

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

SAO No.49 of 2018 (O&M)
Date of Decision.30.08.2018

Talwar Brothers

.....Appellant

Vs

Arun Shoe Store and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishal Gupta, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the order of the lower Appellate Court dated 09.02.2018 whereby the appeal preferred by the respondent-plaintiff against the order dated 05.08.2015 allowing the application submitted by the appellant-defendant for dismissal of the suit, has been allowed.

Mr. Vishal Gupta, learned counsel appearing on behalf of the appellant-defendant submitted that the respondent-plaintiff instituted the suit for permanent injunction restraining the appellant-defendant from making a permanent structure with concrete roof on the rear courtyard of SCO No.68-69, Sector 15-D, Chandigarh. When the suit was slated for plaintiff's evidence, an application on behalf of the appellant-defendant for dismissal of the suit was moved on the premise of alleged violation *vis-a-vis* the Chandigarh Estate Rules had been removed by the Estate Officer. The aforementioned fact was acknowledged by the Estate Officer in the reply. Keeping in view such circumstances, the suit was dismissed and in appeal laid

before the lower Appellate Court, the finding of the trial Court has been reversed. The finding of trial Court was that no useful purpose would be served in continuation of the trial as the relief of mandatory injunction incorporated by way of amendment would also be insignificant. The order of the trial Court has not been set aside in strict sense, despite that, the matter has been remitted to the trial Court to decide the suit on merits by affording opportunities to the parties.

In support of the aforementioned contention, reliance has been placed upon a judgment of Division Bench of Delhi High Court in *Sh. Ravindra Kishore Sinha Vs. Smt. Manjula Bhushan 2009 (22) RCR (Civil) 624* to contend that rigmarole of a trial is not to be routinely undertaken at every stage of the suit. Judges have to be vigilant to see as to whether cause of action for continuation of the suit survives or not.

The old law for adjudication of the application under Order 7 Rule 11 CPC on the basis of averment in the plaint is no longer a good law, thus, urges this Court for setting aside the order under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Gupta. The genesis of the order of the lower Appellate Court had been that the trial Court while accepting the application for dismissal of the suit remained oblivious of the relief sought i.e. mandatory injunction by way of amendment. In such eventuality, the trial Court ought not to have allowed the application

as part of the relief in the amended plaint remained alive. In such circumstances, the ratio decidendi culled out in the judgment cited above would not come to the aid of the appellant.

In view of the aforementioned, I do not find any illegality in the order under challenge and the same is upheld. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 30, 2018
Pankaj*

Whether Speaking/Reasoned Yes

Whether Reportable No