

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

**CR No.2949 of 2018
Date of decision:04.05.2018**

Gurbax Kaur and others

... Petitioners

Vs.

Lehmber Singh @ Bagga and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

AMIT RAWAL J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for directing the Lower Appellate court to decide the application filed under Order 39 Rules 1 and 2 read with Section 151 CPC.

Mr. S.P.Soi, learned counsel appearing on behalf of the petitioner submits that suit for declaration was filed on the premise that plaintiffs were co-sharer in the land recorded in the name of defendant no.1 being member of the coparcenary property, with a further prayer for permanent injunction restraining defendant no.1 from alienating, transferring or creating any charge over the land in dispute, wrongly, illegally, forcibly and also restraining defendants No.2 to 4 to execute the agreement to sell in favour of defendant no.1 in drunkard

condition/madness. Alongwith aforementioned suit, an application under Order 39 Rules 1 and 2 CPC (Annexure P-1) was moved seeking ad interim injunction. On 10.08.2017, notice of the application was issued by passing the following order:-

“Suit received by entrustment. Report of reader seen. It be registered.

Alongwith the main suit, an application U/o 39 Rules 1 and 2 read with Section 151 CPC for seeking an ad interim injunction is filed. The application is supported by an affidavit. Heard. Before the grant of ad interim injunction, I deem it fit to serve a prior notice upon defendant, so, let the notice of the suit as well as stay application be given to the defendants on filing of PF, RC copies, etc., for 04.09.2017. Summons 'dasti' be also taken forthwith, if desired.

*(Ankit Airi)
Civil Judge (Jr. Div.)
Kapurthala.”*

Zimni order dated 04.09.2017 revealed that defendant no.1 appeared in person and Sh. Rakesh Sharma, Advocate has filed Power of Attorney on behalf of defendant no.4. Defendants No.2 and 3 could not be served for want of RC/AD. Vide order dated 09.04.2018, defendants No.2 and 3 were proceeded against ex parte which reads thus;-

“Publication for the service of defendant no.2 and 3 received back duly effected but they did not appear before this Court.

Case called for several time since morning but none has appeared on behalf of defendant no.2 and 3. It is already 4:00 P.M. As such, defendant no.2 and 3 are proceeded against ex parte.

Replication not filed. Be filed on 01.05.2018 if any and for argument on stay application.

(Poonam Kashyap)

CJ(JD)/Kpt.

Thus, primarily relief would be against defendants no.1 and 4. Despite pendency of application since 10.08.2017, no orders have been passed and next date before the trial Court is 15.05.2018.

I have heard the learned counsel for the petitioner and appraised the paper book.

The zimni orders extracted above leaves no manner of doubt that suit was filed alongwith interim application in August 2017 but now service upon contesting respondents was effected and they appeared. Defendant no.4 has filed the written statement, whereas, defendant no.1 has not. The interim application is lingering on without any reasons since August 2017.

In view of the aforementioned, I am of the view that purpose of ad interim application is to protect the interest of the party seeking same, though on preponderance of prima facie documents annexed with the suit which is to bring the case within the provisions of Order 39 Rules 1 and 2 CPC.

Be that as it may, revision petition is disposed of with a direction to the trial Court to expedite the disposal of the interim application as expeditiously as possible preferably within a period of two months from the date of receipt of certified copy of this order.

(AMIT RAWAL)
JUDGE

May 04, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No