

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

C.R. No.4052 of 2016

Date of Decision.19.08.2016

The Legend Residents Welfare Association

.....Petitioner

Vs.

Shakuntala Devi

.....Respondent

Present: Ms. Pooja Aganpal Advocate with  
Mr. G.S. Sullar, Advocate and  
Ms. Devaki Anand Sullar, Advocate  
for the petitioner.

Mr. S.S.Khurana, Advocate  
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner-defendant is aggrieved of the order passed in  
misc. appeal at the instance of the respondent-plaintiff whereby ad interim  
injunction has been issued against them for supplying electricity against the  
receipt of consumption charges.

Ms. Pooja Aganpal, learned counsel appearing for the  
petitioner submits that the developer had obtained licenced for developing  
the five towered building for the benefit of the society, earlier known as M/s  
Clarion Properties Pvt. Ltd. He had taken the electricity connection for  
providing electricity to the building and the petitioner-developer is  
residential society. There is a contract between the developer and the  
petitioner for providing facilities and keeping common area. The developer  
violated the arrangement/agreement/contract by executing the conveyance  
deed of a shop in favour of respondent-plaintiff. Conveyance deed is dated

of the petitioner. The respondent-plaintiff had instituted the suit for permanent injunction impleading the petitioner as well as the developer as defendants and the order dated 20.05.2014 came to be passed wherein both the parties suffered a statement that neither the petitioner-defendant shall interfere in the operation of the shops nor the respondent-plaintiff will alienate the property. The present suit instituted in the month of February, 2015 without impleading the developer is not maintainable. Even the suit was not accompanied by application referring to the correct provisions of law i.e. Order 39 Rule 1 and 2 CPC and only the application under Section 151 CPC was filed. The aforementioned application was dismissed. In fact, the appeal against the aforementioned dismissal order was not maintainable as per the provisions of Order 43 CPC but revisable. This fact has not been looked into by the lower Appellate Court.

Even otherwise, the respondent-plaintiff has failed to lead any prima facie evidence to show that electricity sub meter had been installed in the shop or the petitioner at any point of time supplied electricity, thus, would be arduous and difficult to assess the consumption charges in the absence of installation of sub meters. There are certain shops where sub meters had been installed, much less, in the residential area and the people are paying consumption charges. The respondent-plaintiff had failed to prove any material evidence on record regarding the consumption of the electricity and payment of the bill and therefore, there was no occasion for the lower Appellate Court to pass such directions i.e. for restoration of the electricity supply within a period of 14 days.

She further submits that respondent-plaintiff is of litigating mind and indulging into litigation and openly threatening to entangle the

society in criminal proceedings, in case, the order under challenge is not complied with. The suit in the absence of proper and necessary party is not maintainable as it is settled law that the suit which is, prima facie, not maintainable, the injunction application cannot be entertained, much less, any order can be passed, thus, urges this Court for setting aside of the impugned order.

Mr. S.S. Khurana, learned counsel appearing for the respondent-plaintiff submits that in the previously instituted suit for injunction wherein the order dated 20.05.2014 came to be passed, the developer had been impleaded and filed the written statement that the developer had nothing to do with the property and he has handed over possession. During the course of the arguments, both the parties have raised the submissions about deed of declaration and its alteration. This Court is not debating on the same as the question of merit will be discussed in the aforementioned three suits.

He, during the course of arguments, passed on photographs where certain ATMs, vegetable shops and other shops have been permitted by the Residents Welfare Society and all the shops have also taken electricity connection. The order under challenge is most innocuous and cannot, in any way, be prejudicial to the interest of the defendant, thus, urges this Court for upholding of the order under challenge by dismissing the revision petition.

In rebuttal, Ms. Pooja, learned counsel for the petitioner submits that ATM is not installed in the dedicated area meant for shops but it is in the club, which is not under the care and control of the developer.

As per the agreement entered between the residents welfare society and

contractor/developer, certain areas were to be sold by him. The deed of declaration whether in consonance with the contract or not, the matter is pending adjudication in suit challenging conveyance deed by respondent-plaintiff.

I have heard learned counsel for the parties and appraised the paper book. For the sake of brevity, the operative part of the impugned order reads thus:-

*“Due to aforesaid reasons appeal is allowed with no order as to costs. Impugned order dated 10.02.2016 passed by trial court is set aside. Consequently, application for interim injunction is hereby allowed. Defendant RWA is directed to restore electricity and water supply to the shops No.1 and 2 in question of the plaintiff on payments of prescribed charges by the plaintiff within two weeks from the date of this order. Plaintiff shall be liable to pay bills of charges issued by defendant from time to time and defendant shall also be liable to accept said bills as per prescribed under its tariff applicable from time to time. Said interim injunction shall remain in force during the pendency of the suit before the trial Court.”*

I would be refraining myself from commenting upon the merits and demerits of the cases. It is not the subject matter of lis in the present revision petition. The supply of water and electricity is an amenity and a person cannot be prevented from using the same. It is conceded position on record that the respondent has set up a shop providing daily needs. There is also an undertaking given by the parties in the order dated 20.05.2014 as indicated above and the relevant portion is extracted hereinbelow:-

*“In reply to the application, learned counsel for defendants No.1 to 3 Ms. Pooja Aganpal has made a statement that they shall not interfere in the operation of the shops by the plaintiff and would not do any overt act in contravention of the provisions of law.*

*The other application has been moved on behalf of defendants seeking to restrain the plaintiff from alienating the property/shops in dispute during the pendency of the suit. Ms. Shalini Srivastva, Advocate for the plaintiff has also given an undertaking not to dispose of/alienate the shop during the pendency of the suit.”*

In my view, interference in the operation of the shops will also include the amenities of electricity and water.

Keeping in view the background of the matter that two suits have been filed and another suit challenging conveyance deed, in order to prevent multifarious litigation, I deem it appropriate to uphold the impugned order by directing the trial Court to dispose of the suits after affording three-three effective opportunities to the parties. The Court shall ensure that both the parties under *lis* shall not indulge in dilatory tactics under the garb of this order. They can also take recourse of Order 16 CPC, much less, the Court can also resort to the provisions of Order 16 Rule 12 CPC and decide the controversy as expeditiously as possible, preferably within a period of 8 months.

The revision petition is disposed of with the above directions.

**(AMIT RAWAL)**  
**JUDGE**

**August 19, 2016**  
Pankaj\*

Whether speaking/reasoned      Yes

Whether reportable      No