

As such, the application contains a valid affirmation which is the requirement of law. No law requires that the ejectment application should be signed by all the land-owners. A recognized agent like a "general attorney" properly authorized is fully competent to file and pursue an ejectment application. So, in the present case, both the applications were validly made. They are fully competent. Accordingly, both these writ petitions are allowed and the orders passed by the Assistant Collector, Commissioner and the Financial Commissioner holding them incompetent are illegal and are set aside. The cases are now remanded to the Assistant Collector, 1st Grade for decision on merits in accordance with law. The parties are directed through their counsel to appear before the Assistant Collector 1st Grade, Fatehabad, on 26th of November, 1979. There shall be no order as to costs.

**N.K.S.**

*Before Rajendra Nath Mittal, J.*

DEEP CHAND,—*Petitioner.*

*versus*

**KRISHAN DATT**,—*Respondent.*

*Civil Revision No. 1735 of 1979.*

November 14, 1979.

*Code of Civil Procedure (V of 1908)—Section 151 and Order 41 Rule 5—Suit for possession decreed—Judgment-debtor filing appeal and obtaining stay of execution—Decree holder put in possession before the communication of the stay order—Application by the judgment-debtor for restoration of possession—Court—Whether bound to restore possession—Proceedings after the stay order—When to be set aside.*

*Held*, that the explanation to Order 41 Rule 5 of the Code of Civil Procedure 1908 provides that an order of the appellate court for stay of execution of decree shall be effective from the date of the communication of such order to the court of first instance. In case the order of stay is communicated to the executing court after the possession has been delivered to the decree holder, the stay order cannot be said to have become effective on the date when the possession was delivered to him. The interim proceedings after the stay

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order can still be set aside by the executing court if that is necessary in the interest of justice. It cannot, however, be laid down that in every case where the stay order is brought to the notice of the executing court, it is required to retrace the steps taken by it after the grant of stay. In order to determine whether the interim proceedings be set aside or not, facts and circumstances of each case have to be gone into and in case the interim proceedings have caused great hardship to the judgment-debtor, the court can set aside the interim proceedings but not otherwise. (Para 4).

*Petition Under Section 115 C.P.C. for revision of the Order of Shri M. P. Mehndiratta, Sub-Judge 2nd Class, Panipat, dated 5th June, 1979, dismissing the application filed by the judgment debtor on 24th July, 1978 under section 151 C.P.C..*

C. B. Goyal, Advocate, for the Petitioner.

K. G. Chaudhry, Advocate, for the Respondent.

#### JUDGMENT

R. N. Mittal, J. (Oral).

(1) This revision petition has been filed by Deep Chand, judgment-debtor, against the judgment of the Subordinate Judge, Panipat dated June 5, 1979.

(2) Briefly the facts are that the plaintiff instituted a suit for possession. It was dismissed by the trial Court. The plaintiff went up in appeal against that judgment to the appellate court who accepted the same and decreed the suit of the plaintiff. The defendant came up in Regular Second Appeal in this Court against the judgment of the appellate court. He also prayed that the execution of the decree be stayed till the decision of the appeal. On July 18, 1978, the appeal was admitted and stay was granted in favour of the defendant. On July 20, 1978 when the stay order was not communicated to the trial Court, the possession was taken by the decree-holder. Thereafter, an application was made by the judgment-debtor under Section 151 of the Code of Civil Procedure that stay order had been granted in his favour on July 18, 1978 and therefore, the possession be restored to him. That application was contested by the decree-holder. The learned Court dismissed the same. The judgment-debtor has come up in revision against that order to this Court.

(3) It is contended by the learned counsel for the petitioner that if the execution has been stayed by the appellate court and before the communication of that order to the executing court, possession is delivered to the decree-holder, it should be restored to the judgment-debtor in case he files an application under Section 151 of the Civil Procedure Code. In support of his contention, he places reliance on *Mulraj v. Murti Raghunath Maharaj*, (1) and *Smt. Suraj Kaur v. Shingara Singh and others* (2).

(4) I have heard the learned counsel at a considerable length. I, however, regret my inability to accept the contention of Mr. Goyal. It has been provided in Explanation to Order 41 rule 5 of the C.P.C. that an order by the appellate court for stay of execution of decree shall be effective from the date of the communication of such order to the court of first instance. Admittedly, in the present case the order of stay was communicated to the executing court after the possession had been delivered to the decree holder. Thus, the order of stay had not become effective on the date when the possession was delivered to the decree-holder. In these circumstances, it is now to be seen as to whether the judgment-debtor is entitled to take back the possession. Mr Goyal has placed reliance on the following observations of the Supreme Court in *Mulraj's case* (supra) :—

“Though the court which is carrying on execution is not deprived of the jurisdiction the moment a stay order is passed, even though it has no knowledge of it, this does not mean that when the court gets knowledge of it, it is powerless to undo any possible injustice that might have been caused to the party in whose favour the stay order was passed during the period till the court has knowledge of the stay order. We are of opinion that S. 151 of the Code of Civil Procedure would always be available to the court executing the decree, for in such a case when the stay order is brought to its notice it can always act under S. 151, and set aside steps taken between the time the stay order was passed and the time it was brought to its notice if that is necessary in the ends of justice and the party concerned asks it to do so. Though, therefore, the court executing the decree cannot in our opinion be

(1) AIR 1967 S.C. 1386.

(2) 1972 P.L.R. 609.

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deprived of its jurisdiction to carry on execution till it has knowledge of the stay order, the court has the power in our view to set aside the proceedings taken between the time when the stay order was passed and the time when it was brought to its notice, if it is asked to do so and it considers that it is necessary in the interests of justice that the interim proceedings should be set aside. But that can only be done by the court which has taken the interim proceedings in the interest of justice under S. 151 of the Code of Civil Procedure provided the order is brought to its knowledge and a prayer is made to set aside the interim proceedings within a reasonable time. Otherwise, the interim proceedings in our opinion are not a nullity and in the absence of such exercise of power by the court executing the decree under S. 151, they remain good for all purposes."

From a perusal of the above observations, it is clear that the Supreme Court laid down that the Court can set aside the interim proceedings after the stay order is brought to its notice if that is necessary in the interest of justice. It has not laid down that in every case where the stay order is brought to the notice of the executing court, it is required to retrace the steps taken by it, after the grant of stay. If that interpretation is taken, the explanation to Order 41 Rule 5 loses all its significance. The Supreme Court has laid main emphasis on the words 'interest of justice'. In order to determine whether the interim proceedings be set aside or not, facts and circumstances of each case have to be gone into. In case the interim proceedings have caused great hardship to the judgment-debtor, the Court can set aside the interim proceedings otherwise not.

(5) In the present case the possession of the land has been delivered to the decree-holder. In the application for restoration, no exceptional hardship has been alleged. Later, it is also not proved. In the circumstances of this case, I do not feel that any hardship much less great hardship has been caused to the judgment-debtor. Therefore, he is not entitled to restoration of possession of the property. The observations of the Supreme Court do not help the petitioner.

(6) The facts in *Smt. Suraj Kaur's case* are different. In that case, *Smt. Durga Devi*, appellant had died during the pendency of

the appeal in the court of Additional District Judge and Smt. Suraj Kaur and Harminder Singh, her sister's son had made applications for bringing them on record as legal representatives of the deceased. The application of Smt. Suraj Kaur was dismissed and that of Harminder Singh was accepted. Smt. Suraj Kaur came up in revision against the order of the Additional District Judge and prayed for stay of further proceedings before the Additional District Judge. This Court granted a stay. The stay order was communicated to the appellant court. In spite of the communication of the stay order, the Additional District Judge decided the appeal. The revision petition was ultimately accepted by the Court. In the aforesaid circumstances, the Court ordered that the appeal be decided afresh. A perusal of the facts shows that the observations were made by the learned Judge in a different context. This judgment is, therefore, of no assistance to the petitioner.

(7) For the aforesaid reasons, the revision petition fails and the same is dismissed with costs. Costs Rs. 150/-.

N.K.S.

FULL BENCH

*Before Prem Chand Jain, D. S. Tewatia and Harbans Lal, JJ.*

KASHMIRI LAL,—*Petitioner.*

*versus*

DEPUTY COMMISSIONER, SONEPAT, and others,—*Respondents.*

*Civil Writ No. 94 of 1979.*

January, 14, 1980.

*Punjab Gram Panchayat Act (IV of 1953) as amended by Punjab Gram Panchayat (Haryana Amendment) Act III of 1976—Section 102(1) and (1-A)—Order suspending a Panch under section 102(1)—Opportunity of hearing before passing such order—Whether should be afforded to the Panch.*

*Held, that in the case of an order of suspension under section 102(1) of the Punjab Gram Panchayat Act 1952 as amended in Haryana, the suspension would be almost by way of punishment for at that stage when a panch is sought to be suspended his removal is not under contemplation—There is merely a registration of a case*