

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

C.R. No.1389 of 2018
Date of Decision.01.03.2018

Gian Chand

.....Petitioner

Vs

Municipal Council, Abohar and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Priyanshu Kamra, Advocate
for the petitioner.

-:-

AMIT RAWAL J.(ORAL)

The revision petition is directed against the orders dated 17.02.2016 passed by the trial Court and 08.09.2017 passed by the lower Appellate Court whereby the ad interim application under Order 39 Rule 1 and 2 CPC submitted along with the suit has been dismissed.

The petitioner-plaintiff instituted the suit claiming mandatory and permanent injunction directing the defendant No.1, Municipal Council, Abohar to get the encroachment over the street, as described in the plaint, removed from defendant No.2 by adopting all legal recourses with further direction to allow the plaintiff, defendant No.2 and other general masses to use the street and not to allow defendant No.2 to encroach upon the street in any manner in future by repeating illegal acts and further direction to affix sign boards, caution boards so as to prevent the encroachment of streets situated at Prem Nagar, Old Fazilka Road, near House No.1246, 1247 and B-I-55, street No.0 as depicted in the site plan attached with the suit. Along with aforementioned suit, application for interim relief under Order 39 Rule 1 and 2 CPC was filed. The Court below dismissed the same and the appeal

the present revision petition.

Mr. Priyanshu Kamra, learned counsel appearing on behalf of the petitioner submitted that the respondent-defendant is bent upon to further encroach upon the street. Both the Courts below have abdicated in not noticing that the essential requirements of Order 39 Rule 1 and 2 CPC have been sufficed as the petitioner-plaintiff has been able to make out the ingredients of Order 39 Rule 1 and 2 CPC for the purpose of obtaining ad interim stay. There was ample evidence to show that the aforementioned street was being used by the plaintiff and other public and there was an encroachment by the defendant. It is strange that the Municipal Council did not put the machinery in motion to remove the encroachment, compelling the affected party to approach the Court for easementary rights. The existence of the street has been proved by ex-president of the Municipal Council as PW2 in some other proceedings, which evidence was admissible as per Section 33 of the Indian Evidence Act. The Courts below did not consider the documents placed on record in correct perspective for granting interim relief, thus, there is illegality and perversity.

He further submitted that the respondent-defendant has taken 9 opportunities to cross-examine the plaintiff and plaintiff's witnesses, therefore, there is intentional delay on the part of the defendant for adjudication of the suit.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that ad interim injunction sought in the application is identical to one sought in the main suit, therefore, allowing the same would tantamount to decreeing the suit. Though no zimni orders have been placed on record to establish that the defendant had not been

diligent in examining the witnesses but believing the statement of the counsel made at bar that the defendant had not cross-examined the witnesses despite 9 opportunities, I deem it appropriate not to delve upon the merits and demerits of the matter and dispose of the revision petition with direction to the trial Court to conclude the trial as early as possible and preferably within a period of one year by affording 4-4 effective opportunities to both the parties. The trial Court shall also make endeavour that none of the parties indulge into any delaying tactics.

While upholding the order under challenge, the revision petition is disposed of in the above terms.

(AMIT RAWAL)
JUDGE

March 01, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No