

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM 237-C-2018 in/ and
RSA- 140-2018 (O&M)
Date of decision: 11.01.2018

Madan Pal

.....Appellant

versus

Mahender Singh and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Subhash Rana, Advocate for
Mr.Sandeep Kumar Panwar, Advocate for the appellants

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

CM 237-C-2018

For the reasons mentioned in the application the same is allowed and delay of 61 days in re-filing the appeal stands condoned.

RSA- 140-2018 (O&M)

This regular second appeal has been filed against the judgment 20.2.2017, passed by learned Additional District Judge, Faridabad, affirming the judgment and decree dated 14.1.2015, passed by learned Civil Judge (Junior Division), Faridabad, whereby suit of the plaintiff was dismissed.

Plaintiff filed a suit for permanent injunction for restraining defendant no.1 from running any commercial unit/ workshop in the premises of House no.875-A, Bhodd Colony, Old Faridabad. Injunction

was also sought against defendant no.2 Municipal Corporation, Faridabad from granting any permission/ licence to defendant no.1 to carry out any commercial activities in the area.

I have heard learned counsel for the appellant and have also carefully gone through the file.

Before the lower Court, case of the plaintiff is that defendant no.1 has installed heavy power press and lathe machines in the residential premises bearing House no.875-A, which is causing heavy vibration, noise and pollution. Therefore, permanent injunction was sought. It was also averred that a complaint was also made to the Sub Divisional Magistrate, Faridabad on 27.1.2006 under Section 133 Cr.P.C. The Sub Divisional Magistrate after making an inquiry, dismissed the said complaint. The stand of the defendant was that in the said area, there are various workshops and floor mills. The suit against the workshop of the defendant no.1 has been filed with mala fide intention and enmity. It was stated that there is no pollution or vibration.

Proceedings under Section 133 of Cr.P.C. were initiated. Sub Divisional Magistrate visited the spot and after inspection, held that there is no nuisance created by the defendant at the spot. It was found that all the machines are in the centre of the premises at a distance of more than 200 square yards and there is no vibration or nuisance.

Learned Additional Civil Judge (Junior Division), Faridabad held that since plaintiff had failed to prove that there is any nuisance, therefore, the suit was dismissed.

I am of the view that there is no illegality or infirmity in the findings. According to the plaintiff, defendant is running heavy machinery

in the residential premises. The machinery already being run. Therefore, the suit for permanent injunction for restraining the defendant from running machinery was not maintainable. Rather, suit for mandatory injunction should have been filed for stopping the defendant no.1 from running the said machinery. Moreover, in this case, plaintiff had availed equally efficacious remedy under Section 133 Cr.P.C. Sub Divisional Magistrate conducted the inquiry and after inquiry, it was held that there is no nuisance or violation caused by defendant no.1. Therefore, the said complaint was dismissed.

Learned counsel for the appellant has informed that appeal was preferred before the learned Sessions Judge, which has also been dismissed. As such, findings have become final. Since, plaintiff has availed equally efficacious remedy, therefore, the injunction can otherwise not be granted. There is no illegality of infirmity in the concurrent findings of facts recorded by the two Courts below.

Resultantly, the present regular second appeal stands dismissed.

11.01.2018

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned: Yes

Whether Reportable: No