

CR-2594 of 2020(O&M)

Date of Decision: 15.03.2021.

Sukhbir

...Petitioner

Versus

Surender @ Neetu

....Respondent

CORAM: HON'BLE MR JUSTICE ARUN MONGA

**Present : Ms. Naina Issar, Legal Aid counsel
for the petitioner.**

**Mr. Rajesh Goyal, Advocate
For the respondent.
(presence marked through video conferencing)**

ARUN MONGA, J. (ORAL)

1. Impugned herein is the order dated 07.10.2020(Annexure P-7) passed by the Appellate Court by virtue of which the appeal filed by the petitioner-plaintiff against the order dated 05.02.2020 passed by the trial Court declining the request of the plaintiff to grant ad-interim injunction, has been dismissed on the ground of delay.

2. The plaintiff filed a suit against the respondent claiming compensation of Rs.18,000,00/- on account of damages being caused to his property by the later. An application under Order 39 Rules 1 and 2 CPC was filed seeking ad-interim injunction to restrain the respondent from discharging the dirty water through outlet and from causing further damage to his property.

3. After contest, the said application was dismissed by the trial Court vide order dated 05.02.2020. Aggrieved, the petitioner filed an appeal before the Appellate Court below. The appeal was accompanied by an application seeking condonation of delay of more than 5 months in filing the appeal. The Appellate Court dismissed the application as also the appeal vide order dated 07.10.2020, impugned herein.

4. Having heard learned counsel for the petitioner, I am of the opinion that no interference is warranted in exercise of revisional jurisdiction.

5. Concededly, the trial Court dismissed the injunction application filed by the plaintiff under Order 39 Rules 1 and 2 vide an order dated 05.02.2020. The limitation period of filing an appeal qua the same is 30 days and yet the petitioner/ plaintiff chose to file the same on 31.08.2020, much after the period of limitation. No justification is come forward either in the pleadings or during course of arguments for not filing the statutory appeal within stipulated time despite the copy of order having been supplied to the petitioner on 18.03.2020.

6. Even otherwise, I see no ground to interfere on the merit of the case. The trial Court had rightly dismissed the application of the plaintiff filed under Order 39 Rules 1 and 2 CPC. The relevant of the order reads as under:-

“4. As per jamabandi for the year 2014-15 parties are co-sharer. As per photographs placed on record, there appears a passage and there also exists pacca drain/ Nali alongside the wall. The contentions of both the parties are matter of evidence. The question of possession and the nature of possession over the suit property cannot be determined without evidence.

5. In a matter of granting interim injunction, the applicant must prove that all the three points i.e. prima facie

case, balance of convenience and likelihood of suffering irreparable loss, must co-exist together. However, in the present case, the applicant-plaintiff has failed to prove so. In the peculiar facts and circumstances, no relief of injunction is made out in favour of plaintiffs at this stage.”

7. In view of the above, instant revision petition stands dismissed.

March 15, 2021

Jiten

(ARUN MONGA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No