

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.2574 of 2023 And WPMS No. 2575 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. I.P. Kohli, learned counsel for the petitioner. Mr. Bhuwan Bhatt, learned counsel for the caveator. These two writ-petitions are being decided together. Writ-petition No.2574 of 2023 has been preferred by the defendant to the suit, being aggrieved against the order dated 13.02.2023, as it has been passed in Suit No.104 of 2020 and its consequent affirmation in Misc. Civil Appeal No.24 of 2023. By the judgment of 11.07.2023, its where the plaintiff/ respondent to the writ-petition has been granted temporary injunction and consequently the parties have been restrained from interfering over the property, it will be deemed that it would be exclusively confined to the property, which has been described at the foot of the plaint. So far as the suit itself is concerned, it was accompanied with a counter claim, filed

		by the defendant/petitioner herein and in the counter claim their application, under Order 39 Rule 1 and 2 of the CPC, has been rejected by an order of 13.02.2023 and it was an order which, later on, stood affirmed by the judgment of 11.07.2023, as it has been rendered in Misc. Civil Appeal No.23 of 2023. There is a very fine distinction and the reasoning, which has been given by the Civil Court for sustaining the grant of injunction to plaintiff/ respondent no.2 – Ashok Bansal, which is based on the ground, that the property, as covered in the suit happens to be distinct property than on which the defendant claims their right, as it has been described in the counter claim. It was on that basis, that the finding has been recorded at paragraph no.9 and 13 and the injunction has been granted in favour of the plaintiff-respondent of Writ-Petition No. 2574 of 2023. It is absolutely made clear that while dismissing this writ-petition, the injunction, thus granted concurrently by both the Courts, would be exclusively confined to the property which has been described at the foot of the plaint itself and nothing beyond that. Since, the Court, while deciding the application under Order 39 Rule 1 and 2, has
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		declined to grant injunction to the defendant, petitioner herein, as sought for in the counter claim which was preferred by the defendant is, on the ground, that the property in the counter claim happens to be distinct to the one referred to in the plaint, in that eventuality, grant of an injunction in counter claim to the defendant would not have, at all, a bearing to the property, which is distinct and is a subject matter of Suit No.104 of 2020, as it has been preferred by the plaintiff, because, in the light of the provisions contained under Order 8 Rule 6A(4) of the CPC, the counter claim has to be dealt with, as an independent suit. In that eventuality, the counter claim, which was accompanied by an application for grant of an injunction under Order 39 Rule 1 and 2 of the CPC, on the basis of the logic assigned by the learned trial Court, obviously it will be dealt with to be confined to the property, which has been made as a subject matter of dispute in the counter claim.
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		Thus, this logic assigned by the Court will not create any impediment, as such, in granting injunction and protecting the subject matter which is subject matter of the counter claim preferred by the defendant.
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		Thus, while disposing of Writ-Petition No.2575 of 2023, it is hereby directed that the parties to the suit would maintain status quo qua the property, which has been described by the defendant in their counter claim, which has already been observed by the trial Court to be distinct to the one as claimed in the plaint by the plaintiff / respondent.
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		The disposal of this Writ-Petition No.2575 of 2023 is with the consent of the parties. The disposal of the same may not be construed that this will be creating any impediment as against the plaintiff from raising a plea about the sustainability of the counter claim, as it has been raised by the defendant-petitioner in Suit No.104 of 2020, that has to be independently decided by the learned trial Court based upon the contentions and rival contentions to be raised by the parties.
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		Subject to the aforesaid, Writ-Petition No.2574 of 2023 would stand dismissed.
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		Writ-petition No.2575 of 2023 would stand disposed of, subject to the observations made above.
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		Since the suit happens to be of 2020, a joint request has been made that the parties to the proceedings would cooperate and will
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			make all efforts to assist the Court to expedite the proceedings of Suit No.104 of 2020, “Ashok Bansal Vs. Sunil Kothari and Another”. It is hoped and trusted that the learned trial Court will make all efforts to decide the suits, as expeditiously as possible, but not later than nine months from the date of production of the certified copy of this order. (Sharad Kumar Sharma, J.) 20.09.2023 Sukhbant
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