

**Court No. - 1**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 7117 of 2023

**Petitioner :-** Bharat Singh

**Respondent :-** Anil Kumar Jain And 3 Others

**Counsel for Petitioner :-** Madhav Jain

**Counsel for Respondent :-** Mohan Kant Baghel, Sangam Singh

**Hon'ble Jayant Banerji, J.**

1. Heard Shri Madhav Jain, learned counsel for the petitioner and Shri Sangam Singh, Advocate, appearing for the plaintiff-respondent no. 1.

2. This petition has been filed seeking the following relief:

*"i) To set aside judgment dated 29.05.2023 passed by the Additional District Judge (Court no. 1), Firozabad in Misc. Appeal No. 26 of 2022 (Annexure No. 9 to the petition) and order dated 26.04.2022 passed by the Civil Judge (Senior Division), Firozabad in Suit No. 215 of 2022 and restrain the plaintiff/respondent no. 1 from causing interference in the possession use and occupation of the defendants/ petitioner over the shop in question.*

*ii) Issue any such other order or direction, which the Hon'ble Court may deem fit and proper in the circumstances of the case."*

3. The suit was filed by the plaintiff-respondent-first set, in the court of the Civil Judge (Senior Division), Firozabad, bearing Original Suit No. 215 of 2022, seeking a decree of permanent injunction in respect of shop/godown situated in the premises of Thakur V.R. Singh Educational Society Market Tundla, District Firozabad shown in the site plan in the suit as A, B, C, D and also in respect of a road shown as E, F, G, C. Alongwith the aforesaid suit, an application under Order 39 Rule 1 and 2 read with Section 151 CPC was filed seeking temporary injunction.

4. By an order dated 26.4.2022, the trial court granted an ad-interim injunction. It was further directed that in case the arguments on the application 6C is not advanced by the plaintiff on the next date fixed, the ad-interim injunction would automatically come to an end. The plaintiff was directed to take steps for service of notice and the next date fixed in the matter was 5.5.2022. Further, a direction was issued on an application 8C issuing commission to the court Amin for service of summons and to submit an on-scale site plan and his report.

5. It is stated by learned counsel for the petitioner that the

aforesaid order dated 26.4.2022 was subjected to challenge in Misc. Civil Appeal No. 26 of 2022 which appeal was dismissed by the impugned order dated 29.5.2023 by the Additional District Judge, Court No. 1, Firozabad.

6. The contention of the learned counsel for the petitioner is that the petitioner had set up a claim of being the tenant of the suit property whereas, it was not established that the plaintiff was a tenant. It is further stated that the appellate court has erroneously rejected the appeal on the ground that the defendant-petitioner had not appeared before the trial court and had not filed any objection to the application filed by the plaintiff-respondent under Order 39 Rule 1 and 2 CPC. It is stated that the appellate court has wrongly affirmed the order of the trial court by observing that it is legal and correct. It is contended that the aforesaid observation of the trial court would operate to the disadvantage of the defendant-petitioner inasmuch as both the applications 6C filed for temporary injunction as well as the suit are pending. In support of his contention, learned counsel for the petitioner has relied upon a judgment of the Supreme Court in case of **A. Venkatasubbiah Naidu Vs. S. Chellappan and others** reported in **AIR 2000 SC 3032** to contend that an appeal against any order of injunction passed under Order 39 Rule 1 CPC would be maintainable under Order 41 Rule 3 of the CPC.

7. Learned counsel for the respondent has strongly opposed the petition and has stated that the petitioner ought to file his objections before the trial court against the application 6C which has not been filed. Learned counsel for the petitioner has admitted that the petitioner-defendant has put an appearance before the trial court on 12.5.2022 but is yet to file his objection or written statement.

8. Having heard counsel for the parties and on perusal of the record, it appears that the trial court, given the allegations made in the application 6C, had granted an ad-interim temporary injunction on the basis of the documents on record. The plaintiff had submitted receipts for tenancy with regard to the suit property which is the shop/godown and had noted the statement of the plaintiff that the position of the defendant is also that of tenant. It was also stated on behalf of the plaintiff that if the plaintiff is evicted from the suit property, the purpose of filing the suit would be frustrated. Accordingly, the interim injunction was granted and specific direction that arguments on the application 6C would not be adjourned. The petitioner then filed an appeal dated 16.5.2022 in the court of the District Judge, Firozabad being Civil Misc.

Appeal No. 26 of 2022 against the order dated 26.4.2022 passed by the trial court. The appellate court, in the impugned order dated 29.5.2023 has noticed the documents filed before the trial court and the analysis of the trial court while granting ad-interim injunction order by its order dated 26.4.2022. The appellate court noted that the trial court has got powers to pass an ex-parte ad-interim injunction. The appellate court went on to notice that the grounds raised in the appeal are to be considered at the stage of trial, that the defendant had not appeared before the trial court and had not filed any objection to the application filed under Order 39 Rule 1 and 2 CPC. It was further held that with regard to the suit property, the order passed by the trial court is completely valid and legal.

9. The grounds available to the petitioner to oppose the application 6C before the trial court can always be pressed by the petitioner in his objections/written statement that he may choose to file before the trial court which, admittedly have not been done by the petitioner till date. As far as the validity of the order passed by the trial court is concerned, it is noticed that the order of 26.4.2022 is an ad-interim injunction that is subject to the final decision on the application 6C, which is still pending. The contention of the learned counsel for the petitioner that an appeal would be maintainable against the ad-interim injunction order passed by the trial court under Order 39 Rule 1 and 2 CPC is correct.

10. Given the fact that the application 6C is pending, the interest of justice would be served with a direction to the trial court that the application 6C be adjudicated expeditiously after considering any objection that may be filed by the petitioner.

11. Any observations made by the appellate court in the impugned order dated 29.5.2023 would not be read by the trial court as an observation on merits of the case of the plaintiff either while adjudicating the application 6C or the suit.

12. In view of the aforesaid observations made, there is no need for interference in this petition and it is, accordingly, **dismissed**.

13. It is made clear that any observations made herein shall not be read as an opinion of the Court on merits of the case of either of the parties.

**Order Date :-** 31.10.2023/A. V. Singh

(Jayant Banerji, J.)