

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

CR No.5577 of 2017
Date of decision : 30.01.2018

Nisha Devi and another

...Petitioners

Versus

Chandan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kul Bhushan Sharma, Advocate for the petitioners.

ANIL KSHETARPAL, J. (ORAL)

The petitioners are in the revision petition against the order passed in appeal by the learned District Judge arising out of the proceeding under Order 39 Rule 2-A CPC alleging the violation of the interim order passed by the Court.

Learned First Appellate Court after discussing the facts available on the file has opined that there is no evidence available to record a finding that the temporary injunction order passed by the Court was ever violated.

Learned counsel for the petitioners has vehemently argued that there is a report of the Local Commissioner Ex.D1 on the file which proves the encroachment by the respondents. He has submitted that in view of the aforesaid report, learned District Judge committed error while accepting the appeal filed against the order passed by the trial Court. In this regard, it is

suffice to mention that Ex.D1 is only a piece of evidence. The suit is already pending in the Court. The First Appellate Court has held that there is no evidence that the encroachment took place after the temporary injunction orders were passed.

Still further, it is admitted position on the record that the applicants did not step into the witness-box to prove that fact. Only their General Power of Attorney, father-in-law of one of the applicant had appeared. The First Appellate Court has already noticed that the suit is pending and in absence of any evidence available on the file that the interim orders passed by the Courts were violated, the respondents cannot be ordered to be punished.

In view thereof, there is no scope for interference in the impugned order passed by the learned District Judge.

Revision petition is dismissed.

However, it is clarified that the trial Court while deciding the suit shall not be bound by the finding of the learned District Judge while deciding an application under Order 39 Rule 2-A CPC.

30.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No