

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

CR No. 8345 of 2016(O&M)

Date of decision: 12.12.2016

Jagan Nath and anotherPetitioners

VERSUS

Banarsi Dass and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ish Puneet Singh, Advocate for the petitioners.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against orders dated 27.10.2016 (Annexure P-5) passed by the Additional District Judge, SBS Nagar and dated 30.05.2016 (Annexure P-2) passed by the Additional Civil Judge (Senior Division), Balachaur.

The sole submission made by counsel for the petitioners is that once the Court of appeal (Additional District Judge) had come to the conclusion that the appeal is not maintainable, by taking into consideration the provisions of Order 39 Rule 3 and 43 Rule 1(r) of the Code of Civil Procedure, 1908 (in short 'CPC'), the Court of appeal should not have adverted to merits of the appeal with regard to entitlement or otherwise of the petitioners/plaintiffs to seek interim injunction. It is further submitted that in case findings recorded by the Court of appeal in para 7 are allowed to sustain even before application for interim injunction is decided by the trial Court, the same would cause serious prejudice to the petitioners to assert their claim for injunction.

I have heard counsel for the petitioners, perused the paper-book particularly the order passed by the trial Court as well as the Court of appeal.

It is undisputed position of the case that the trial Court issued notice to the respondents/defendants before adverting to entitlement of the petitioners to get an ex parte injunction. The said order was challenged in appeal before the Court of District Judge and the Appellate Court in view of its observations recorded in para 6 of the impugned order arrived at a conclusion that the appeal is not maintainable against the order passed by the trial Court because the trial Court has neither granted nor disallowed injunction. However, in para 7, the Court has adverted to merits of plea of the petitioners as well as respondents and eventually rejected claim of the petitioners for grant of injunction on merits. As soon as the Court of appeal had arrived at a conclusion that appeal against the order passed by the trial Court is not maintainable, the Appellate Court should have left it to be decided by the trial Court as to whether the petitioners are entitled to get injunction or otherwise. In this view of the matter, any observations made by the Court of appeal with regard to merits of the stay application would not cause prejudice to the petitioners at the time of disposal of the stay application by the trial Court. It is further clarified that the trial Court shall decide the application for interim injunction without being influenced by any observations made by the Court of appeal, touching merits of the case.

Disposed of accordingly.

DECEMBER 12, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no