

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.5806 of 2015

Date of decision : 07.09.2015

Sudarshan Kumar

...Petitioner

Versus

Mahender and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. R.D. Yadav, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the impugned order, whereby application filed by the respondents-defendants for directing the plaintiff to allow the inspection of building by his expert has been allowed.

Mr. R.D. Yadav, learned counsel appearing on behalf of petitioner-plaintiff submits that in support of averments culled out in the suit, the petitioner-plaintiff has examined the expert in 2012 and concluded the evidence in affirmative on 20.02.2014, but when the case was listed for respondents-defendant's evidence, the aforementioned application, seeking indulgence of this Court, for permitting his expert to inspect the premises of the plaintiff was moved, which has erroneously been allowed vide impugned order, thus the same suffers from illegality and infirmity for the reasons, that after filing of the suit, the plaintiff had sent a legal notice calling upon the respondents-defendant to join the inspection conducted by the building expert of the plaintiff and since defendants failed to exercise his option he cannot be

permitted to examine his expert in the manner as has been chosen.

I have heard learned counsel for petitioner and appraised the paper book.

Since parties were at variance, the petitioner-plaintiff has sought decree for mandatory and permanent injunction to the effect that defendant No. 1 be restrained from causing any damages to the construction of the house of the plaintiff as it has resulted into weakening of foundation of the home of petitioner-plaintiff. The plaintiff in support of averments examined expert, who is duly cross examined by the defendant when the matter is listed for defendant's evidence.

The defendant in order to rebut the report of the expert, examined by the plaintiff, sought the indulgence of the trial Court to allow the plaintiff to inspect the premises by his expert so that Court would have evidence of both the Experts and after examining the same could render finding in accordance with law. In my view such reasoning given by the trial Court allowing the application does not suffer from illegality and perversity.

The defendants, cannot be prevented, to lead evidence in support of the defence taken in the written statement as it would scuttle his right to lead evidence in affirmative.

The impugned order thus cannot be said to have been passed without jurisdiction.

There is no merit in the revision petition.

Accordingly, the present revision petition is dismissed.

07.09.2015

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**(AMIT RAWAL)
JUDGE**