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

**RSA-5668-2015 (O&M)
Date of decision : 02.03.2016**

Krishan Lal

...Appellant

Versus

Sunita Dua and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gorakh Nath, Advocate
for the appellant.

Mr. D.K. Tuteja, Advocate
for respondent No.1.

Mr. P.K. Longia, Advocate
for respondent No.2.

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?

AMIT RAWAL, J. (ORAL)

The appellant-defendant No.1 is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit for permanent injunction seeking restraint order against the appellant-defendant No.1, who is doing the commercial activities of manufacturing and repairing the cooler and almirah bodies in the residential area, has been decreed.

Mr. Gorakh Nath, learned counsel appearing on behalf of the appellant-defendant No.1 submits that prior to the institution of the suit which was filed on 24.01.2011, a complaint at the behest of the Municipal Corporation, Rohtak under Section 133 of the Code of Criminal Procedure, was

filed before the SDM, Rohtak, on 20.01.2011, which has been proved on record and the same was dismissed vide order dated 11.01.2012, by relying upon the aforementioned facts, the trial Court dismissed the suit, however, the lower Appellate Court discarded the report and decreed the suit, whereas the respondent No.1-plaintiff failed to lead any evidence in support of the same and thus, urges to this Court to formulate the following substantial questions of law for determination:-

“(i) Whether the suit of plaintiff could be decreed and defendant No.1 could be restrained from doing the work of repair and painting of almirahs and coolers in a portion of property when the complaint filed by MC, Rohtak against defendant No.1 under Section 133 Cr.P.C. was dismissed by the learned SDM, Rohtak on 11.01.2012 as per the order?

(ii) Whether the learned ADJ, Rohtak had set aside and reversed a well reasoned and unassailable judgment of the learned trial Court on the basis of impermissible surmises and conjectures and without laying any firm and legal basis for his conclusions?

(iii) Whether the learned ADJ, Rohtak had misconstrued and misappreciated the evidence on record and the law applicable to such cases?

Mr. D.K. Tuteja, learned counsel appearing on behalf of respondent No.1-plaintiff submits that there is no illegality and perversity in the judgment and decree of the lower Appellate Court which is based upon the appreciation of oral and documentary evidence. The lower Appellate Court being the last Court of fact re-appreciated the oral and documentary evidence and found that appellant-defendant No.1 was running the residential/commercial activity without obtaining the licence or permit from the Municipal Authority and said fact is causing air and noise pollution and therefore, has been injuncted not to carry out the commercial activity and

submits no substantial question of law arises for determination and prays for dismissal of the appeal.

Mr. P.K. Longia, learned counsel appearing on behalf of respondent No.2-Municipal Corporation, Rohtak, submits that the activity carried in the shop at the behest of the appellant-defendant No.1 without obtaining any licence or permit, but he submits that as per the report of SDM, Rohtak, only activity is inside the shop, which has resulted into dismissal of the complaint.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a substance in the plea of Mr. Gorakh Nath, for the reason that the finding rendered by the SDM, Rohtak, initiated under Section 133 Cr.P.C., have been misread and misunderstood. For the sake of the brevity, the order passed by the SDM, reads thus:-

“The facts of this case are that the applicant had filed an application in this Court and had prayed that responsibility for keeping the city of Rohtak to be neat and clean, pollution free and undisturbed nuisance free (utpat mukt) was the responsibility of the applicant. The respondent was in the residential area doing business of preparing bodies of coolers and of preparing almirahs of iron and steel without obtaining any licence and illegal. The business of the respondent was a permanent nuisance (utpat) and it was harmful for the health of the residents there. In this connection, Shri Krishan Lal Dua, Advocate who was a neighbourer of the respondent had filed an application and thereupon the concerned officer/clerk had inspected the spot and found that the facts mentioned in the application were true. Notices were issued to the respondent in this connection but all in vain. Thereafter, application was filed under Section 133 Cr.P.C. that the respondent be bound down and his nuisance be removed with immediate effect and that the fine be also imposed upon him.

On the basis of the application moved by the applicant, the respondent was summoned through the SHO of Police Station concerned with conditional order. The respondent appeared in this Court along with his counsel and on 10.05.2011, he made a prayer for obtaining a copy of the complaint and the documents in order to file reply to the same and thereafter on 05.07.2011, he filed his reply according to which the complaint made by the complainant was false and baseless. The same matter (case) with the complainant was pending in the Civil Court. According to the respondent he is doing the business of preparing bodies of the coolers and that it was false that he was running any factory for which he may require a licence. On the other hand, he had constructed his house in the year 1970 and till 1980 he had done the work of flour mill (Atta Chakki) and thereafter in one portion of the house he remained doing the work of painting coolers and iron almirahs and that he was not manufacturing almirahs and coolers. The complainant had constructed his house recently whereas his own work was very old and that from his work neither any noise is caused nor there is any pollution nor any inconvenience is caused to any one and he was also paying professional tax of this house.

During the course of arguments, the complainant stated that the respondent was having a factory for manufacturing coolers and iron almirahs and in that connection, the report of the counsel stands produced on the file and that he had not obtained any permission or licence from the Municipal Council and so it should be got closed whereas the respondent stated that he was not doing any work of manufacturing coolers and iron almirahs and that he was simply doing the work of painting coolers and almirahs and that he was doing this work for the last considerable period and that on account of his doing this work, no inconvenience or harassment has been caused to any one nor any other person had till date filed a complaint against him and that he was paying professionals tax to the Municipal Council.

On a careful consideration of the file and after hearing both the parties in detail and after carefully perusing the facts which had come on record the spot was inspected and it would found that no goods or articles were found lying outside the shop on the road. The entire work was being done inside the shop and that inside the shop, the work of painting coolers and iron almirahs was being done and no mismanagement of any type was found on the spot nor any act was found being done at the spot from which it might appear that was harmful for the health. Thus, keeping in view the facts, I dismiss the complaint. The file be consigned to record book after compliance.”

No independent evidence has been led to show that the appellant-defendant No.1 is carrying out any activity harmful to humane body, which resulted into noise/air pollution. All the activities stated to be inside the shop, and in my view, the lower Appellate Court has committed illegality and perversity in injuncting the appellant-defendant No.1 for carrying out the commercial activity. The respondent No.1-plaintiff miserably failed to discharge the onus in support of the averments made in the plaint. In the absence of discharge of burden, the onus did not shift.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the lower Appellate Court is set aside and the substantial questions of law noticed above, are answered in favour of the appellant-defendant No.1 and against the respondent No.1-plaintiff. Suit stands dismissed.

With the aforementioned observations, the appeal is allowed.

02.03.2016
yogesh

(AMIT RAWAL)
JUDGE