

CR-1248-2021

Date of decision: 05.08.2021

Sital Singh

.....Petitioner

versus

Kewal Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. S.P. Soi, Advocate and
Mr. Sahil Soi, Advocate
for the petitioner.**FATEH DEEP SINGH, J.**

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

Revisionist-Sital Singh initially filed through his attorney a suit under Section 38 of the Specific Relief Act, 1963 for grant of a decree of permanent injunction in respect of his property detailed therein and along with it, filed an application under Order 39 Rules 1 & 2 CPC for grant of ad interim injunction against the defendants, now respondents.

The Court of the learned Civil Judge (Junior Division), Nakodar vide order dated 18.05.2021 passed the following order:-

“Suit received by entrustment. Report of reader seen. Court fees is found to be correct. It be registered. Along with the main suit, the plaintiff has moved an application under Order 39 Rules 1 & 2 CPC for grant of ad-interim injunction against defendants, which is also supported with duly sworn affidavit of plaintiff. A prayer is made for considering this

application ex parte in view of emergent circumstances. Heard on ex parte ad interim injunction. In the opinion of the court, from the pleadings and documents placed on record by the plaintiff, no grounds are made out to grant the ex parte ad interim injunction in favour of plaintiff without hearing the opposite party. As such ex party ad interim injunction is not granted at this stage in favour of plaintiff. Let notice of the suit as well as application be issued to the defendant for 27.05.2021 subject to filing the PF/RC and through ordinary process.”

Dissatisfied over the same, the plaintiff, thereafter, filed an appeal before the Court of the learned Additional District and Sessions Judge (NRI), Jalandhar. It is, thereafter, an application under 151 CPC was moved by the then appellant, now petitioner, for preponing the appeal and passing a specific reasoned order on the stay application of the applicant. The Court of the learned Additional District and Sessions Judge (NRI), Jalandhar vide order dated 31.05.2021 passed the following orders:-

“File put up before me being Duty Judge as the Ld. Presiding Officer is availing the joining time. In view of the office order bearing No.1507-18 G/-Covid-19 dated 10.05.2021 received from the office of Ld. District & Sessions Judge, Jalandhar, file is taken up for hearing.”

An application has been filed on behalf of the appellant for taking up the file of the appeal and for preponing the case and for passing a specific reasoned speaking order on the stay application of the appellant.

The perusal of the file shows that the present appeal in hand has been filed against the impugned order dated 18.05.2021 passed by the Court of Ms. Rajbinder Kaur, Civil Judge (Jr. Division), Nakodar whereby the grant of ex parte stay has been declined without hearing the opposite party. The appeal

file has already been adjourned by the Ld. Presiding Officer for 06.07.2021 for arguments. Now the Ld. counsel for the appellant has prayed for the grant of ex parte interim injunction by preponing the case. Ow since the appellant has prayed preponing of the case and for passing the ex parte stay order. So, before passing any order on the application in hand, I find it appropriate to issue notice to the respondents. Accordingly, notice of the application for preponing the appeal file as well as notice of main appeal and stay application is ordered to be issued to the respondent for 04.06.2021. Dasti summons be taken, if required, File be sent back to the concerned Court.

And the matter was adjourned to 04.06.2021 when none appeared on behalf of the present revisionist and so was the fate on the next dates i.e. 07.06.2021; 10.06.2021; 06.07.2021 and on 19.07.2021; adjournment had been sought on the grounds that the plaintiff/appellant has filed the instant revision. No doubt, in such a situation, the Courts need to be sensitive to the claim of a party and though the plaintiff/present petitioner is not left with any remedy. Under the provisions of Article 227 of the Constitution of India, this Court has ample powers of superintendence and control over the Subordinate Courts and, therefore, it is its first and foremost duty to intervene in the matter and to set aside the orders passed by the Courts below, if this Court comes to the conclusion that there is an abuse of the process of the Court and the lower Courts have passed an order which is unwarranted, unjustified, illegal and invalid. Reverting back to the instant case, the primary challenge before this Court is to the orders of the first Appellate Court in the civil revision

passed by the Court below and which necessary orders have been reproduced above. It is reflective therein that at the first place, the learned Trial Court of Civil Judge (Junior Division) has only given a reason why it feels appropriate to issue notice to the opposite side before adjudicating on the stay application and which was put to challenge by way of appeal, wherein, an application for preponement and decision on the stay application was moved. Thus, it is emphatically clear that on 31.05.2021 when the appeal was listed and miscellaneous application for preponement and passing of orders on *ex parte* stay application prayer was to be taken up, the Court found it appropriate to issue notice for preponement to the opposite side and though, it was not appropriate for the Court below to issue notice on the preponement application only when the opposite side has not been issued notice or was served.

Be so as it may and subsequent orders are quite reflective of the fact that it was none but the present petitioner who did not put in appearance repeatedly on 04 occasions which prompted the Court to adjourn the matter and, subsequently, on 19.07.2021, it was on the request of learned counsel for the petitioner that they have instituted the instant matter before this Court an adjournment was granted.

To the mind of this Court, though provisions of Order 39 Rule 1 & 2 CPC was not applicable to the order in question, as there was no order which was amenable to appeal under Order 43 Rule 1 CPC as no speaking order has come about in these proceedings and there was no declining of either interim order or grant of it and,

thus, there is no instance of exercise of discretion to grant or refuse to grant relief of temporary injunction by the Courts below. Rather, it was the own fault of the petitioner's side which did not appear and pursue the application which could lead to the passing of a fruitful orders by the Court below. It would have been appropriate for the petitioner to have filed revision where the Courts below have failed to exercise their jurisdiction vested in them by the law which the petitioner did not deem it appropriate at that stage.

In view of the foregoing observations, this Court does not feel inclined to show indulgence in the proceedings before the lower Courts, at this juncture. The petitioner is directed to approach the Court below and seek the remedies which they have tried to seek which still is to be adjudicated upon and it was too premature and preposterous for the petitioner to have come up before this Court.

The petitioner is directed to approach the Court below for early disposal of the application, so moved, which shall take up the matter and dispose it off, expeditiously.

The present petition stands disposed off accordingly with these observations.

05.08.2021
Neha

(FATEH DEEP SINGH)
JUDGE

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