

Sr. No. 224

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

Civil Revision No. 2093 of 2020 (O&M)

DATE OF DECISION : 12.10.2020

Kuldeep &Ors.

...Petitioners

Versus

Shanti Niketan Yoga Ashram Trust &Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. VikramPoonia, Advocate
For thepetitioners.

Mr. HarkeshManuja, Advocate
Forrespondent No.1.

Mr. MaheshSaxena, Advocate
Forrespondent Nos.2 to 5.
(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

1. Impugned herein is an interim order dated 22.07.2020 passed by the trial Court. As an interim measure, defendants in the suit(petitioners herein) have been restrained from alienating the suit land and from interfering in the peaceful possession of the plaintiffs.

2. Impugned order reads as under:-

“Written statement and reply to injunction application by defendant No.1,2,4,6 and 16 not filed. Date is requested. Heard and allowed. Now, the case is adjourned to 02.09.2020 for filing the same. Court fees be filed on the date fixed.

Notice issued to defendant No.3,7,8,9,10,11,12,13,14 and 15 not received back in any form. Let, fresh notice to them be issued for the date fixed through registered post on filing of registered cover etc.

After having heard the rival submissions of ld. Counsel for the parties, defendants are hereby restrained from alienating the suit property, detailed in para No.2 of the plaint, and also from interfering in peaceful possession of the plaintiff except following due course of law, till further order.”

3. Major argument of learned counsel for the petitioners is, that notwithstanding, that the case is still at the stage of effecting service on unserved defendants, ad-interim injunction has been granted in haste. Ignoring altogether that written statement/s and reply to injunction application are yet to be filed by the served defendants, who had put in appearance. That apart, impugned order has been passed without application of judicial mind and assigning any cogent or convincing reasons, contends the counsel. According to him, the petitioners-defendants are left with no other remedy except to assail the said order before this Court.

4. Per contra, learned counsel for contesting respondents-plaintiffs, at the outset, objects to the maintainability of the instant revision petition. Per him, the petitioners have a remedy to file an appropriate application before the trial Court seeking vacation of ad interim injunction order. However, without resorting to the same, they have rushed to this court.

5. Having heard learned counsel for the parties and on perusal of record, I am of the opinion that the arguments advanced by learned counsel for the petitioners are bereft of any merit.

6. Rule 4 Order XXXIX of Code of Civil Procedure 1908, gives spot answer to the situation in hand. It precisely envisages where and how an order for injunction may be discharged, varied or set aside. The same reads as under:-

“Any order for an injunction may be discharged, or varied, or set aside by the Court, on an application thereto by any party dissatisfied with such order:-

Provided that if in an application for temporary injunction or in any affidavit supporting such application a party has knowingly made a

false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice :

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.”

7. Proviso to Rule 4 leaves no manner of doubt that when a temporary injunction has been granted without giving notice, the opposite side always has the remedy to move the same Court by filing an appropriate application seeking its recalling/ modification. Only when the all/opposite parties have been heard the same shall not be changed. Even when all parties have been heard, the court is still vested with the power to change its order provided, either there is change of circumstances or the court feels and is satisfied that the order has caused undue hardship.

8. I am, therefore, not in agreement with the argument of learned counsel for the petitioner that proviso to Rule 4 does not deal with the situation where a temporary interim order has already been passed. Per his understanding/argument, when a final injunction is granted to be operative during pendency of the suit, only then an aggrieved party can approach the same Court. The said argument, on the face of it, is devoid of merit and flies in the face of plain language of Order 39 Rule 4, which suggests otherwise.

9. Order dated 22.07.2020 passed by the learned Additional Civil Judge(Sr. Division), impugned herein clearly states that notice was issued to defendants No.3 and 7 to 15 and the same was not received back in any form, as on that date. Petitioners herein, who are defendants No. 6,1, 2, 3, 4,

9, 10, 12, 13 and 14, respectively in the suit, therefore, are/were yet to cause their appearance or to file their written statement as on the date of passing of the impugned order. The aforesaid proviso to Rule 4 gives them ample window to approach the trial Court for modification/ recalling of temporary injunction order, on causing appearance.

10. In the premise, instant revision petition is dismissed with liberty to the petitioner to approach the trial Court seeking modification/ recalling of the impugned ad interim injunction order by filing an appropriate application.

11. Pending applications, if any, stand disposed of.

October 12, 2020
Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No