

(2004) 11 P&H CK 0039

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5541 of 2004 (O and M)

Roop Lal

APPELLANT

Vs

Punjab State Civil
Supplies and OthersRESPONDENT

Date of Decision: Nov. 18, 2004**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 5, Order 41 Rule 5(3), Order 41 Rule 5(5)

Citation: (2005) 139 PLR 534**Hon'ble Judges:** M.M. Kumar, J**Bench:** Single Bench**Advocate:** G.S. Bhatia, for the Appellant;**Final Decision:** Dismissed

Judgement

M.M. Kumar, J.

This is defendant's revision filed under Article 226 of the Constitution seeking modification of the inter-locutory order dated 22.9.12004 passed by the learned District Judge, Kapurthala. The learned District Judge while entertaining the first appeal of the defendant-petitioner has passed an interim order of stay by imposing numerous conditions.

2. The plaintiff-respondents have filed a suit against the defendant-petitioner, who has been working as Inspector Grade-I for recovery of Rs. 3,50,893.75 paise, for various reasons mentioned in the judgment, the suit has been decreed along with interest at the rate of 18% per annum and future interest from the date of filing of the suit till final realisation. The plaintiff Corporation has also been held entitled to realise future interest at the rate of 18% per annum on the principal amount of Rs. 1,17,984.96 paise. The defendant-appellant has challenged the decree in appeal. Along with the appeal, the defendant-petitioner filed an application under Order 41 Rule 5 CPC for stay of the money

decree dated 19.4.2004. The learned District Judge, Kapurthala, stayed the operation of the judgment and decree dated 19.4.2004 subject to the condition of deposit of whole decretal amount with interest till the date of the order. The deposit was required to be made within a period of one month from 22.9.2004, i.e., the date of the order. The amount so deposited with the Court was not to be disbursed to the plaintiff-respondents till the final decision of the appeal. The concluding part of the order of the learned District Judge, reads as under:-

"The decree was passed by the Lower Court, against the appellant-defendant, as he had caused loss to the respondents. It is settled principle of law, that the loss which can be compensated in terms of money, cannot be said to be an irreparable loss. The Counsel for the appellant/defendant, also submitted that the appellant was going to retire from his service, in the near future. He further submitted that there will be sufficient amount due to the appellant. In his G.P.F. amount, and he shall also be entitled to other benefits, at the time of retirement. He further submitted that, as such, the respondents could recover the amount, from those dues, which may ultimately be paid to the appellant, at the time of his retirement. The execution of the decree, cannot be deferred, on such undertaking, having been furnished, by the appellant. Since, this is the first statutory appeal, having been filed, by the appellant, in my opinion, the operation of the judgment and decree dated 19.4.2004, rendered by the Court below should be stayed, subject to certain conditions. Accordingly, the operation of the judgment and decree dated 19.4.2004, passed by the Lower Court, is stayed subject to deposit of the decretal amount, with interest upto date, within a period of one month from today. In case, the amount is deposited, that shall not be disbursed to the respondents, till the decision of the appeal. In case, the appellant, fails to comply with the condition aforesaid, within the stipulated period, then the stay granted shall automatically stand vacated."

3. Learned counsel for the defendant-petitioner has argued that the petitioner has been serving in the plaintiff-respondent Department and he is to retire after 4-5 years. According to the learned counsel, once the appeal is admitted for consideration by the First Appellate Court then the operation of the judgment and decree under appeal should ordinarily be stayed. The learned counsel has also submitted that there is no bar on the power of the First Appellate Court to order stay of execution of the judgment and decree including the money decree. For the aforesaid proposition, learned counsel has placed reliance on a judgment of this Court in the case of Rajwant Singh v. Major Sukhdev Singh, 1976 P.L.J. 616 and argued that Order 41 Rule 5 of the C.P.C. does not make any distinction between the money decree and other decree which may warrant refusal of staying the execution of a money decree.

4. After hearing the learned counsel at some length. I am of the considered view that the learned District Judge has rightly exercised the discretion in imposing the condition for the stay of the judgment and decree against the defendant-petitioner. According to Order 41 Rule 5 of C.P.C. sub-Rule 3, it has been categorically provided that no order of stay of execution is to be made unless the Court is satisfied about the substantial loss which may

result to the party seeking stay of execution. The provisions of Order 41 Rule 5 of the CPC are required to be referred and the same reads 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.]

(2) Stay by Court which passed the decree.- Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) [Subject to the provisions of sub-rule (3)], the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of Rule 1, the Court shall not make an order staying the execution of the decree.]."

5. Sub-rule (3) of Rule 5 of the C.P.C, in terms has provided that the Court must record its satisfaction that the applicant is likely to suffer substantial loss in the absence of stay of execution of the judgment and decree and that the application for stay was filed without unreasonable delay. It has further been provided that security must be given by the applicant for due performance of the decree. Sub-rule (5) of Rule 5 C.P.C. creates a

complete bar on the power of the court to pass any order of stay of execution of decree where the applicant failed to deposit or furnish security in accordance with the provisions of sub-rule (3) of Rule 1 C.P.C.

6. When the facts of the present case are examined in the light of the principle of law provided by sub-rules (3) and (5) of Rule 5 Order 41 C.P.C, then it cannot be concluded that the discretion exercised by the learned District Judge by imposing the condition of depositing the decretal amount with interest is unreasonable. The judgment and decree dated 19.4.2004 has been passed principally on the ground that the defendant-petitioner has caused financial loss to the plaintiff-respondent. The undertaking furnished by him before the learned District Judge for effecting recovery from the G.P.F. account or other retiral dues of the defendant-petitioner has been rightly rejected by the learned District Judge because there are numerous prohibitions for effecting recovery from the retiral dues. The Courts are not expected to pass an order which may result into violation of Civil Service Rules because such orders would be open to serious legal objections. Therefore, the discretion exercised by the learned District Judge deserves to be upheld. For the aforementioned view, I draw support from the judgment of the Supreme Court in the case of [Central Bank of India Vs. State of Gujarat and Others](#) .

For the reasons aforementioned, this petition fails and the same is dismissed.