

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2042-2020

Date of Decision: 22.07.2020

Mohinder Singh Tanwar

....Petitioner

Versus

Kshatriya Sabha, Kurukshetra and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vivek Goyal, Advocate, for the petitioner.

HARNARESH SINGH GILL, J.

Challenge in the present revision petition filed under Article 227 of the Constitution is to the order dated 10.07.2020 (Annexure P.1) passed by the District Judge, Kurukshetra, whereby an application seeking transfer of Civil Suit 153 of 2020 titled as 'Mohinder Singh Tanwar Vs. Kshatriya Sabha and others' to some other Court of competent jurisdiction, has been dismissed.

The petitioner filed the aforesaid application, inter-alia, on the ground that the Presiding Officer, before whom, the Civil Suit was pending, was not acting fairly while dealing with the case and that he is giving short dates in the matter; that the petitioner, who is 70 years old, is facing a lot of inconvenience, while being compelled to appear on such short dates; that by giving such short dates, the Presiding Officer, is favouring the

defendants and that in this manner, the petitioner does not have any hope to get justice.

While passing the impugned order, the learned District Judge, has discussed the submissions made by the petitioner threadbare and dismissed the transfer application. The relevant extracts from the order would read as under:-

“..... It has been pleaded by plaintiff in the suit that he was duly elected Manager of Maharana Partap Shiksha Samiti/Maharana Partap Public School, Kurukshetra and member of governing body of Kshatriya Sabha, Kurukshetra, Haryana, but defendant Nos. 2 and 3 started interfering in the administration and have illegally nominated defendants No. 4 and 5 and had also nominated an illegal Shiksha Samiti in place of duly elected Maharana Partap Shiksha Samiti, which has wrongly and illegally passed resolution dated 09.02.2020 removing him as Manager. After hearing both the parties, Shri Amit Kumar Grover, Civil Judge (Senior Division), Kurukshetra, vide order dated 02.03.2020 had ordered that operation of the resolution dated 09.02.2020 shall remain in abeyance till the decision of pendency of injunction application. Since both the parties are claiming management of the institute, therefore, it is necessary to decide the case at the earliest for better administration of school and therefore, in this situation, if the learned Presiding Officer has fixed the case for arguments on 23.06.2020, when she was otherwise not holding Court as per duty

roster, is no ground to hold that she was favouring the defendants as alleged by plaintiff.

15. Now as far as submission of applicant that no message was sent about fixing of case on next date on his or phone of counsel is concerned, the same is also without any substance as it is common practice in the trial courts that generally the clerks take and note down the date in the case diary and, therefore, no fault can be found in the procedure adopted by the Reader in informing the clerk of the counsel for the applicant for adjourned date. The contention of applicant that he had not been supplied copy of order dated 23.06.2020 on the same day and same has also not been uploaded on the website of court is also baseless as the learned Presiding Officer has categorically stated that she signed the order on 22.06.2020 itself and same was uploaded.”

Learned counsel appearing for the petitioner vehemently contends that the civil suit filed by the petitioner, is being adjourned by the Presiding Officer for very short dates and he being a senior citizen is compelled to remain present on each and every date. It is further contended that the proceedings are being conducted in a post haste manner that too during Pandemic Covid-19, which shows that learned Presiding Officer, is favouring the defendants.

After hearing the learned counsel for the petitioner and going through the case file, I do not find any merit in the submissions made by the learned counsel for the petitioner.

In the application filed under Order 39 Rules 1 and 2 CPC by the petitioner-plaintiff, interim injunction order was passed by the trial Court on 02.03.2020, keeping in abeyance operation of the resolution dated 09.02.2020. The allegations of mala-fide of the petitioner against the Judicial Officer, are also baseless. A perusal of the order dated 23.06.2020 passed by the learned trial Court, would show that it was on the request of the learned counsel for the plaintiff that there were chances of compromise, the matter was adjourned to be taken up after half an hour. When the matter was taken up after half an hour, it emerged that the parties were not ready to compromise the matter. Instead of getting the injunction application finally decided, the petitioner was adamant in getting the application moved by him for striking off the defence of the defendants, decided first. Thus, the matter was adjourned to after lunch period for orders. When the matter was taken up for hearing during post lunch period, the application seeking striking off the defence of the defendants was dismissed. The said part of the order dated 23.06.2020 would read as under:-

“File taken up again. At this stage, the plaintiff and his counsel as well as counsel for defendants are not present. However, order pronounced. Vide my separate order of even date, the application for striking off the defence of the defendants for filing of power of attorney, application and written statements without any Resolution/Authority, is hereby dismissed as detailed therein. Court time is also about to over and now to come up on 24.06.2020 for arguments on stay application, on

which part arguments have already been advanced as well as for arguments on application under Order 7 Rule 11 of CPC. It is also made clear in this order that in case arguments on stay application are not advanced, then the stay order/abeyance order dated 02.03.2020 shall stand vacated. Arguments on other pending applications shall also be heard on the date fixed. All concerned be informed accordingly, who shall come present at 10 A.M., for arguments.”

From the conduct of the proceedings before the trial Court, it appears that the petitioner, who has already obtained an interim injunction order, intends to linger on the matter. The observations made by the learned District Judge that as both the parties are claiming management of the institute, therefore, it is necessary to decide the case at the earliest for the better administration of the School and, therefore, in this situation, if the learned Presiding Officer had fixed the case for arguments on 23.06.2020, when she was otherwise not holding Court as per duty Roster, is no ground to hold that she was favouring the defendants as alleged by the plaintiff.

It is beyond common prudence, as to why the plaintiff, who himself has filed the suit, is crying foul when the learned trial Court is taking up the matter for early disposal by giving short dates. In normal circumstances, the situation happens to be the converse, where the party instituting the suit alleges delay in disposal. The matter does not rest here. As stated above, the petitioner is enjoying interim injunction and the application under Order 39 Rules 1 and 2 CPC is yet to be

finally decided. Thus, by creating hindrance in decision of such application, the obvious motive of the petitioner is to delay and linger on the proceedings. Still further, being a civil matter, there is no merit in the contention of the petitioner that he is being compelled to attend the Court regularly. The petitioner can appear through his counsel and more so, during Pandemic Covid-19, when the Courts are being held through Video Conferencing, the assertions of the petitioner do not hold the ground.

The allegations of favoritism, having been not made out from the assertions made, it seems that the petitioner intends to overawe the Judicial Officer. If such assertions are entertained, the very administration of the justice would crumble.

In view of the above, finding no merit in the present revision petition, the same is hereby dismissed.

July 22, 2020
ds

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No