

SUKHWINDER SINGH

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. M.K. Dhot, Advocate
for the petitioner.

MANDEEP PANNU, J (ORAL)

1. This order shall dispose of the present revision petition filed under Article 227 of the Constitution of India with a prayer to set aside the order dated 01.09.2025 passed by the learned Civil Judge (Junior Division), Malerkotla, whereby the application dated 22.08.2025 moved by the petitioner–Judgment Debtor under Section 151 CPC for staying the execution of the judgment and decree dated 31.05.2024 has been dismissed.

2. Briefly stated, the respondent–decree holder had instituted a suit for recovery against the petitioner–defendant, which came to be decreed by the learned Civil Judge (Junior Division), Malerkotla, vide judgment and decree dated 31.05.2024. Aggrieved by the said decree, the petitioner filed an appeal before the learned District Judge, Sangrur, accompanied by an application under Section 5 of the Limitation Act for condonation of delay of

eight days and another application under Order 41 Rule 5 CPC seeking stay of operation of the aforesaid judgment and decree.

3. It is submitted that despite issuance of notice in the appeal, the respondent failed to appear, and during pendency of the appeal, he initiated execution proceedings to enforce the decree dated 31.05.2024, wherein warrants of attachment were issued. The petitioner moved an application before the Executing Court praying for stay of execution proceedings till disposal of the appeal, but the same was dismissed vide the impugned order dated 01.09.2025. Hence, this revision petition.

4. Learned counsel for the petitioner argued that once the decree has been challenged in appeal and the stay application is pending before the Appellate Court, the Executing Court ought to have stayed further proceedings to avoid multiplicity and conflicting decisions. It is contended that continuation of the execution proceedings would render the pending appeal infructuous and cause irreparable loss to the petitioner.

5. Reliance has been placed on the judgment of this Court in '***Santosh v. Kanta Devi and others***', 2023 (3) RCR (Civil) 652, wherein it was observed that when an appeal is pending and substantial rights of the parties are yet to be determined, the Executing Court should exercise discretion to stay proceedings to avoid injustice.

6. Since the issue involved is a short legal question and the record is sufficient for adjudication, issuance of notice to the respondent is dispensed with.

7. I have heard learned counsel for the petitioner and perused the available record.

8. There is no dispute that the judgment and decree dated 31.05.2024 has been challenged in appeal and that the stay application under Order 41 Rule 5 CPC is pending before the learned Lower Appellate Court. The only question for determination is whether, pending decision on that stay application, the Executing Court was justified in declining to stay the execution proceedings.

9. It is settled law that the mere filing of an appeal does not operate as a stay of execution of a decree unless specifically ordered by the Appellate Court. This principle is embodied in Order 41 Rule 5(1) CPC, which provides that an appeal shall not operate as a stay unless the Appellate Court expressly directs so. The Executing Court is bound to execute a decree so long as it remains in force and has no authority to stay execution merely because an appeal has been filed or is pending.

10. The reliance placed by the petitioner on Santosh's case (supra) is misplaced. In the said case, the Appellate Court had already granted conditional stay of execution, and this Court held that the executing Court should not act contrary to such appellate directions. The ratio of that judgment is distinguishable on facts, as in the present case no stay has been granted by the Appellate Court till date. Thus, the Executing Court rightly proceeded with execution of a valid and subsisting decree.

11. Accordingly, the civil revision petition is dismissed, and the impugned order dated 01.09.2025 passed by the learned Civil Judge (Junior Division), Malerkotla, is hereby affirmed.

12. It is, however, observed that the petitioner shall be at liberty to pursue the pending application for stay before the learned Appellate Court,

which shall decide the same on its own merits in accordance with law, uninfluenced by any observation made herein.

13. All pending miscellaneous application(s), if any, stands disposed of.

31.10.2025

Poonam Negi

(MANDEEP PANNU)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No