

In the High Court of Punjab and Haryana at Chandigarh

248

CR No. 6449 of 2017 (O&M)

Date of decision: 12.11.2018

SURINDER KUMAR & ORS

.....petitioners

Versus

HARISH CHANDER & ANR

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Parvez Chugh, Advocate,
for the petitioners.

Mr. S.K.Arora, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(oral)

Defendants have come in revision against the order passed by the lower Appellate Court reversing the order of the trial Court under Order 39 Rules 1 and 2 CPC.

Plaintiffs filed a suit for permanent injunction restraining the defendants/ petitioners from interfering in the construction work of the plaintiffs. Plaintiffs claimed themselves to be owners in possession of the shop. Earlier the shop was owned by Amar Nath, father of plaintiff No.1 and father-in-law of plaintiff No.2. Plaintiffs further claimed that the defendants have no concern with the suit property and they are involved in restraining the plaintiffs from raising a new building on the shops in question.

Defendants contested the suit on the ground that the predecessor-in-interest of the defendants earlier filed a suit for

permanent injunction against Amar Nath restraining him from raising roof of shops No.9 and 10. In the aforesaid suit a compromise was effected to the effect that Amar Nath will not raise any construction over 9 feet and will raise construction below the ventilators i.e. 9 feet. The ventilators of the defendants had an opening towards the shop of the plaintiffs since 75 years. The defendants claimed their easementary rights to use those ventilators and windows.

Trial Court dismissed the application under Order 39 Rules 1 and 2 CPC. However, the lower Appellate Court reversed the same by observing that the application needs to be allowed and the plaintiffs are entitled to raise construction over the shops on their own risk subject to outcome of the decision of the suit on merits. The trial Court was also directed to dispose of the matter expeditiously.

During the course of arguments, learned counsel for the petitioners has pointed out import of order dated 17.5.2018 passed by this Court, wherein, it was recorded that the respondents are allowed to complete the construction with a condition that if the revision is decided against them, the construction will be demolished. Whether act of the plaintiffs would amount to closing down the ventilators and windows of the defendants would also be subject to quality of evidence to

be led by the parties during trial. Factum of road being lifted upto 3 to 4 feet would also require evidence by the parties. Taking judicial notice of the fact would also be dependent upon the quality of evidence to be led by the parties. Plaintiffs have already been permitted to raise construction at their own risk and responsibility.

Learned counsel for the respondents has submitted that the plaintiffs have already raised the construction. At the stage of consideration of the application under Order 39 Rules 1 and 2 CPC, the golden principles i.e. existence of prima facie case, balance of convenience and irreparable loss in the event of non grant of ad interim injunction are to be considered.

In view of the facts on record, order dated 17.5.2018 needs to be clarified to the effect that any construction made by the plaintiffs would be subject to decision of the suit. In case suit is dismissed, the plaintiffs would be under obligation to remove the construction in accordance with law. Trial Court shall make every endeavour to decide the suit at the earliest.

Petition stands disposed of accordingly.

November 12, 2018
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking
Whether reportable

Yes/No
Yes/No