

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

CR No.5343 of 2016(O&M)

Date of decision:9.9.2016

Pritam Kaur

....Petitioner

VERSUS

Bhim Chand and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Sekhon, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 31.03.2016 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Moga whereby application under Order 39 Rule 2-A read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') has been dismissed.

Counsel for the petitioner has submitted that the petitioner filed a suit for permanent injunction restraining respondents No.1 and 2 from encroaching upon street shown in red colour marked A B C D E F in the site plan and making any obstruction in the use of street by covering it by extending roof of house of defendant forcibly, illegally. On 10.08.2011, the Court restrained respondents/defendants in the main suit against encroaching any portion of the street and obstructing use of street by general public including the applicant/plaintiff. As the respondents/defendants along with respondents No.3 and 4 violated the order of injunction passed by the Court, the petitioner initiated the proceedings under Order 39 Rule 2-A CPC for taking action against the

violators. It is vehemently argued that keeping in view the materials on record, the Court below should have initiated action against the respondents.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

The trial Court in para 9 of the order has observed that Pritam Kaur in her cross examination has admitted that there is no obstruction in passing through the street in dispute and two-wheelers can easily pass through the street. It is an admitted fact that street in dispute is 6 feet wide having drains on both sides. It has further been held that the applicant has totally failed to prove on record status of the projection alleged to be widened by respondents in violation of stay order of the Court. There is no site plan on record which could go to show dimensions, length and measurement as well as exact status of the projection prior and after passing of the stay order Ex.A1.

Counsel for the petitioner has not disputed the factual observations recorded by the trial Court. This apart, the order impugned is an appealable order envisaged under Order 43 Rule 1 CPC but since this Court has heard the petition on merits, it would be an exercise in futility to relegate the petitioner to file an appeal before the Court of District Judge.

In view of the above, the petition fails and is accordingly dismissed.

SEPTEMBER 9, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no