

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 77 of 2018

1. Smt. Sanju Devi Kashyap, W/o Late Kanha Ram Kashyap, aged about 42 years, R/o Villaged Nigarband, P.S. and Tahsil Takhatpur, District Bilaspur (C.G.)
 2. Prem Prakash Kashyap, S/o Late Kanha Ram Kashyap, aged about 22 years, R/o Villaged Nigarband, P.S. and Tahsil Takhatpur, District Bilaspur (C.G.)
 3. Ku. Akanksha Kashyap, D/o Late Kanha Ram Kashyap, aged about 17 years, through natural guardian Mother Smt. Sanju Devi Kashyap, W/o Late Kanha Ram Kashyap, aged about 42 years, R/o Villaged Nigarband, P.S. and Tahsil Takhatpur, District Bilaspur (C.G.)
- Petitioners**

Versus

1. Smt. Uma Bai, aged about 50 years, D/o Late Kanharam Kashyap, W/o Ramlochan Kashyap, R/o Village Karankapa, P.S. and Tahsil Takhatpur, Dist. Bilaspur (C.G.)
2. Smt. Vimlesh Kashyap, aged about 46 years, D/o Late Kanha Ram Kashyap, W/o Janak Ram Kashyap, R/o Village Thakurkapa, P.S. and Tahsil Takhatpur, Dist. Bilaspur (C.G.)
3. Smt. Mina Kashyap, aged about 40 years, D/o Late Kanha Ram Kashyap, W/o Nand Kumar Kashyap, R/o Village Barahi (Parsakapa), P.S. and Tahsil Takhatpur, Dist. Bilaspur (C.G.)
4. Smt. Kamlesh Kashyap, aged about 43 years, D/o Late Kanha Ram Kashyap, W/o Janak Ram Kashyap, R/o Village Nigarband, P.S. and Tahsil Takhatpur, Dist. Bilaspur (C.G.)
5. Ku. Madhu Kashyap, aged about 37 years, D/o Late Kanha Ram Kashyap, R/o Village Nigarband, P.S. and Tahsil Takhatpur, Dist. Bilaspur (C.G.)
6. Smt. Satyabhama Kashyap, aged about 32 years, D/o Late Kanha Ram Kashyap, W/o Hemant Kashyap, R/o Village Nigarband, P.S. and Tahsil Takhatpur, Dist. Bilaspur (C.G.)
7. Ku. Sarita Kashyap, aged about 30 years, D/o Late Kanha Ram Kashyap, R/o Village Nigarband, P.S. and Tahsil Takhatpur, Dist. Bilaspur (C.G.)

8. State of Chhattisgarh, through Collector, Bilasupr, Dist. Bilaspur
(C.G.) **---- Respondents**

For Petitioners	:	Mr. Ravindra Sharma, Advocate.
For Respondents	:	Mr. Ravindra Agrawal, Advocate.
For Respondent No.8/State	:	Mr. Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/11/18

1. The petitioners/defendants take exception to the order of the Miscellaneous Appellate Court granting the miscellaneous appeal filed under Order 43 Rule 1(r) of CPC by the plaintiffs and remanding the matter to the trial Court to decide the application filed by the defendants under Order 39 Rule 1 & 2 of CPC afresh keeping in view the observations made therein.

[For the sake of convenience, the parties would be referred hereinafter as per their nomenclature shown in the suit filed before the trial Court].

2. The respondents/plaintiffs filed a suit for declaration of title and also for recovery of possession from the defendants in which the defendants No. 1 to 3/petitioners herein filed an application under Order 39 Rule 1 & 2 CPC stating inter-alia that the plaintiffs be restrained from interfering with their peaceful possession and they be further restrained from harvesting the crops. That

application was granted by the trial Court by order dated 08.08.2017 holding that the defendants have *prima-facie* case and balance of convenience lies in their favour and since they are in possession of the suit property, if temporary injunction is not granted, they will suffer irreparable loss and restrained the plaintiffs from interfering with the peaceful possession of the defendants which was assailed by the plaintiffs under Order 43 Rule 1(r) CPC. The miscellaneous appellate Court while hearing appeal against the order granting temporary injunction, by its impugned order, held that the question is to whether the defendants' application under Order 39 Rule 1 & 2 CPC particularly Clause-(c) was maintainable or not has not been examined by the trial Court and, therefore, remanded the matter to the trial Court for hearing the application afresh keeping in view the observations contained in paragraph 17 & 19 of the impugned order. Questioning that order this writ petition has been preferred.

3. Mr. Ravindra Sharma, learned counsel appearing for the petitioners/defendants would submit that the miscellaneous appellate Court is absolutely unjustified in setting aside the order of the trial Court granting temporary injunction and further remanding the matter to the trial Court for hearing the matter afresh is unsustainable and bad in law and, therefore, the

impugned order is liable to set aside.

4. Mr. Ravindra Agrawal, learned counsel appearing for the respondents/plaintiffs submits that defendants are not entitled to maintain an application under Order 39 Rule 1 & 2 read with Clause –(c) of CPC and as such, the Miscellaneous Appellate Court is absolutely justified in granting the appeal and remanding the matter to the trial Court for fresh adjudication of the maintainability of the said application exercising power of remand under Order 41 Rule 23, 23A of CPC.
5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
6. Two short questions arises for consideration :-
 - (1) Whether Misc. Appellate Court while hearing miscellaneous appeal under Order 43 Rule 1(r) CPC against order granting temporary injunction under Order 39 Rule 1 & 2 of CPC is empowered to invoke jurisdiction under Order 41 Rule 23, 23A of CPC ?
 - (2) Whether defendant is entitled for temporary injunction under Order 39 Rule 1 & 2 CPC restraining the plaintiff from dispossession ?
7. Answer to Issue No.1 :-

The trial court granted the application for temporary injunction filed by the defendant under Order 39 Rule 1(c) CPC restraining his

dispossession and in appeal preferred by the plaintiff under Order 43 Rule 1(r) CPC the miscellaneous appeal court remanded the matter to the trial court to consider whether the defendant's application under Order 39 Rule 1 and 2 CPC was maintainable in law. The question for consideration whether the court hearing the appeal against the order can invoke jurisdiction under Order 41 Rule 23 to Order 41 Rule 25 CPC and direct for re-trial while reversing an order of temporary injunction.

8. Clause (r) of Order 43 Rule 1 of the CPC provides as under :-

"An appeal shall lie from the following orders under the provisions of section 104, namely: -

(r) an order under rule 1, rule 2, rule 2-A, rule 4 or rule 10 of Order XXXIX;"

9. The powers of appellate Courts are the same as are conferred by this Code to the trial Court. By virtue of Order 43 Rule 2 of the CPC, the provisions of Order 41 of the CPC shall apply to appeals from orders.

10. At this stage, it would be appropriate to notice the provisions contained in Section 107 of the CPC which provides powers of Appellate Court and Section 108 of the CPC which provides procedure in appeals from appellate decrees and orders, contained in Part VII of the CPC. Sections 107 and 108 read thus,

"107. Powers of Appellate Court.--(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial; (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein."

108. Procedure in appeals from appellate decrees and orders.--The provisions of this Part relating to appeals from original decree shall, so far as may be, apply to appeals—

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided."

Thus, by virtue of Section 108 of the CPC, the provisions of Part VII including Section 107 which relates to powers of appellate court to take additional evidence or to require such evidence to be taken, has been made expressly applicable to appeals from orders under the Code. But, Section 108 of the CPC limits the application of other provisions in that Part by using the expression "so far as may be".

11. The expression "so far as may be" should be taken to mean so far as it is consistent with the nature of order appealed against. The Supreme Court in the matter of **Dr. Partap Singh and another v.**

Director of Enforcement, Foreign Exchange Regulation Act and others¹ while considering the meaning of expression "so far as may be" employed in Section 37(2) of the Foreign Exchange Regulation Act, 1973, held that the expression "so far as may be" has always been construed to mean that those provisions may be generally followed to the extent possible.

12. The circumstance and grounds on which a case can be remanded by the appellate court are provided in Order 41 Rule 23, 23(A) & 25 CPC.

"Rule 23. Remand of case by Appellate Court :- Where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgement and order to the court from whose decree the appeal is preferred, with directions to readmit the suit under its original number in the register of civil suits and proceed to determine the suit, and the evidence (if any) recorded during the original trial shall subject to all just exceptions be evidence during the trial after remand".

Rule 23-A. Remand in other cases :- Where the court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate court shall have the same powers as it has under Rule 23.

Rule 25. Where Appellate Court may frame issues and refer them for trial to court whose decree appealed from :- Where the court from whose decree the appeal is preferred has omitted to frame or try any

1 (1985) 3 SCC 72

issues, or to determine any question of fact, which appears to the Appellate court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the court from whose decree the appeal is preferred, and in such case shall direct such court to take the additional evidence required no such court to take the additional evidence required,

and such court shall proceed to try such issues and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor (within such time as may be fixed by the Appellate Court or extended by it from time to time".

Rule 24 of Order 41 CPC can also be said to be relevant

the same may also be reproduced :-

Rule 24. Where evidence on record sufficient, Appellate Court may determine case finally :-
Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgement, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgement of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds."

13. Section 141 of CPC provides that the procedure provided in CPC in this regard to suits shall be followed in so far as it can be made applicable in any court of civil jurisdiction, question is whether the power of remand conferred under Order 41 Rule 23, 23(A) and 25 CPC to the appellate court while hearing the regular appeal against the judgment and decree of the trial court can be invoked by miscellaneous appeal court hearing the appeal under Order 43 Rule 1(r) CPC against order granting temporary injunction under

Order 39 Rule 1 & 2 CPC.

14. A careful perusal of Order 41 Rule 23 would show that it is a provision which is applicable where a suit has been disposed off on a preliminary point and decision on it is reversed in appeal, likewise, Rule 23(A) would be applicable where the court from whose decree an appeal is preferred has disposed off the case otherwise on a preliminary point and decree is reversed in appeal and re-trial is considered necessary. Likewise, under Order 41 Rule 25 - the appellate court is empowered to make limited remand by framing an issue and refer the same to the trial to the court. The Rules 23, 23(A) & 25 of Order 41 speaks of decree and trial. The Section 2(2) of CPC defines the decree as "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matter in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include- (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default. Likewise, the trial of the suit commences with the presentation of the plaint and comes to in and on delivery of judgment and decree by the court and thereby proceeding of the suit finally terminates, and on the other hand in deciding the application for temporary injunction the court has to

find out as to whether plaintiff has prima facie case in his favour and whether balance of convenience lies in his favour and if temporary injunction is not granted irreparable loss would be caused to the plaintiff who applied for grant of temporary injunction.

15. Thus, the powers of the appellate courts are the same as are conferred by this Code to the trial Court. By virtue of Order 43 Rule 2 of the CPC, the provisions of Order 41 of the CPC shall apply to the appeals from orders. But scope of appeal under Order 43 Rule 1(r) of the CPC is restricted by Section 108 read with Section 43(2) of the CPC, though the entire procedure as applicable to the regular appeal has been made applicable to miscellaneous appeal under Order 43 Rule 1(r) of the CPC, but distinction must be kept in mind regarding the scope of regular appeal and miscellaneous appeal. In case of a regular appeal, the same is continuation of suit and the power to make additional evidence and power to direct amendment is always there, but in an appeal of miscellaneous nature, the jurisdiction of miscellaneous appellate court is confined to decide the correctness or otherwise of the order of temporary injunction granting or rejecting that application, as the miscellaneous appellate court has no concern with suit, but it is only an appellate authority to adjudicate the legality or validity of order deciding the application for temporary injunction. Even otherwise, on a perusal of Sections 107 and 108 read with Order

43 Rule 1 of the CPC, it is quite clear that there is implied bar on such an exercise of jurisdiction. Thus, the scope of miscellaneous appeal under Order 43 Rule 1(r) of the CPC is limited. The challenge is only regarding grant of temporary injunction, as the miscellaneous appellate court was not exercising the power or jurisdiction over the suit. Accordingly, the miscellaneous appellate court while hearing miscellaneous appeal may not entertain an application for additional evidence, application for amendment etc. submitted before it and if such an application is made in miscellaneous appeal, the only course which ought to have been adopted by that court is to direct the party, plaintiff / defendant as the case may be, to file the said application before the trial court for deciding it in accordance with law after disposing of the miscellaneous appeal on merits.

16. The High Court of Madhya Pradesh in the matter of **Dhundasing v. Liladhar and another**² has clearly held that though by virtue of Section 108(b) of the CPC, the provisions of Section 107 of the CPC that powers of appellate Court shall apply to appeals from orders under the Code including Order 43 Rule 1(r) of the CPC, but distinction between regular appeal under Section 96 of the CPC and miscellaneous appeal under Order 43 Rule 1 of the CPC has to be born in mind, as regular appeal is continuation of suit, but miscellaneous appeal under Order 43 Rule 1 of the CPC is not

2 A.I.R. 1982 MP 14 : 1982 M.P.L.J. 432

seisin either to suit or file appeal, it is confined to decide legality and validity of an order passed during the pendency of suit and in appeal under Order 43 Rule 1(r) of the CPC, correctness or otherwise of application for temporary injunction granting or refusing temporary injunction has to be decided.

17. In the matter of **Kailash Nath Singh v. The District Judge, Mirzapur and another**³, the Allahabad High Court has also followed the law laid down by the M.P. High Court in **Dhundasing** (supra) and has held that the court while hearing miscellaneous appeal under Order 43 Rule 1(r) of the CPC is not competent to allow amendment of plaint.

18. The Rajasthan High Court in the matter of **Nand Lal and others v. Purshottam and others**⁴ has clearly held that the miscellaneous appeal court doesn't have power in miscellaneous proceeding to pass an order of remand under Order 41 Rule 23, 23(A) & 25 CPC and held as under:-

“11. By referring to this definition it is to be seen whether the act of the court while deciding an application for grant of temporary injunction can be said to be covered by the expression, 'trial' so as to say that the appellate court can direct the trial court to hold a re-trial and give a fresh decision, while disposing an application under O.29 Rules 1 and 2 CPC, the court has to look into the documents which have been produced by the parties and look into the affidavits which have been filed and if necessary the deponents can be cross-examined on their affidavits, and site can be inspected for the purpose of having a

3 AIR 1993 Allahabad 67

4 AIR 1988 Rajasthan 26

clear idea of the situation. Even after doing all this exercise, the court does not give a decision on the question in dispute so as to say that the matter has been decided after trial but it only arrives at a conclusion which may at best be said to be a prima facie case. While disposing an application for temporary injunction the court does not determine a question of fact so as to say that the procedure adopted in deciding the same can be called a trial which includes the formal examination of the matter issue. Trial or re-trial of a matter is something more than a mere order which is to govern the parties during the pendency of the suit. The trial of a suit commences with the presentation of the plaint and comes to end with a judgement and decree passed by the court. In between this the court has to decide various supplementary matters and it cannot be said that the decision on each such matter can be said to be a trial, within the main trial, so as to say that the disposal of an application for grant of temporary injunction also constitutes a trial of the suit. By virtue of Section 141 CPC the procedure prescribed for suits can be made applicable to other proceedings, but only so far as they can be said to be applicable. When there is no trial then the question of re-trial does not arise so as to say that the power of remand can be made applicable to such proceedings. S.141 CPC cannot be invoked when the procedure is not applicable. In the present circumstances, re-examining of the matter only to see whether an application for temporary injunction should be granted or not cannot be said to be a re-trial of the matter so as to attract O.41 Rule 23A CPC.....

14. In my view as discussed above the appellate court does not have power in misc. proceedings to pass an order of remand under O.41, Rules 23, 23A and 25 CPC but can exercise this power only under S.151 CPC. When the exercise of power is under S.151 CPC then this court can, in a revision examine whether the exercise of jurisdiction is illegal or with material irregularity.....”

19. Reverting to the facts of the present case, in light of principle of law flowing from the aforesaid judgments, the miscellaneous

appellate court while considering the appeal under Order 43 Rule 1(r) CPC did consider the appeal on merits but doubted the maintainability of the application filed by the defendant under Order 39 Rule 1 & 2 CPC and made certain observation in that regard and thereafter directed the trial court to re-examine the matter qua the maintainability of the defendant's application under Order 39 Rule 1 & 2 CPC in light of the observation so made and thereby remanded the matter to the trial court, which that court did not have the jurisdiction to make an order of remand while hearing miscellaneous appeal against the order passed in the application under Order 39 Rule 1 & 2 CPC and ought to have decided that application finally and even otherwise the appellate Court should be circumspect in directing remand and thereby has committed illegality in directing for remand.

20. Answer to Issue No.2 :-

In order to consider the plea raised at the Bar, it would be appropriate to notice Order 39 Rule 1 & 2 CPC which provides as under :-

“O.39 R.1. Cases in which temporary injunction may be granted- Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

[(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

O.39, R.2- Injunction to restrain repetition or continuance of breach.- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise,

as the Court thinks fit.

(3) [* * *]

(4) [* * *]

The aforesaid clause- (a), (b) and (c) of Order 39 Rule 1 CPC deals with the different situation and states independently-

- (i) Clause-(a) deals with situation whether the property in dispute in the suit in danger of being wasted, damaged or alienated by any party to suit or wrongful sale or delivery in execution of decree.
- (ii) Clause-(b) deals with the situation whether the defendant threatens or indicates to remove or dispose of his property with a view to defraud his creditors.
- (iii) Clause-(c) deals with the situation whether the defendant threatens to dispose the plaintiff or otherwise cause injury to the plaintiff in relation to property in dispute in this suit.

In a situation covered by Clause-(a), if the property in dispute is in danger of being wasted etc. by any party to the suit, the Court may by order grant temporary injunction to restrain objectionable act. In that situation, either the plaintiff or the defendant is entitled to seek for the relief of temporary injunction but Clauses- (b) and (c) omits any party to suit and specifically provides that the defendant threatens or disposes the plaintiff and as such, in two other situations covered by Clause-(b) and (c) it is only the plaintiff who is entitled to seek injunction against

defendants. As such, out of three clauses in the Order 39 Rule 1, the last two clauses i.e. Clause- (b) and (c) refer to the order of injunction to be issued against the defendants, whereas Clause- (a) does not confine to the application filed by the plaintiff and it is available to any party of the suit which is sufficient enough to indicate that the legislature wanted that Order 39 Rule 1 (a) can be invoked even by the application filed by the defendant and even otherwise the issue is no longer *res-integra*.

21. The Division Bench of the Madhya Pradesh High Court in the decision rendered in **Churamani & Another v. Ramadhar & Others**⁵ has clearly held that injunction cannot be granted to defendant and defendant cannot maintain an application covered by Order 39 Rule 1 Clause (b) & (c) of CPC whereas can claim injunction under Order 39 Rule 1 Clause (a) CPC and held in paragraph-19 and 20 as under :-

'19. Now, though the defendants-respondents styled their application for grant of temporary injunction to be one under Rules 1 and 2 of Order 39 Civil Procedure Code it is clear from a perusal of the provisions contained in the said Rules that Rule 2 was not attracted in respect of the type of temporary injunction sought for by them. Under the said Rule, a temporary injunction could be issued only in favour of a plaintiff against the defendant. (See : *Election Officer vs. Abdul Ghani*, AIR 1923 Lahore 47.) Moreover, the said Rule

5 (1991) MPLJ 311

dealt with the grant of temporary injunction in a particular class of cases, not covered by the provisions of Rule 1 viz, cases of apprehended breach of contract or other injuries of any kind. Thus, the said Rule i.e. Rule 2 had no applicability for grant of temporary injunction to the application made by the defendants-respondents.

20. That leaves us with the question whether the application made by the defendants-respondents was maintainable under Rule 1 of Order 39. Under the said Rule, a temporary injunction could be granted by the Court under three different situations as specified in clauses (a), (b) and (c) thereof. The said situations are as follows : (a) that any property in dispute in a suit was in danger of being wasted, damaged or alienated by any party to a suit or wrongfully sold in execution of a decree; or (b) that the defendant threatened or intended to remove or dispose of his property with a view to defrauding his creditors, or (c) that the defendant threatened to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit. Thus, while in a situation covered by clause (a), a temporary injunction could be granted to either of the parties i.e. to the plaintiff or the defendant (See : *Sivakami Achi v. Narayana Chettiar*, AIR 1939 Madras 495) in the situation covered by clauses (b) and (c) a temporary injunction could be granted to the plaintiff alone and not to the defendant except perhaps in a case where the defendant filed a counter claim in respect of the same property and was thus himself in the position of a plaintiff.”

22. Reverting to the facts of the present case, in the light of the principles of law laid down by the Madhya Pradesh High Court in *Churamani & Another* (supra) to the facts of the present case, in the instant case the defendants invoked Order 39 Rule 1-(c) CPC restraining the plaintiffs from dispossessing them from the suit property till disposal of the suit and thus, it is apparent that the type of temporary injunction sought by the petitioners/defendants was that of a nature covered by Clause-(c) of Rule 1 of Order 39 CPC and as such, the situation covered by Clause-(c) of Rule 1 Order 39, a temporary injunction could be granted to the plaintiffs alone and not to the defendants and consequently it follows that no temporary injunction sought by the defendants could be granted to them and as such, there is error apparent on the face of the record and trial Court has no jurisdiction to grant temporary injunction under that clause to defendants. As such, the order granted by the trial Court granting temporary injunction restraining plaintiffs from dispossession under Order 39 Rule 1(c) was not maintainable at all and as such, the First Appellate Court has rightly set aside that order of the trial Court but instead of remanding the matter to the trial Court, first appellate Court ought to have decided it on its merits finally.
23. In view of the aforesaid analysis, the order of the miscellaneous appellate Court is partly upheld but for the different reasons and

as such, the impugned order directing remand for rehearing is set aside and the application filed by the petitioners/defendants under Order 39 Rule 1 and 2 of CPC for temporary injunction is hereby dismissed and the order of temporary injunction granted in their favour shall stand vacated.

24. The writ petition is accordingly disposed of with aforesaid direction/observation. No order as to cost(s).

SD/-

(Sanjay K. Agrawal)
Judge