

RCA DJ 50/24

KRISHAN KUMAR GAMBHIR Vs. KINGSON GOGIA

26.04.2025

Present: None for parties.

O R D E R

1. Vide this order, this Court shall decide the application under Order 41 Rule 5 read with Section 151 CPC moved on behalf of applicant/ appellant.
2. Arguments have already been heard. Record perused.
3. In said application, it is submitted on behalf of applicant/ appellant that present appeal has been filed against the judgment and decree dated 31.01.2024 passed by the Court of Ld Civil Judge-03, West, THC, Delhi in CS No. 613292/2016 titled “Kingson Gogia Vs. Krishan Kumar Gambhir”.
4. It is submitted that applicant/ appellant has a very good case in his favour and likely to succeed in the present appeal. It is submitted that in case impugned judgment and decree is not stayed, applicant/ appellant will suffer irreparable loss and injury and in case stay is granted, no prejudice shall be caused to opposite side. Prayer has been made to stay the operation of

impugned judgment and decree dated 31.01.2024.

5. The prayer has been strongly objected by opposite side.
6. This Court is of the considered view that perusal of record shows that by way of impugned judgment and decree, applicant/ appellant / defendant was directed to pay the amount of Rs.3 Lac alongwith interest to plaintiff.

As per Order 41 Rule 1(3) CPC *“where the appeal is against a decree for payment of money, the appellant shall, within such time as the appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit”.*

As per Order 41 Rule 5 (1) CPC : *“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.*

As per Order 41 Rule 5(3) CPC : *“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.

As per Order 41 Rule 5 (5) CPC : “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.]

7. This Court is of the considered view that it is clear from the impugned judgment and decree that impugned decree is for payment of money. So, in accordance with the above provisions, applicant/ appellant is required to furnish the sufficient security for the due performance of decree or order as may ultimately be binding upon him, in case appeal is dismissed.

8. So, in accordance with the above, applicant/ appellant is directed to furnish the FDR for the amount of Rs. 3 Lac in the name of learned Principal District & Sessions Judge, West, Delhi. The said FDR shall be of auto renewal mode after every three/six months and shall be issued by any Nationalized Bank. Subject to compliance of said directions, impugned judgment and decree is stayed till the disposal of the present appeal. Appellant is required to deposit the FDR of above amount within a period of 15 days from today. Accordingly, this application is

disposed of.

Matter be put up for arguments on appeal on
01.08.2025.

(Dharmender Singh)
District Judge-01 (West), THC,
Delhi/26.04.2025