

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 2902 of 2017(O&M)

Date of decision : August 29, 2017

Sushil Kumar and another

..... Petitioners

Versus

Divisional Canal Officer and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. P. S. Jammu , Advocate
for the petitioners.

Mr. S. K. Yadav, DAG., Haryana.

Mr. J. S. Thind, Advocate
for respondent No.3.

RAKESH KUMAR JAIN, J (oral).
CM No. 12007 of 2017

This application is filed to place on record the copy of
logbook of outlet 132730-R Kalanaua minor as Annexure R-4.

C.M.is allowed.

Annexure R-4 taken on record.

CWP No. 2902 of 2017

This petition is filed to challenge the order dated
10.8.2016 passed by the Divisional Canal Officer (respondent No.1).

Notice of motion was issued on 16.2.2017 and stay was
also granted. However, on 16.5.2017 the following order was recorded by
this Court:-

“None for the petitioners.

Mr. Indresh Goel, Addl. A.G., Haryana.

Mr. J.S. Thind, Advocate for the respondent No.3.

Learned counsel for the respondent(s) submits that the petitioners have concealed the certain facts, therefore, the matter requires consideration at early point of time.

There is no representation on behalf of the petitioners.

It is already 5 past 4.

Adjourned to 25.05.2017.

To be shown in the urgent list.”

At the threshold, Mr. J. S. Thind, learned counsel appearing on behalf of respondent No.3 has submitted that the present writ petition is not maintainable because the petitioners have not come to this Court with clean hands. It is submitted that the petitioners have deliberately concealed that order dated 10.8.2016 was challenged by the petitioners by way of a civil suit. The petitioners had also filed an application for temporary injunction under Order 39 Rule 1 and 2 CPC. The said application was dismissed on 4.2.2017 but still the suit was pending. The petitioners filed this petition on 13.2.2017 and obtained the order of stay on 16.2.2017. It is further submitted that the petitioners nowhere mentioned in the entire writ petition that they had already availed remedy of civil suit in order to challenge the order dated 10.8.2016.

Learned counsel for the petitioners has submitted that though the petitioners had challenged the order dated 10.8.2016 by way of suit for declaration and permanent injunction but the said suit was withdrawn on 16.2.2017 because the suit was not maintainable. It is thus, submitted that there is no concealment of facts as the said suit was withdrawn on the date when the stay was granted by this Court.

I have heard learned counsel for the parties and perused

the record with their able assistance.

The issue involved in this case is as to whether this Court should entertain this petition when the petitioner has concealed the fact of already availing a remedy of civil suit?

The writ jurisdiction under Article 226 and 227 of the Constitution of India is the extraordinary jurisdiction of this Court. It is invoked when the litigant does not have any other remedy available to him. It is also expected from the litigant that he would disclose all the facts in the petition about the pendency or decision of any previous litigation.

In the present case, the petitioner had challenged the same impugned order dated 10.8.2016 by way of civil suit for declaration and permanent injunction but when he was unsuccessful in getting temporary injunction, he thought to file the writ petition instead on 13.2.2017 while the suit was still continuing. As soon as he got the stay in the writ petition on 16.2.2017, he withdrew the civil suit. It appears that the petitioners game plan was to obtain stay by any means. In this game plan, he failed to get injunction on 4.2.2017 and filed writ petition on 13.2.2017 instead of filing an appeal before the appellate court against the order of declining temporary injunction. Had the petitioners disclosed these facts of having filed a civil suit against the impugned order on the alleged ground that the civil suit was not maintainable, perhaps this Court would have considered his argument for the purpose of proceeding with the writ petition but concealment on the part of the petitioner is not tolerable. As a matter of fact, it is a case of overreaching the court by the petitioners who might have thought that if he would not disclose the factum of previous litigation, thus and it would never come to light or notice of the Court. The petitioners are

guilty of suppressing material facts from this Court for the purpose of taking favourable orders. This act of the petitioner is not appreciated. Hence, I am of the considered opinion that the present petition is not maintainable and the petitioners are held liable to pay costs to this Court for obtaining the stay order by concealing the material facts.

Thus, this petition is hereby dismissed with costs of Rs.50,000/- which shall be deposited, by the petitioner in the Registry of this Court within a period of one month from today.

(RAKESH KUMAR JAIN)
JUDGE

August 29, 2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No