

Parveen Kumar Khagta vs. Karam Dass

RSA No.279 of 2022

04.01.2025 Present: Mr. Romesh Verma, Senior Advocate, with Mr. Sumit Sharma, Advocate, for the appellant.
Ms. Meera Devi, Advocate, for the respondent.

CMP No.26369 of 2024

Reply, if any, be filed on or before the next date of hearing.

List on **07.03.2025**.

CMP No.13810 of 2022

By way of the present application, filed under Order 41, Rule 5 of CPC, read with Section 151 of CPC, a prayer has been made to stay the execution of the decree dated 24.12.2021, passed by the Court of learned Civil Judge, Chopal, District Shimla, H.P., (hereinafter referred to as the 'trial Court'), in Civil Suit No.21-I/2017, titled as 'Karam Dass versus Praveen Kumar Khagta'.

2. Vide judgment and decree dated 24.12.2021, the suit of the respondent was decreed, by granting the following relief:-

"22.In view of my findings given on the above mentioned issues, the suit of the plaintiff is hereby decreed. It is held that shop is required by plaintiff for bonafide requirement and the tenancy has been terminated in the notice dated 31.03.2017. It is further

held that after termination of the tenancy the possession of defendant in the shop is illegal and unauthorised and plaintiff is entitled to use and occupation the charges @ of Rs.4500/- per month from the date of termination of the tenancy till the premises be vacated by the defendant. There is no order as to costs. Decree sheet be drawn accordingly. File, after due completion be consigned to record room.”

3. Against the said judgment and decree, the present applicant has filed appeal before the Court of learned District Judge, Shimla, District Shimla, H.P (hereinafter referred to as the 'First Appellate Court'), bearing Civil Appeal No.6-S/13 of 2022, titled as 'Praveen Kumar Khagta versus Karam Dass'.

4. Vide judgment and decree dated 19.07.2022, learned First Appellate Court has dismissed the said appeal preferred by the appellant against the judgment and decree dated 24.12.2021 passed by the learned trial Court.

5. Now, the applicant is before this Court, by way of the Regular Second Appeal. The appeal preferred by the applicant-appellant has not yet been admitted, but certainly, it will take sufficient time for its disposal. As such, the application is allowed and during the pendency of the appeal, execution of the decree, passed by the learned trial Court, and affirmed by the learned First Appellate Court, is ordered to be stayed, subject to the conditions :-

a) That the applicant shall be deposited use and occupation charges as ordered by the learned trial Court, during the pendency of the appeal.

b) That the applicant shall furnish Security bond in the sum of Rs.50,000/-, to the satisfaction of the learned trial Court (Executing Court), be also furnished, by the applicant, within seven days from today, by giving an undertaking for due performance of the decree, which has been passed by the learned trial Court, as modified by the learned Appellate Court, in case of ultimate dismissal of the appeal by this Court.

6. It is further clarified that the stay of the execution of the decree shall operate, when the above order is complied with.

7. It is also clarified that the amount of interest, shall not be disbursed to any of the parties and the entitlement of the same will be decided, by this Court, at the time of final hearing of the appeal.

CMP No.11008 of 2023

8. Pleadings are complete. This application will be taken up with the main case at the time of final hearing of the appeal.

CMP No.26369 of 2024

9. Reply, if any, be filed on or before the next date of hearing.

**(Virender Singh)
Judge**

January 04, 2025
(subhash)