

**CM No. 9527-CII of 2016 in/and
CR No. 2776 of 2016 (O&M)**

-1 ARCHANA ARORA
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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

**CM No. 9527-CII of 2016 in/and
CR No. 2776 of 2016 (O&M)
Date of decision : May 12, 2016**

Om Parkash and another

..... Petitioners

Versus

Haryana Wakf Board, Ambala Cantt.

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Alok Jain, Advocate
for the petitioners.

Mr. Gulam Nabi Malik Advocate
for the respondent.

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

Amit Rawal, J (oral).
CM No. 9527-CII of 2016

Both the parties are ad idem that hearing of the revision petition be pre-poned owing to the fact that respondent has moved an application for vacation of stay.

The hearing of the revision petition is pre-poned to today itself. The petition is taken on Board.

CR No. 2776 of 2016 (O&M)

The petitioner-defendant is aggrieved of the impugned order passed on ad interim application filed along with the

suit whereby defendants have been restrained from raising any type of construction or to change nature of the property in question in any way or manner with consequential relief of permanent and mandatory injunction.

Mr. Alok Jain, learned counsel appearing on behalf of the petitioners submits that Wakf Board instituted a suit on the basis of notification dated 9.4.1988. Prior to the aforementioned notification the predecessor-in-interest of the petitioner was in occupation of the premises and allotted an area measuring 248 sq.yards and ultimately in the year 2005 a conveyance deed dated 5.10.2005 has been executed by the Custodian Department but owing to promulgation of the notification, Wakf Board threatened to eject the petitioner, thus had no option but to enter into a lease deed.

He further submits that there is already a round of litigation initiated by the tenant who entered into a lease deed on 9.2.1998 qua 52 sq.yard out of 248 sq.yards and as per terms and conditions of the lease deed and as well site plan attached thereto it is a double story building, the construction has been sought to be raised at the risk and cost of the petitioner when a counter claim was set up which was ultimately dismissed. The appeal is stated to be pending. There is an interim order. Copy of the interim order has been re-produced in the grounds of revision and as well annexed as Annexure P-3 and P-4.

He further submits that even Wakf Board has not

laid any challenge to the conveyance deed dated 5.10.2005 or questioned the order dated 25.8.2005 but these facts have not been noticed by the courts below while disposing of the ad interim application, thus, urges this court for setting aside the impugned order.

Mr. Gulam Nabi Malk, learned counsel appearing on behalf of the respondent submits that the conceded position on record is that the petitioner is tenant of Wakf Board and tenant has not right to raise construction, claim ownership. As per the photographs, the petitioner has raised a construction on the second floor and therefore, tantamounts to altering the nature of the property and it will seriously pre judice the right and interest of the respondent-plaintiff. The courts below while rendering a finding in the application filed under Order 39 Rule 1 and 2 has rightly restrained the petitioner to raise any construction, thus urges this court to affirm the impugned order.

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

Learned counsel for the petitioner, during the course of argument on instructions from his client has submitted that the construction if any shall be at his cost,risk/peril. It is a matter of record that the matter is sub judiced before the lower court as per Annexure P-3 and P-4. Even otherwise as per the site plan and the alleged lease deed, no harm would be caused if petitioner is allowed to continue with the construction with a rider that the entire

construction raised, if any, shall be at his risk, cost.

In view of the aforementioned facts and the undertaking given on behalf of the petitioner's counsel, the petitioner is permitted to continue the construction at his risk,,cost/peril, accordingly, the impugned order under challenge is hereby set aside. The ad interim stay is hereby confirmed. The trial court is directed to conclude the trial as early as possible in order to avoid further delay.

Nothing expressed herein shall be construed as an expression on the merits of the adjudication of suit pending before the trial court.

The civil revision petition stands disposed of.

**(AMIT RAWAL)
JUDGE**

**May 12 , 2016
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