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

CR No.431 of 2021 (O&M)
DATE OF DECISION: 01.03.2021

Sukhwinder Kaur

.... Petitioner.

Vs.

Simarjit Kaur and another

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Sunil Agnihotri, Advocate for the petitioner.

ALKA SARIN, J

Heard through video conferencing.

This is a petition under Article 227 of the Constitution of India for setting aside the order dated 19.02.2021(Annexure P-7) passed by the Civil Judge, Junior Division, Dasuya.

Brief facts relevant to the present case are that the plaintiff-respondent No.1 filed a suit for permanent injunction for restraining the defendant-petitioner and their attorney/agents from interfering in the peaceful possession of the plaintiff-respondent No.1 over her separate portion on the first floor of the shared house by way of placing locks to that separate portion in her possession or in any other manner or for forcibly dispossessing her from the portion in her possession.

Vide order dated 01.02.2021 (Annexure P-2) the suit was registered and on the application filed by the plaintiff-respondent No.1 under Order 39 Rule 1 and 2 CPC it was ordered as under :-

“Heard. The law is well settled that there should be an extra ordinary ground while passing any ex parte order in favour

of a party without hearing the other party which is not present to give his defence. The plaintiff has placed on record the site plan and the compromise as mentioned as mentioned above from which at this stage, the plaintiff has been able to convince the Court that she is in possession of the house in dispute being the daughter-in-law of the defendants and she has no other house to reside. After perusing the file as well as the documents placed on file this Court at this stage, is of view that the plaintiff has prima facie case in her favour. Balance of connivance also lies in favour of the plaintiff. Plaintiff shall also suffer irreparable loss and injury if the application is not allowed. Accordingly, in order to safe guard the right of the plaintiff over the house in dispute, the application in hand is hereby allowed ex parte and the defendants are hereby restrained from interfering into the peaceful possession of the plaintiff byway of placing locks or in any other manner and dispossessing her forcibly and illegally from the separate portion on the first floor of the residential house in dispute till the next date of hearing i.e.12.02.2021.”

It was further observed in the order that any observation made while granting the ex-parte stay order shall not be construed as an expression of opinion at the time of final disposal of the stay application or the main suit.

Thereafter, the plaintiff-respondent No.1 filed an application (Annexure P-3) under Section 151 CPC seeking police help for

implementation of the interim order dated 01.02.2021 (Annexure P-2). It was averred in the said application that the plaintiff-respondent No.1 was residing in a separate portion on the first floor with her minor daughter and despite the stay order granted on 01.02.2021 the defendant-petitioner was interfering in the peaceful possession of the plaintiff-respondent No.1 and was placing locks to the separate portion in possession of the plaintiff-respondent No.1 in which her entire household articles including valuable articles, clothes of a minor child and other articles were lying. Reply (Annexure P-4) was filed to the said application by the defendant-petitioner.

After hearing both the parties, the Civil Judge (Junior Division) Dasuya passed the impugned order dated 19.02.2021 (Annexure P-7) allowing the application (Annexure P-3) and directed the Station House Officer, Dasuya to get the order dated 01.02.2021 (Annexure P-2) implemented in letter and spirit. Aggrieved by the said order, the present petition has been filed.

Learned counsel for the petitioner has contended that a petition under Domestic Violence Act, 2005 is also pending which has been filed by respondent No.1-herein. He has further contended that the counsel for the petitioner was directed to file the reply to the application (Annexure P-3) on the same date and though the matter was adjourned for 17.03.2021 for his written statement, however, the impugned order (Annexure P-7) was passed. Learned counsel would further contend that the written statement is yet to be filed and the present order is illegal, arbitrary and unjust.

I have heard the learned counsel for the petitioner.

In the present case, an order was passed on 01.02.2021 by the Trial Court restraining the defendant-petitioner from interfering in the peaceful possession of the plaintiff-respondent No.1 by placing locks or in any other manner trying to dispossess her forcibly and illegally. Despite the said order, the defendant-petitioner is stated to have placed locks on the portion in separate possession of the plaintiff-respondent No.1.

During the course of hearing, a specific question was put to the learned counsel for the defendant-petitioner by this Court as to whether he was willing to make a statement that till the final order is passed on the application under Order 39 Rules 1 and 2 CPC the defendant-petitioner would desist from interfering in the possession of the plaintiff-respondent No.1. The learned counsel for the defendant-petitioner requested for a pass-over to get instructions. The matter was again taken up at the end of the board and the learned counsel for the defendant-petitioner only stated that the impugned order be stayed till 17.03.2021, till he files a written statement. However, the counsel for the defendant-petitioner was not willing to make a statement that till the decision on the application under Order 39 Rules 1 and 2 CPC the defendant-petitioner would refrain from interfering in the peaceful possession of the plaintiff-respondent No.1.

A specific question was also posed to the counsel for the defendant-petitioner as to whether any application for vacation of the order dated 01.02.2021 (Annexure P-2) was filed by the defendant-petitioner to which the learned counsel stated that he had no quarrel with

the order dated 01.02.2021 (Annexure P-2). However, he requested for stay of the impugned order (Annexure P-7) passed allowing Police help.

The suit itself is at its initial stage where the written statement has not yet been filed. The defendant-petitioner, despite there being a restraint order, is stated to be interfering in the peaceful possession of the plaintiff-respondent No.1 who is residing on the first floor of the house along with her minor daughter. The defendant-petitioner is also not willing to make a statement that till the decision on the application filed under Order 39 Rules 1 and 2 CPC she (the defendant-petitioner) would refrain from interfering in the peaceful possession of the plaintiff-respondent No.1.

Keeping in view the above-noted facts and the conduct of the defendant-petitioner wherein her counsel has on the one hand stated that she (the defendant-petitioner) has no quarrel with order dated 01.02.2021 (Annexure P-2) and yet on the other hand the defendant-petitioner is not willing to comply with the said order and is stated to have been violating the said order. In view thereof, I do not find any illegality or infirmity in the order dated 19.02.2021 (Annexure P-7) passed by Civil Judge (Junior Division), Dasuya.

The present petition is hence dismissed.

March 01, 2021
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO