
(2014) 02 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3701 of 2014

Swarn Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5(1)

Citation : (2014) 176 PLR 327

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Vikas Bahl, Sr. Advocate and Ramandeep Singh, Advocates for the Appellant

Judgement

Ritu Bahri, J.—Vide order dated 22.02.2013 (Annexure P-1) order of ejectment had been passed against the tenants of the petitioner by the Sub Divisional Magistrate-cum-Assistant, Collector 1st Grade. Thereafter, an appeal against the ejectment order was dismissed on 15.05.2013 Annexure P-2. A revision against the order is now pending before the Commissioner, Ropar. During the pendency of this revision, the said application made by the tenant, is pending consideration since 15.07.2013. In the execution, the warrant of possession has been issued by the SDM for 24.05.2013 Annexure P-4 and thereafter police help was refused to give in spite of the fact that the appeal was dismissed and there was no stay order operating against the order dated 11.06.2013 Annexure P-6 whereby he has deferred the request of the police assistance till the decision of the appeal.

2. As per order 41 rule 5 (1) the Code of Civil Procedure, 1908 reproduced as under:--

"5. Stay by Appellate Court:--

(1) 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; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation:- An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the Appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance."

3. A perusal of the same would show that mere filing of an appeal/revision shall not operate as stay of proceedings nor shall execution of an order be stayed on the said ground. After hearing learned counsel for the petitioner, Annexure P-6 passed by the District Magistrate is being modified that stay will operate till the decision of the said application which is pending before revisional authority i.e. before the Commissioner Ropar. The police help shall be provided if need be after the application is decided immediately.

With the above modification, the writ petition is disposed of.