

2025:PHHC:096362



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

123

CR-4391-2025 (O&M)

Date of decision: 30.07.2025

Kewal Singh

...Petitioner

Versus

Parminder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Ms. Bhavna Kapur, Advocate for the petitioner.

VIKAS SURI, J.

1. This is a petition under Article 227 of the Constitution of India at the behest of defendant-judgment debtor for setting aside order dated 19.05.2025 (Annexure P-1), passed by learned Additional Civil Judge (Senior Division), Kapurthala, whereby the objections filed by the petitioner in execution proceedings, have been dismissed.

2. Learned counsel for the petitioner would contend that the suit for possession by way of specific performance of the agreement to sell dated 09.12.2009 with regard to the suit property, measuring 16 marlas, was decreed vide judgment and decree dated 08.11.2019, passed by learned Additional Civil Judge (Senior Division)-II, Kapurthala. Aggrieved by the same, the petitioner challenged the aforesaid order by way of an appeal before the first appellate Court. The appeal was instituted on 13.12.2019. Along with the said appeal, an application under



Order 41 Rule 5 CPC has also been filed, which is pending along with the main appeal and the next date of hearing before the first appellate Court is 11.08.2025.

2.1 Learned counsel for the petitioner would further submit that while dismissing the objections filed by the petitioner, the learned Executing Court has held that mere pendency of appeal is no ground to stay the proceedings except for an order passed by the appellate Court under the provisions of Order 41 Rule 5 CPC. In all fairness, learned counsel for the petitioner concedes that no fault can be found with the aforesaid observation and the same is in consonance with candid provisions of Order 41 Rule 5 CPC. It is further submitted that though the petitioner has been pressing hard for disposal of his application for stay, but the same is being adjourned in a routine manner.

3. After arguing for some time, learned counsel for the petitioner states that the petitioner would be satisfied at this stage, if a direction is issued to the appellate Court to dispose of the main appeal on the date already fixed before it and if the same is not convenient to the Court, at the very least, the stay application be disposed of on the said date or within some reasonable time, thereafter.

4. I have heard learned counsel for the petitioner and perused the paper book.

5. The admitted position is that the petitioner has preferred an appeal along with an application under Order 41 Rule 5 CPC for stay of operation of the impugned judgment and decree, till the final decision of



the case. The said appeal came to be registered as CA/327/2019 titled as *Kewal Singh vs. Parminder Kaur etc.* The respondent-decree holders stand served in the said appeal and no order has been passed on the stay application so far. Learned counsel for the petitioner would also refer to the application (Annexure P-12) for preponing the appeal, when the matter was pending for 06.01.2025, to submit that the petitioner has taken all possible steps to seek an early disposal of the stay application/appeal.

6. Learned counsel for the petitioner relies upon the judgment rendered by the Hon'ble Supreme Court in *Mool Chand Yadav vs. Raza Buland Sugar Company Limited, Rampur, (1982) 3 SCC 484* and the judgment of this Court in *Santosh vs. Kanta Devi, 2023 (3) RCR (Civil) 652*, in support of her contention that during the pendency of the appeal, any order having serious consequences connected with appeal, ought to be stayed.

7. It is not in dispute that the first appeal preferred by the petitioner is *sub judice* and the application filed along with the said appeal for stay of operation of the impugned judgment and decree is also pending. The impugned decree is being executed during the pendency of the aforesaid and if the petitioner is dispossessed from the suit property and/or title is transferred to the plaintiff/decree holder/respondents, the same would cause irreversible and irreparable damage qua rights of the petitioner in the suit property.

8. In view of the aforesaid and on consideration of the factual matrix in its entirety, I deem it appropriate to dispose of this petition by



granting the limited prayer made during the course of hearing and accordingly, direct the learned first appellate Court to dispose of the application under Order 41 Rule 5 CPC (Annexure P-4) expeditiously, preferably on the date already fixed or within a period of one week thereafter. It shall be open to the said Court to hear arguments on the main appeal as well and dispose of the same simultaneously, within the aforesaid period.

9. The revision petition is disposed of in the aforesaid terms.

July 30, 2025
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes / No
Yes / No