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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.1572 of 2013(O&M)
Date of decision: 07.1.2015

Shiv Kumar ...Petitioner

Versus

Jagminder Goyal and others ...Respondents

CORAM: MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate or the petitioner

Mr. V.B.Aggarwal, Advocate for the respondents.

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G.S.SANDHAWALIA, J.

1. Challenge in the present revision petition filed by the petitioner-plaintiff under Article 227 of the Constitution of India is to the order dated 7.1.2013 (Annexure P/9) wherein Lower Appellate Court, Karnal allowed the appeal of respondent no.1/defendant no.3 and set aside the injunction granted in favour of the petitioner-plaintiff by the trial Court on 2.2.2012 (Annexure P/8).

2. The reasoning given by the Lower Appellate Court was that property was jointly owned by both the plaintiff and defendant no.3 and therefore, being co-sharer plaintiff had no right to seek injunction against the other co-sharer from interfering in the joint possession. The direction which has been issued to pay expenses to the said defendant who is the father of the petitioner and to take care of his medical need was accordingly set aside.

3. A perusal of the paper-book would go on to show that the petitioner-plaintiff filed a suit for injunction against his family members, namely, brother, mother and father respectively. The plea taken was that

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he was owner in possession of one shop known as "Babe Di Hatti" situated in the Main Bazar, Assandh, District Karnal boundaries of which was given on the strength of sale deed dated 14.9.2000 (Annexure P/1). It was pleaded that he and defendant no.3 had jointly purchased from one Smt. Shanti Devi and as per family settlement the said shop had come to his share where he was running a business and also paying income tax regularly and had taken loan against the security of the said shop. The defendants were interfering in his possession and therefore, defendants be restrained from interfering in the peaceful possession of the plaintiff over the shop in question.

4. Defendant no.3 had opposed the claim of the plaintiff by filing written statement taking the plea that he was owner of ½ share and the said share was owned and possessed by him. It was denied that there was any family settlement in the year 2001 and that the plaintiff was running the business in the shop in question. Rather it was alleged that answering defendant was running his business in the shop. It was alleged that plaintiff and other two defendants had given beating to him and tried to dispossess him and he had also filed DDR No.40 dated 12.9.2011 and the plaintiff and answering defendant were challaned also under Section 107/151 Cr.P.C. The case of the defendant no.3 that he was running his business under the name and style M/s Shiv Cloth House in the said shop and that he was having the possession as per his share.

5. The trial Court accordingly noticed that the dispute pertained to the house-cum-shop and there was an agreement that defendant no.3 had agreed to sell his share to the plaintiff and received a sum of ₹ 5 lacs as earnest money and the compromise was settled at ₹ 50,00,000/-. It was noticed that the income tax return showing alleged income from M/s Shiv

Cloth House for the period 1.4.2008 to 31.3.2009 was only ₹ 1,48,500/-. Accordingly, keeping in view the factum that the defendant had agreed for a settlement as per Kalandra lodged by him and also that his wife had filed an application under Section 12 of the Domestic Violence Act, 2005, the plaintiff was granted injunction subject to payment of ₹ 20,000/- per month to his father for day to day expenses and his livelihood and that he would not interfere with the shop in question. The relevant directions read as under:-

> "(i) Plaintiff shall run his business in the shop in question and defendant no.3 shall not interfere in the shop in question till decision of the suit.
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> (ii) Plaintiff will pay Rs. 20,000/- per month to defendant no.3 for his day-to-day expenses and for his livelihood. It is directed to defendant no.3 to furnish his account number and also directed to plaintiff to deposit the amount of Rs.20,000/- per month in that account number. (Since defendant no.3 has assessed his income from the business only Rs.1,48,500/- per year as per his assessment year 2009-10 and he has no intention to run his business as per his settlment).
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> (iii) The settlement of Rs.50,00,000/- have yet be proved by the defendant no.3 and plea of family partition is yet to be proved by plaintiff by way of leading evidence.
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> (iv) In case of medical urgency to defendant no.3 he will move application before this Court with the relevant papers and in that case plaintiff will pay the whole medical expenses incurred in treatment of defendant

no.3 in case any situation arises in future.

(v) The complete money payable by plaintiff to defendant no.3 during pendency of suit will be adjusted at the time of final adjudication of the case."

6. As noticed above, the Lower Appellate Court has allowed the appeal solely on the ground that as per sale deed dated 14.9.2000 (Annexure P/1) both the parties were co-sharers and therefore, the plaintiff had no right to seek injunction and by allowing the appeal set aside the injunction order.

7. While issuing notice of motion this Court had stayed the operation of the order of the Lower Appellate Court. Various efforts have been made to get the matter resolved keeping in view the fact that the parties are closely related to each other but the parties remained at logger heads and on account of adament stand taken by both sides, this Court is proceeding to decide the issue on merits.

8. Counsel for the petitioner has submitted that it is admitted fact that the petitioner's possession is proved as per pleadings itself since it is not denied that he is in possession and defendant has only stated that he is in possession as per his share whereas it is categorical case of the petitioner that he is running his business and also in exclusive possession. It is submitted that the defendant's defence is only that ½ share is owned and possessed by the answering defendant and therefore, as per admission made itself once the ouster is proved he is entitled for the injunction till the matter is decided keeping in view the fact that there is a an admission made to the extent that settllement has been made and the defendant was entitled to ₹ 50 lacs. Reference has also been made to the proceedings filed under the Domestic Violence Act by his mother against

the father and one relative to submit that whole family is against the act, behaviour and conduct of defendant no.3.

9. Counsel for the respondents on the other hand has not seriously objected to the arrangment which had been made by the trial Court. It is further submitted that the amount has not been paid as granted by the trial Court. Accordingly, keeping in view the fact that the admission as such had been made regarding the possession of the plaintiff/petitioner regarding his share and that the petitioner has placed on record the photographs to show that he is running a cloth house and attending to the customers and also placed on record income tax return showing that he is doing business under the name of "Babe Di Hatti' and his injunction was only regarding running of the business under the said name prima facie shows that he is in exclusive possession of the premises in question. Thus balance of convenience also lies in his favour and irreparable loss would be caused to him in case he is not allowed to run his business in the premises in question and thus this Court is of the opinion that he is entitled for the injunction subject to conditions which have been imposed by the trial Court as reproduced above. The Lower Appellate Court was not justified in the above said circumstances in allowing the appeal.

10. It is settled principle that the Appellate Court would not reverse the findings of the trial Court solely on the ground that different view can be taken and it has to be seen that the principles governing grant of interim injunction have been kept in mind keeping in view the irreparable loss and injury which could be caused. In the present case, it is the specific case of the petitioner that he is running his business under the name and style "Babe Di Hatti" and the income tax returns from the assessment years 2002-03 onwards till 2006-07 in his name have been appended and the

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aspect of running the business has not been denied. In such circumstances, the Appellate Court was not correct in interfering solely because a different view was possible since the discretion which has been exercised by the trial Court was not one which was an arbitrary or caprcious discretion and the principles regarding grant of injunction were kept in mind. The scope of such interference was noticed by the Apex Court in **Esha Ekta Appartments CHS Ltd. and others Vs. The Municipal Corporation of Mumbai and another (2012) 4 SCC 689.** The relevant observations read as under:-

> "14. We have considered the respective submissions and carefully scrutinized the record. The scope of the appellate Court's power to interfere with an interim order passed by the Court of first instance has been considered by this Court in several cases. In Wander Ltd. v. Antox India (P) Ltd 1990 Supp SCC 727, the Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondent's prayer for interim relief. This Court set aside the order of the Division Bench and made the following observations:
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> > "In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in

interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

15. In Skyline Education Institute (India) Pvt. Ltd. v. S.L. Vaswani 2010 (3) R.C.R. (Civil) 436 : 2010 (3) R.A.J. 606 : (2010) 2 SCC 142, the 3-Judge Bench considered a somewhat similar question in the context of the refusal of the trial Court and the High Court to pass an order of temporary injunction, referred to the judgments in Wander Ltd. v. Antox India (P) Ltd (supra), N.R. Dongre v. Whirlpool Corpn. 1996 (3) R.C.R. (Civil) 697 : (1996) 5 SCC 714 and observed:

"The ratio of the above noted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity."

11. Accordingly, the order passed by the Lower Appellate Court dated 7.1.2013(Annexure P/9) is set aside and that of the trial Court dated 2.2.2012 (Annexure P/8) is restored. In addition to the conditions imposed by the trial Court, it is clarified that the petitioner shall pay a sum of ₹ 20,000/- per month by 10th of every month which is to be deposited in the bank account of respondent no.1 details of which will be furnished by him.

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The arrears from 2.2.2012 will be paid in three equal instalments first of which will be payable on 28.2.2015, second on 30.4.2015 and the last on 30.6.2015. It is further made clear that in case the arrears are not paid as directed or monthly payment are not made for two consecutive months, the order granting injunction shall stand vacated. In case there is default in deposit of the monthly deposits also, respondent no.1 will be entitled to approach the trial Court for vacation of the injunction. The injunction shall operate during the pendency of the civil suit and the amount paid by the petitioner would be kept in mind by the Court while finally deciding the lis. The trial Court shall make all endeavour to dispose of the proceedings within a period of one year from the date of framing of issues.

12. With the aforesaid observations, the present revision is allowed.

January 07, 2015 **(G.S.SANDHAWALIA)**
Pka **Judge**