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

**RSA-3154-2011 (O&M)
Date of decision : 07.09.2016**

Chaman Lal (deceased) through LRs

... Appellant(s)

Versus

Municipal Council, Hoshiarpur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Takhi, Advocate
for the appellant(s).

Mr. Rajdeep Singh Cheema, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact and law, whereby the suit for permanent injunction restraining respondent No.1 Municipal Council, Hoshiarpur from demolishing the first and second storey shown red over the house shown in green in site plan as described in the head-note of the suit, had been dismissed by both the Courts below.

Mr. Arun Takhi, learned counsel appearing on behalf of the appellant-plaintiff submits that on 15.12.2003, the plaintiff had sent the notice under Section 193 to the Municipal Council for approving the site plan alleged to have been submitted. For six months, site plan was not approved and thereafter, thinking that it deemed to have been sanctioned, raised the construction in the year 2004. However, on 24.08.2005 and 2006, the Municipal Council served the notices (Ex.P2) and (Ex.P-3). It is, in this

background of the matter, the injunction was sought. During the pendency of the case, it has been brought to the notice of the Court that the Municipal Council had initiated an action under Section 228 of the Punjab Municipal Act for filing the complaint. Copy of the complaint is (Ex.P-5) and the matter was compromised acknowledging the statement of Chaman Lal on 24.08.2006 and resultantly, the appellant had deposited the compounding fee of ₹ 3,680/- vide receipt No.30 (Ex.P-1). All these facts have escaped the notice of both the Courts below and injunction in this aspect, ought to have been granted as there was no breach of the Municipal Bye-laws, thus, urges this Court for decreeing the suit by setting aside the judgment and decree of both the Courts below.

No doubt, this Court on earlier occasions had been framing substantial questions of law while deciding the appeal, but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **"Pankajakshi (dead) through LRs and others Vs. Chandrika and others" AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97 (1) CPC, whether the provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **"Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others" 2001 (4) SCC 262** applicability of Section 97 (1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

Mr. R.S. Cheema, learned counsel appearing on behalf of the

respondent No.1-Municipal Corporation submits that the remedy, if any, for the plaintiff was to file the appeal against the proposed action, but not the suit. Even the notices have not been challenged, therefore, the suit was not maintainable, rightly, so, the suit has been dismissed.

I have heard the learned counsel for the parties and appraised the paper book and of the view that once, the statement suffered by the appellant-plaintiff acknowledged by the concerned Officer of the Municipal Council and the compounding fee has been deposited, the alleged construction of second and third storey is deemed to have been compounded, meaning thereby, the construction is duly recognized, thus, there cannot be said to be any violation of Municipal Bye-laws.

However, this observation of mine will not entitle the appellant-plaintiff to raise further carry out repair without seeking the permission of the Municipal Council for modification and re-sanction of the site plan. The order of mine shall only be confined to the existing construction, but if found to be in violation of prevailing laws, the respondents shall be at liberty to take action in accordance with law.

In view of the facts and circumstances of the case, the judgment and decree of both the Courts below are hereby set aside and the suit of the appellant-plaintiff is decreed and accordingly, the appeal stands allowed.

07.09.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**