

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

1. **CR No.4616 of 2015 (O & M)**
Date of Decision:-08.2.2018

Pawan Kumar

...Petitioner

Versus

Municipal Council, Bhiwani

...Respondent

2. **CR No. 7796 of 2015 (O & M)**

Rajender Kumar Anchal

...Petitioner

Versus

Pawan Kumar and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sudhanshu Makkar, Advocate
for the petitioner (in CR No.4616 of 2015).

Mr. Naveen S. Bhardwaj, Advocate
for the petitioner (in CR No.7796 of 2015).

Mr. Dinesh Arora, Advocate
for the respondent (in CR No.4616 of 2015).

Mr. Sunny Bhardwaj, Advocate
for respondent No.1 (in CR No.7796 of 2015).

Mr. Jagdish Manchanda, Advocate
for respondent No.2 (in CR No.7796 of 2015).

AMIT RAWAL J.(Oral)

This order of mine shall dispose of two revisions petitions i.e. CR No.4616 of 2015 and CR No.7796 of 2015, arising out of the similar suit. CR No.4616 of 2015 is against the order dated 13.3.2015 (Annexure P-6) of the lower Appellate Court wherein appeal preferred under Section 43(1) of the Code of Civil Procedure against the order of the trial Court passed in an application under Order 39 Rules 1 and 2 CPC restraining the Municipal Council from causing demolition has been set aside. CR No.7796 of 2015 has been filed against the order dated 3.11.2015 (Annexure P10) passed by the trial Court whereby the application filed by the petitioner-applicant under Order 1 Rule 10 CPC for becoming party as defendant in the suit has been dismissed. For sake the brevity, the facts are being taken up from CR No.4616 of 2015.

The petitioner-plaintiff instituted a suit for permanent injunction restraining the defendant-Municipal Council Bhiwani from demolition of the residential house as per the site plan attached with the plaint on the grounds stated therein. Alongwith the suit an application under Order 39 Rules 1 and 2 CPC was filed. The trial Court on the basis of the documentary evidence and after hearing contentions of both the parties restrained the defendant-Municipal Council from demolition of the house till the decision of the case. The aforementioned order was assailed by the defendant-Municipal Council and the learned lower Appellate Court in appeal against the said order passed by the trial Court, vacated the

interim stay on various grounds.

Mr. Sudhanshu Makkar, Advocate learned counsel appearing for the petitioner submitted that the suit was instituted in the year 2014. This Court while issuing notice of motion on 24.7.2015 stayed the demolition proceedings. The suit is now at the stage of recording of plaintiff's evidence. Learned counsel for the defendant-respondent Municipal Council has submitted that the demolition was essential as the petitioner-plaintiff encroached the area belonging to the Municipal Committee, in essence, raised construction on the area more than the sanctioned one and therefore the demolition was inevitable.

Mr. Naveen Bhardwaj, Advocate learned counsel appearing for the petitioner (in CR No.7796 of 2015) submitted that for the adjudication of the suit, the impleadment of Rajender Kumar Anchal would be essential and necessary as he is the immediate neighbour of the plaintiff-Pawan Kumar and in the process of construction, some land belonging to him (Rajender Kumar Anchal) has also been encroached by Pawan Kumar but the Courts below has erroneously dismissed his application for impleadment.

I have heard learned counsel for the parties, apprised the paper book and of the view that without commenting on the merits viz a viz the decision on the application moved under Section 39 Rules 1 and 2 CPC particularly when this Court on 24.7.2015 had granted the interim injunction, the revision petitions stand disposed of by issuing the direction to the trial Court to maintain the aforesaid interim order dated 24.7.2015

and expedite the decision of the suit expeditiously, preferably within a period of nine months by giving 3-3 effective opportunities to both the parties.

Nothing mentioned herein shall be construed as an expression on the merits of the case. As regards the contention of Mr. Naveen Bhardwaj, Advocate, in case there is encroachment on the land belonging to the petitioner-Rajender Kumar Anchal, who wanted to be impleaded as party in the suit, he has an independent cause of action. With the aforesaid observation by maintaining the interim order the revision petitions stand disposed of.

February 08, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No