



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

115

CR-2210-2025 (O&M)  
Date of Decision:17.07.2025

SHANGARA SINGH

. . . .PETITIONER

Vs.

MALKIAT SINGH

. . . . RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

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

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DEEPAK GUPTA, J.

Petitioner herein is judgment debtor in execution petition bearing CIS No.Exe-50-2024 pending before learned Additional Civil Judge (Sr. Division), Phagwara. He is aggrieved by the order dated 13.03.2025 (*Annexure P-1*), whereby his objections against the execution have been dismissed.

2. Perusal of the paper book would reveal that way back in 2004 Malkiat Singh (*respondent herein*) filed a suit against Shangara Singh (*petitioner herein*) seeking a decree of declaration and permanent injunction regarding property in dispute. Trial Court dismissed the suit on 20.03.2009 (*Annexure P-6*). The appeal filed by said Malkiat Singh was partly allowed by the First Appellate Court on 17.02.2011 (*Annexure P-7*). Being not satisfied, respondent Malkiat Singh filed **RSA-4083-2011** before this Court and vide order dated 11.07.2018 (*Annexure P-8*), this Court decreed the suit by holding Malkiat Singh to be the owner in possession of the suit land.

3. After the aforesaid decision dated 11.07.2018 (*Annexure P-8*), petitioner filed a fresh suit (**CS/8/2020**) in January, 2020 seeking declaration



that he was owner in possession of the suit property. On the other hand, Malkiat Singh filed a separate suit (**CS/388/2020**) in December, 2020 seeking a decree of possession by directing the defendant of that case i.e., Shangara to remove the Malba lying on the suit property. Vide consolidated judgment dated 30.11.2023 (*Annexure P-5*), the Court of learned Additional Civil Judge (Sr. Division), Phagwara dismissed the suit of Shangara Singh i.e. *petitioner herein*; and decreed the suit of Malkiat Singh i.e. *respondent herein* for possession of the suit property.

4. Against the aforesaid judgment & decree, petitioner filed appeal, which is stated to be pending before learned District Judge, Kapurthala.

5. In the meantime, decree-holder i.e. respondent-Malkiat Singh filed an execution, wherein the present petitioner filed objections that as his appeal was pending before the District Court against the judgment & decree dated 30.11.2023, so execution be dismissed. However, said objections were dismissed by way of the impugned order.

6. Assailing the aforesaid order, it is contended by learned counsel that in case proceedings of the execution are not stayed; or in case execution is not dismissed, the whole purpose of filing the appeal by the petitioner shall be defeated.

7. This Court does not find any merit in the contention. Order 41 Rule 5(1) CPC specifically provides that 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, though the Appellate Court may for sufficient cause order stay of execution of such decree.

8. In the present case, it is conceded by learned counsel for the petitioner that in the appeal filed by petitioner before the First Appellate Court against the judgment & decree dated 30.11.2023, no stay order has been granted by the Appellate Court.



9. In the aforesaid facts and circumstances, the Executing Court was justified in rejecting the objections of the petitioner-judgment debtor.

10 As such, finding no illegality in the impugned order, the present petition is hereby dismissed.

**17.07.2025**

*Pry*

**(DEEPAK GUPTA)**

**JUDGE**

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>