

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

**Civil Revision No.5225 of 2016
Date of decision: 17.8.2016**

Achal Mandir Sabha and others

... Petitioners

Versus

Achleshwar Mandir Kar Sewa Trust and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Arun Abrol, Advocate,
for the petitioners.

AMIT RAWAL, J. (Oral)

The petitioner-defendant is aggrieved of the impugned order dated 26.4.2016 (Annexure P-5) whereby the application under Order 41 Rule 5 of the Code of Civil Procedure along with the appeal has been disposed by holding that any appointment/removal of the priest would be subject to the outcome of the appeal.

Mr.Arun Abrol learned counsel appearing on behalf of the petitioner submits that against the judgment and decree dated 5.2.2016, the appellant-defendant had failed the appeal under Section 96 CPC which was registered as Civil Appeal No.120 of 2016 and the lower appellate court on 7.4.2016 passed the following order : -

“Heard on the application under order 41 Rule 5 CPC to some length. Learned counsel for contesting respondents no.1 to 3

insists that lower court record be summoned. Same has not been received despite issuance of notice to concerned Ahlmad Kirandeep Singh. He be summoned throughailable warrants in the sum of Rs.5000/- with one surety of the like amount for 11.04.2016 with lower court record. Till then operation of impugned Judgment and decree is stayed.”

On 11.4.2016, the matter was not listed and it was brought to the notice of the Court and thereafter the case was listed on 26.4.2016. He submits that once there was already interim stay qua the implementation of the impugned judgment and decree, there was no occasion for the lower appellate court to decide the application in the manner and mode as indicated above. Instead it ought to have called the parties to address arguments on the main appeal as the appeal is kept pending for 13.9.2016.

I have heard the learned counsel for the petitioner and appraised the paper-book and am of the view that in case there was any urgency with regard to the interim direction, the lower appellate court ought to have called upon the parties to address arguments in the main appeal instead of pondering upon an interim application, though there is a rider that employment and removal of the temple priest shall be subject to the outcome of the appeal, in my view, such a rider would certainly affect the rights of the petitioner as the remedy of first appeal is a statutory one as per Section 96 of the Code of Civil Procedure.

For the reasons above, order under challenge is here by set aside and that of 7.4.2016 is restored. The lower appellate court is directed to decide the appeal along with the application by the adjourned date, i.e., 13.9.2016.

The revision petition stands disposed of in the aforementioned terms.

(AMIT RAWAL)
JUDGE

August 17, 2016
Paritosh Kumar

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No