

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

Civil Writ Petition No.12491 of 2020(O&M)

Date of decision: 01.09.2020

Jaswinder Kaur and another

...Petitioners

Versus

Civil Judge, Junior Division, Sunam and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Karan Garg, Advocate,
for the petitioners.

Mr. J.S.Bhinder, Advocate
for respondent no.2.

ANIL KSHETARPAL, J.

The petitioners have filed the writ petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondent no.1 i.e. Civil Judge (Jr. Division), Sunam, to decide an application for grant of an injunction in Civil Suit No.478 dated 12.06.2020 (*Jaswinder Kaur and another vs. Satnam Singh*) within the specified period. It is also prayed that during the pendency of the present petition, injunction be granted in favour of the petitioners against respondent no.2, restraining him from alienating his share in the suit property.

From the pleadings of the suit, it appears that the plaintiffs have filed a suit along with an application for permission to file a suit as an indigent persons for recovery of arrears of maintenance. Respondent no.2 herein, is the husband of petitioner No.1 and the father of petitioner No.2.

The petitioners have annexed zimni (daily) order dated 04.08.2020, passed by the learned Civil Judge, adjourning the case to 11.11.2020 for filing written statement to the plaint as well as reply to the application for grant of injunction.

In the considered view of this Court, the petitioners have an equally efficacious remedy of filing an appeal before the learned District Judge in accordance with Order 43 Rule 1(r) of the Code of Civil Procedure, 1908. In fact, this aspect has already been examined by the Supreme Court in A. Venkatasubbiah Naidu vs S. Chellappan And Ors (2007) SCC 695. After noticing the scheme of the Code of Civil Procedure, 1908, it has been held that in case where an ex-parte injunction is not granted and the application for injunction is not finally decided within 30 days, the aggrieved party shall be entitled to file an appeal before the Appellate Court even during the pendency of the application for grant of injunction. It has also been held that failure to decide the application or vacate the ex-parte temporary injunction shall, for the purpose of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of 30 days. Paragraph 21 of the judgment is extracted as under:-

"In such circumstances the party who does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court

shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3A. In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule."

Still further, the petitioners herein have not annexed the order passed by the Learned Trial Court on the first date of hearing when the suit was listed before the Court. It has also not been clarified that whether the application for permission to sue as indigent person has been allowed or not? On 04.08.2020, the learned Civil Judge only adjourned the suit for filing written statement to the plaint and reply to the application for grant of injunction.

Keeping in view the aforesaid facts, this court is of the considered view that since the petitioners have an equally efficacious remedy of filing an appeal, therefore, they are required to be relegated to the alternative remedy.

Disposed of accordingly.

01st September, 2020
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(ANIL KSHETARPAL)
JUDGE