

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1527 of 2016(O&M)
Date of Decision-14.08.2018

Nisha Rani

... Petitioner

Versus

Dharmender Singh @ Bijender Singh and another

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Bhoop Singh, Advocate
for the petitioner.

Mr. D.R. Bansal, Advocate
for respondent No.1.

Mr. Surinder Kumar Mahajan, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 14.12.2015 passed by Civil Judge (Junior Division), Jind and order dated 18.01.2016 passed by Additional District Judge, Jind whereby application under Order 39 Rules 1 and 2 CPC was concurrently dismissed.

[2]. Plaintiff/petitioner filed a suit for permanent injunction, restraining defendant No.1 from raising any further construction on his plot No.2182, Urban Estate, Jind without obtaining Damp Proof Course (DPC) certificate from defendant No.2 and for mandatory injunction, directing defendant No.1 to demolish the construction already raised and to lower the plinth level up to the

approved height of 46 cm from the road level. Mandatory injunction was also sought for damages to initiate legal action against defendant No.1 for violating the terms and conditions as per HUDA Act, 1977 and Regulations 1978. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was filed, seeking *ad interim* injunction for restraining defendant No.1 from raising further construction and for *ad interim* mandatory injunction to reduce the plinth level of plot No.2182 as per approved site plan sanctioned by defendant No.2. Directions were also sought against defendant No.2 to take further action for non-compliance of notice dated 06.11.2015 served by defendant No.2 upon defendant No.1.

[3]. Plaintiff asserted in the suit that she is owner of plot No.2183 i.e. adjoining plot of defendant No.1 and has constructed her building and occupying the same for the last 25 years. Defendant No.1 has constructed his house on the adjoining plot No.2182. He has raised plinth level of his house to 5 feet from the road level which is against the approved norms of HUDA i.e. plinth level should be 46 cm from the road level. The allottee has to raise construction upto DPC level which is to be checked by HUDA and thereafter, he can raise the construction. Defendant No.2 has also issued notice to defendant No.1 on 06.11.2015 in the context of aforesaid violation. The plaintiff was residing at Gurgaon and she came to know that due to construction raised by defendant No.1 on the common wall of the houses by raising

the plinth level to 5 feet from the road level, the damages has started in the wall of her house. It was due to non-performance of dampness proofing in the gap of plinth level from 46 cm upto 5 feet i.e. about 3 feet *inter se* between the plinth level of the plaintiff and defendant No.1. Due to non-performance of dampness proofing by defendant No.1 towards underneath level of 5 feet plinth as raised by him, the dampness towards the house of the plaintiff has caused serious damage to the house of the plaintiff i.e. peeling of plaster and stones at several spots and conspicuous cracks in the plaster have occurred in the house of the plaintiff. It is because of the fact that defendant No.1 has put lots of water under the plinth from 46 cm to 5 feet which has been covered under ground floor by raising the floor construction at the level of 5 feet from the road level.

[4]. Since the construction has been raised on the common wall between the two houses, therefore, the same has become threatening proposition to the plaintiff due to continuous nuisance in addition to cracks and peeling of plaster and stones at several spots. Re-carpeting needs to be done without any future assurance that such nuisance will not creep again. As per assertion made by learned counsel for the petitioner, dampness has started in the house of the plaintiff from ground level and is going towards upper direction. The suit was filed when construction of defendant No.1 was in progress.

[5]. Against the impugned orders passed by the Courts below, petitioner ventured to file the present revision petition.

[6]. At the time of issuance of notice of motion on 27.02.2016, following order was passed by the High Court:-

“Learned counsel for the petitioner submits that the learned appellate Court, in the impugned order, has erred in holding that there is an efficacious remedy available with the petitioner which she has already availed of, inasmuch as she has filed a complaint/representation to respondent No.2, i.e. the Haryana Urban Development Authority, with regard to the alleged violation committed by respondent No.1, in not obtaining a clearance certificate in respect of 'Damp Proof Course' (DPC), as a result of which the walls of the petitioners' house are getting completely damaged by the construction being made by respondent No.1, on a common wall, adjacent to the petitioners' house.

Prima facie, I am in agreement with the argument raised that other than the remedies which may be available to the petitioner, qua the statutory provisions allegedly violated by respondent No.1, there is a remedy in tort available to the petitioner in seeking an injunction against the alleged tortfeasor, from damaging the property of the petitioner.

Notice of motion, returnable on 17.3.2016.

Process dasti only.

In the meanwhile, further construction till the next date of hearing only, shall remain stayed.”

[7]. Thereafter, the matter was again considered by the High Court on 17.03.2016 and following order was passed:-

“After hearing the parties at length, I am of the view that the dampness in the wall complained of by the plaintiff/revision petitioner could be prevented only if a proper damp proofing is

done on the common wall between the plaintiff and the defendant. The plaintiff/revision petitioner may provide the extent of work that is necessary and give the estimate of cost. The defendant is also at liberty to provide any proof of dampness proofing as having already been done on his side upto the plinth so that the dampness complained of by the plaintiff can be shown to be not attributable to the height of DPC as complained of by the plaintiff. The defendant is entitled to resume the construction, provided, it is in accordance with law and after due sanction from the concerned authorities and provided further that any construction now sought to be made will abide by directions of this Court and the defendant shall not claim any equity for regularizing of any such construction. The defendant shall not to complete the ground flooring adjoining the common wall until further orders.

Adjourned to 06.05.2016.”

[8]. Learned counsel for the petitioner contended that despite the orders dated 27.02.2016 and 17.03.2016, defendant No.1 kept on constructing his house and violated the orders in question for which a contempt petition has been filed in the High Court. Since there was no representation on behalf of respondent No.2, this Court vide order dated 11.07.2018 considered it appropriate to inform the standing counsel for respondent No.2. Learned counsel for respondent No.2 has also been heard. Issuance of notice dated 06.11.2015 by defendant No.2 to defendant No.1 is not in dispute. The stand of defendant No.2 is that defendant No.2 will take appropriate action in accordance with law if violation of HUDA Act and Rules comes to fore.

[9]. Learned counsel for respondent No.1 has placed on record building plan, DPC certificate, occupation certificate and some photographs by way of moving CM No.13992-CII of 2016. In the aforesaid application, prayer for modification of Order dated 17.03.2016 was made. Para No.9 of the application reads as under:-

9. That during this rainy season there is every possibility of seepage of water in the common wall as the ground floor flooring adjoining the common wall has been stayed till further orders. As the respondent No.1 is not in a position to fix tiles or complete flooring adjoining the wall of the petitioner, he is unable to stop the seepage in the common wall from the front courtyard as flooring of back courtyard stands completed long back. Even otherwise the allegation of constructing the house against the building plan/rules of HUDA is not the concern of the petitioner, it is a matter between the respondent No.1 and HUDA-respondent No.2.

[10]. Perusal of the photographs attached as Annexure R1 with the aforesaid application would show that respondent No.1 has left some portion adjoining the common wall as uncovered. The photographs attached by the petitioner in CM No.16056-CII of 2016 would give state of affair prevailing at the spot which is suggestive of the fact that the dampness has reached upto the roof level of bathroom and rooms. There are cracks in plaster and fragmentation and blackness in the plaster have taken place. According to learned counsel for the petitioner, defendant No.1 has raised the construction from 5 feet of the ground level

thereby leaving unprotected area from 46 cm from the road level upto 5 feet from where plinth of defendant No.1 started. In the unprotected area from 46 cm to 5 feet, there is no protection in terms of Damp Proof Course in the plinth of common wall.

[11]. In view of order dated 17.03.2016 passed by the Coordinate Bench, I deem it appropriate to direct defendant/respondent No.2 to send a team of experts to the house of respondent No.1 for the purpose of ascertaining the violation and causing damage to the property of the plaintiff due to alleged non-performance of any Damp Proof Course (DPC) certificate. If the recurring damage which is being caused to the property is found to be due to non-performance of DPC by defendant No.1 towards his side of the house between the plinth level at 46 cm upto 5 feet from the road level, then all corrective measures be taken including the digging of land adjoining to the plinth upto 46 cm from the road level and then performance of DPC be completed at the cost of defendant No.1. Defendant No.1 shall not object to any such activity to be undertaken by defendant No.2. If the dampness is found due to inaction on the part of defendant No.1, then the expenditure incurred in doing DPC shall be borne by defendant No.1. If the dampness in the house of the plaintiff is found to be not attributable to the non-performance of DPC on behalf of defendant No.1, then the expenses incurred in doing DPC towards the side of defendant No.1 house upto 5 feet plinth level from 46 cm above the road

level shall be recovered from the plaintiff. This interim arrangement is being ordered keeping in view the personal nuisance as alleged by the plaintiff viz-a-viz her house being adjacent to the house of defendant No.1. The aforesaid arrangement would be in consonance with order dated 17.03.2016 passed by the Co-ordinate Bench. For the implementation of the aforesaid order, respondent No.2 shall ensure that official machinery is properly utilized. Respondent No.2 would also be entitled to police help if need be. For residual controversy, the trial Court shall proceed to decide the suit in accordance with law.

[12]. With the aforesaid directions, the present revision petition is disposed of.

(RAJ MOHAN SINGH)
JUDGE

14.08.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No