

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

RSA No.2431 of 2016 (O&M)

Date of Decision.06.09.2016

Raj Kumar

.....Appellant

Vs.

Kishan Kumar

.....Respondent

Present: Dr. K.S. Yadav, Advocate
for the appellant.

Mr. Navdeep Chhabra, Advocate
for the caveator-respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit of the respondent-plaintiff has been decreed whereby mandatory injunction against the defendant to provide 3 feet space for staircase towards Bazar Side to the plaintiff to enable the plaintiff to raise construction over shop No.76-P, Kabari Bazar, Adda Lal Kurti, Ferozepur in occupation of the appellant-defendant as tenant, has been issued.

Mr. K.S. Yadav, learned counsel for the appellant submits that no doubt clause 8 of the lease/agreement dated 09.04.2011 envisage liberty to the plaintiff to raise construction but the respondent-plaintiff, being landlord, had already filed ejectment petition and it would have far reaching consequences. He further argued that relief of mandatory injunction cannot

support of his contention relies upon the judgments of Hon'ble Supreme Court in *Metro Marins and another Vs. Bonus Watch Co. Pvt. Ltd. and others 2005(1) CCC 308 (SC)* and *Dorab Cawasji Warden Vs. Coomi Sorab Warden 1990(2) SCC 117.* All these facts and position of law escaped notice of the Courts below and therefore, there is illegality and perversity in the judgments and decrees passed by the Courts below and they are liable to be set aside.

He has further expressed apprehension that under the garb of construction of the stair-case, respondent-plaintiff/landlord may destroy the ground floor compelling the appellant-defendant to vacate the premises, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below at least till the adjudication of the ejectment proceedings.

Per contra, Mr. Navdeep Chhabra, learned counsel appearing for the caveator/respondent submits that clause 8 of the lease agreement is sacrosanct between the parties and the appellant-defendant cannot turn around and challenge the terms and conditions of the agreement. The concurrent finding of fact cannot be interfered with unless and until, there is gross illegality and perversity, thus, urges this Court for confirming the same by dismissing the second appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Yadav, learned counsel appearing for the appellant-defendant. The ratio decidendi culled out in the judgments referred to above deals with issuance of the interlocutory temporary injunction tantamounting to mandatory injunction. In my view, the aforementioned judgments would not apply to the facts and circumstances of the present case. The relief of

mandatory injunction is granted as per provisions of Section 39 of the Specific Relief Act, 1963 when there is breach of an obligation by either of the parties, the other party can seek intervention of the Court. Since clause No.8 *ibid* granted liberty to the respondent-plaintiff to raise the construction of the stair case, I am of the view that injunction so granted is in correct perspective. There is no force in the submission of Mr. Yadav that raising the construction would hamper adjudication of the ejectment proceedings, for, the ejectment petition is based upon independent grounds. In view of the above, the plaintiff should also strictly adhere to the injunction granted in his favour and should not deviate from it.

For the foregoing reasons, I am of the view that the Courts below have decided the suit on the basis of preponderance of the evidence. I do not find any reason to differ with the findings rendered by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 06, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No