



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

134

CR-6109-2025 (O&M)  
Date of decision: 04.09.2025

Tarsem Masih

...Petitioner

V/s

Baldev Singh and another

...Respondents

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Vipin Mahajan, Advocate, for the petitioner.

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**VIKRAM AGGARWAL, J (ORAL)**

The instant revision petition, preferred under Article 227 of the Constitution of India, assails order dated 21.08.2025 (Annexure P-5) passed by the Court of Additional District Judge, Gurdaspur, vide which the application preferred by the petitioner under Order 41 Rule 5 of the Code of Civil Procedure, 1908 (for short the "CPC") was rejected.

2. The facts, as emanating from the revision petition, are that a suit for possession by way of specific performance of agreement to sell dated 08.01.2015 was filed by respondent No.1-plaintiff (Baldev Singh). The said suit was decreed by the Court of Addl. Civil Judge (Sr. Divn.), Gurdaspur, vide judgment and decree dated 14.07.2023 (Annexure P-1). Appeal (Annexure P-2) was preferred against the said judgment and decree by the present petitioner. The said appeal was accompanied by an application (Annexure P-3) under Order 41 Rule 5 CPC for stay of execution of the impugned judgment and decree. The case of the petitioner is that the said application remained pending and was never decided and in the meantime, execution proceedings continued. The reply to the said application was filed on 04.08.2025 that too on the insistence of the present petitioner since



execution proceedings were pending. However, the application stands dismissed.

3. Learned counsel for the petitioner submits that the first Appellate Court erred in rejecting the application for stay. He submits that the first Appellate Court is the final Court of facts and that in case the decree is executed during the pendency of the appeal, grave prejudice shall be caused to the rights of the petitioner. Learned counsel further, very fairly, submits that any time period be fixed for disposal of the appeal and till then, the execution of the judgment and decree dated 14.07.2023 be kept in abeyance.

4. I have considered the submissions made by learned counsel for the petitioner.

5. There would be no necessity of issuing notice to the respondents, for, in view of the nature of the order that is proposed to be passed, no prejudice would be caused to them.

6. No doubt, the suit for possession by way of specific performance of agreement to sell dated 08.01.2015 was decreed vide judgment and decree dated 14.07.2023. However, concededly, an appeal was promptly filed against the said judgment and decree accompanied by an application under Order 41 Rule 5 CPC.

7. During the pendency of the appeal, it appears that no decision was ever taken on the application for stay. Order dated 29.07.2025, which has been produced by learned counsel for the petitioner during the course of arguments, reads as under:-

***“Counsel for the appellant came present and produced photocopy of order dated 01.07.2025 passed by the Executing Court. Perusal of that order shows that Court has ordered the DH to file draft sale deed for 18.07.2025. Counsel for the appellant requested that application is pending under Order 41 Rule 5 CPC be disposed off at the earliest. On the other side, Clerk of Sh. Satyan Khajuria, Advocate and requested to***



*adjourn the case for 01.08.2025 on the ground that counsel for respondent No.1 wants to argue in the presence of the respondent No.1. Request heard and allowed. Now, to come up on 01.08.2025 for arguments on application pending under Order 41 Rule 5 CPC and record be also called for the date fixed.”*

8. Thereafter, order dated 01.08.2025 states as under:-

*“Record received. Today case was fixed for consideration on application pending under Order 41 Rule 5 CPC but perusal of record shows that reply to above said application has not filed by respondent No.1. On request of learned counsel for respondent No.1, case is adjourned to 04.08.2025 for filing reply to the application pending under Order 41 Rule 5 of CPC.”*

9. Order dated 04.08.2025 also shows that the reply to the application was filed on the said date. By way of the impugned order, the application under Order 41 Rule 5 CPC was dismissed;

*“7. From the rival contentions of the parties, it is to be stated that this appeal was filed on 07.08.2023 and in the meanwhile, execution petition was filed, but this application filed under Order 41 Rule 5 read with Section 151 of COPC was not pressed by the applicant/appellant till 29.07.2025 when applicant/appellant asserted that application be disposed off. Applicant/appellant also produced photocopy of the order dated 01.07.2025 passed by the executing Court. No doubt, in execution, executing Court has proceeded in the execution and respondent/plaintiff was directed to file draft sale deed for execution of sale deed qua property under consideration, but proceedings of execution cannot be stayed mere on the ground that appellant is asserting that impugned decree and judgment are liable to be set aside. Perusal of file shows that appellant/applicant has admitted received Rs.5 lacs from respondent on 08.01.2014 at the time of execution of agreement to sell under consideration. Trial Court has given adjudication regarding execution of agreement to sell dated 08.01.2014. It is apparent that respondent/plaintiff is still knocking the door of executing court by asserting that he is ready to pay the balance sale consideration in compliance of judgment and decree passed by trial Court. Learned counsel for the respondent/ plaintiff hotly argued that no irreparable loss will be caused to the applicant/appellant, rather the respondent/plaintiff will suffer irreparable loss if impugned decree and judgment will be set aside. Though, the court does not want to comment on the merits of the case at this stage, but at the same time, this*



*court is of the opinion that balance of convenience at this stage has lying in favour of respondent/plaintiff. In view of the above said discussion, application under Order 41 Rule 5 CPC read with Section 151 CPC is hereby dismissed being without merits.”*

10. In the considered opinion of this Court, the Court of Additional District Judge, Gurdaspur was not right in saying that since the application for stay had never been pressed, no order was passed. It has to be borne in mind that valuable rights of parties are involved and in first appeal, normally, unless circumstances appear to the contrary, stay of execution is not to be denied. In any case, if the execution of the decree is not stayed during the pendency of the appeal, it shall gravely prejudice to the rights of the petitioner.

11. That being so, the present revision petition is disposed of with a direction to the Court of Addl. District Judge, Gurdaspur, to hear and decide the appeal within a period of three months from today. Till such time, the appeal is heard and decided, the execution proceedings shall remain in abeyance.

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

(VIKRAM AGGARWAL)  
JUDGE

**September 04, 2025**

vcgarg

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No