

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

431

FAO No. 2391 of 1996 (O&M)

Date of Decision : 2.4.2018

**M/s Jain Grit Udyog through its partner Sh. Mohinder Kumar Jain
....Appellant**

vs.

State of Haryana and anotherRespondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Sanjay Vij, Advocate
for the appellant.

Mr. Sidharth Sanwaria, DAG, Haryana.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing an application for injunction filed by the appellant.

The appellant had filed a suit for injunction restraining the respondent from recovering an amount of Rs.29,880/-. He moved an application for temporary injunction which was declined by the trial Court primarily on the ground that the recovery to be made was not an irreparable loss. He challenged the order of the trial Court in appeal but the Appellate Court not only dismissed the appeal but held that the suit itself was not maintainable and directed the trial Court to return the plaint to it and that is how he is before this Court.

Learned counsel has argued that against the impugned order he had filed two appeals and when the matter was pending in the second appeal

he came to know that the order has been passed on the basis of the statements of some persons who never appeared to give testimony and whom he was never given a chance to cross-examine and at that stage he filed the instant suit.

As per learned counsel firstly there is no warrant for the proposition that if a revision before the statutory authority is available a suit cannot be filed. He has drawn the attention of the Court to Section 9 of the CPC as per which the Courts shall (subject to the provisions herein contained) have jurisdiction to try all Suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Moreover, in the present case once it came to light that the order has been passed on the basis of the statements of certain persons the appellant could never confront the jurisdiction of the Civil Court could not be barred as the basic process was flawed.

Learned DAG is not in a position to show how order of recovery could have been passed by relying upon the statements of persons which were recorded ex parte behind the back of the appellant.

In the circumstances, it has to be held that the order directing the trial Court to return the plaint is illegal and that part of the order is set aside.

Learned counsel for the appellant states that the interim order was also wrongly declined by the trial Court. In my opinion, this argument cannot be accepted. Once the trial Court itself noticed that in the event of recovery being held illegal, reparation could be made, no fault could be found with the refusal of the injunction. The matter is now remanded back

to the trial Court for a decision of the case on merits. Parties through counsel are directed to appear before the District Judge, Gurgaon on 30.5.2018 so that the matter can be referred to the competent authority for further proceedings. Record be sent back to the District Judge, Gurgaon.

The appeal stands disposed of.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

2.4.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No