

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

CR No.8168 of 2017

Date of Decision:22.01.2018

Gagandeep Singh
vs.

.....Petitioner

Saroj Sharma and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. G.S. Sidhu, Advocate for
Mr. Parvez Chugh, Advocate
for the petitioner.

Ramendra Jain (Oral)

Through the instant petition filed under Article 227 of the Constitution of India, the petitioner-plaintiff has laid challenge to the order dated 26.10.2017 (Annexure P.4) passed by the First Appellate Court thereby dismissing the application of the petitioner- plaintiff under Order 39 Rules 1 and 2 read with Section 151 CPC reversing the order of the trial Court dated 20.04.2017 (Annexure P.3.)

In nutshell, the petitioner instituted a suit for permanent injunction restraining respondent No.1- defendant from selling or displaying any product, eatable or beverage other than “Verka” products in booth allotted to her by respondents No.2 to 4 and further restraining respondents No.2 to 4 from allowing her to do so.

Along with suit, the petitioner- plaintiff filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC alleging that he took a canteen on lease from defendant- respondent No.3 for a period of one year w.e.f. 14.09.2002 to 13.09.2003 which was not further extended by the respondent's authority, but still he was occupying the canteen on payment of lease money regularly and, therefore, the petitioner- plaintiff had become

statutory tenant under respondents No.2 to 4 and was continuing as such.

The eviction petition filed by respondents No.3 and 4 against the petitioner- plaintiff was pending before the Collector, Ferozepur. During the pendency of the eviction petition aforesaid against the petitioner- plaintiff, respondent- defendants No.3 and 4 tried to open a “Verka” booth/ outlet in their premises but the petitioner- plaintiff had filed a suit for permanent injunction against them and obtained a status quo order which was later on vacated. Thereafter, respondent- defendant No.2 allotted a Verka Milk Bar to respondent No.1- defendant in which she was also selling other products without any legal right.

Upon notice, respondent- defendant No.1 contested the suit as well as aforesaid application under Order 39 Rules 1 and 2 read with Section 151 CPC pleading that before allotment of booth to her, the notice was published in a Daily Newspaper on 04.08.2016 inviting applications from the interested persons. The respondent No.1- plaintiff also applied and was allotted a booth on the basis of draw of lots held on 22.08.2016 for three years from 01.10.2016 to 30.09.2019 on deposit of security amount to the tune of ₹50,000/-. Resultantly, she was running the “Verka” Milk Bar/ Booth in Civil Hospital, Ferozepur as per terms and conditions.

Respondent- defendant No.2 in its written statement pleading the legality and validity of the allotment of booth to respondent No.1- defendant prayed for dismissal of the suit.

Similarly respondents- defendants No.3 and 4 in their separate written statements prayed for dismissal of the suit on the ground that the same was a counter blast to the eviction application filed by them against the petitioner- plaintiff under the relevant provisions of the Punjab Public

Premises (Eviction and Rent Recovery) Act (for short, 'the Act'). The licence of the petitioner- plaintiff had already been expired on non-payment of water and electricity charges by him on 13.09.2003 and also on account of non-renewal of his licence. The petitioner- plaintiff was being an illegal occupant of the canteen had no right to file the instant suit.

The trial Court after hearing both the sides accepted the said application of the petitioner- plaintiff under Order 39 Rules 1 and 2 read with Section 151 of CPC vide order dated 20.04.2017.

Being aggrieved, respondent- defendant No.1 preferred an appeal which was accepted vide impugned order dated 26.10.2017, thereby dismissing the said application under Order 39 Rules 1 and 2 CPC by reversing the order dated 20.04.2017 of the trial Court on the ground that petitioner- plaintiff had no locus standi to file any suit against the respondent No.1- defendant as his lease period for running the canteen had already expired and proceedings of his eviction were also pending against him. Respondent No.1- defendant in her written statement had categorically pleaded that she was running the "Verka" Milk Booth in the Civil Hospital as per terms and conditions and was not selling any item of other companies.

Learned counsel for the petitioner contends that since respondent No.1- defendant was allotted a booth in the Civil Hospital for selling the "Verka" products only, therefore, she was not entitled to sell the products of any other Company. The First Appellate Court without appreciating the above fact has wrongly dismissed the stay application of the petitioner- plaintiff by reversing the well reasoned order of the trial Court dated 20.04.2017. He while drawing attention of this Court towards

the photographs Annexure P.5 averred that respondent No.1- defendant has kept a large quantity of packets of snacks etc., in the booth which shows that she was running the booth allotted to her in violation of the terms and conditions, whereby he could sell only “Verka” products.

Having given thoughtful consideration to the submissions made by the learned counsel for the petitioner, this Court finds that, the instant petition is completely devoid of any merit for the reasons to follow:-

The petitioner has no locus standi to file any suit for permanent injunction or any stay application under Order 39 Rules 1 and 2 read with Section 151 of CPC against any of the respondents inasmuch as his licence/ lease has expired long ago in September, 2003 and thereafter, he is in illegal possession of the booth in the premises of respondents No.2 to 4.

Undisputedly, eviction proceedings under Sections 4 to 7 of the Act, are also pending against the petitioner- plaintiff for his eviction.

The grouse, if any, qua the alleged conduct of respondent No.1- defendant for unauthorisedly selling any product other than “Verka” at the most could be raised by respondents No.2 to 4 - defendants only and not by the petitioner- plaintiff, who is a totally dishonest man being unauthorisedly and illegally occupying the booth as an encroacher even after expiry of his lease on 13.09.2003.

I have gone through the impugned order of the First Appellate Court and find no illegality and perversity in the same.

Accordingly, the impugned petition is dismissed with exemplary cost of ₹2,000/- to be deposited by the petitioner with Punjab State Legal Services Authority, for filing of such type of frivolous and malafide petition, unnecessarily wasting previous time and energy of the Court which

could have been utilised for some genuine adjudication of some contentious litigation.

Member Secretary, Punjab State Legal Services Authority, Ferozepur is directed to recover the cost of ₹2,000/- from the petitioner. A copy of this order be sent to him for compliance.

January 22, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No