

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

129

**CR-1500-2022 (O&M)
Date of decision: 11.05.2022**

M/s S.S. Fitness Club

.....Petitioner

Versus

Nirmal Chhaya Flat Owners Welfare Society (Regd.)Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rakesh Bhatia, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been filed under Article 227 of the Constitution of India to impugn the order dated 30.03.2022 (Annexure P-4) whereby the learned lower appellate Court upheld the order of dismissal passed by the learned trial Court dismissing an application under Order 39 Rule 1 and 2 CPC preferred by the petitioner/plaintiff in a suit which had been filed by it for permanent injunction to restrain the respondent/defendant from forcibly dispossessing the petitioner/plaintiff and from interfering in the plaintiff's peaceful possession and also from not causing any obstruction by way of damaging the demised premises i.e. one swimming pool of depth of 6 feet, one small kids swimming pool, pump room, dressing room, washroom and amenities available at site adjoining to the Club House situated in Nirmal Chhaya Tower, VIP Road Zirakpur.

Learned counsel for the petitioner submits that both the Courts below while deciding the application under Order 39 Rule 1 and 2 CPC had virtually decided the suit at that stage itself which was not

permissible under law. He further submits that as per the lease deed dated 01.04.2019 (Annexure P-1) the lock-in period was upto 30.03.2021. Therefore, the petitioner/plaintiff had no right to revoke the lease unilaterally, more so, when no notice as required under Clause 8 was served upon the petitioner qua termination of the lease. He submits that subsequent lease deed executed by the respondent in favour of one Mumtaz Ahmad was a false and fabricated document executed with an oblique motive to oust the petitioner from the demised premises. He further submits that since there was a change of office bearers in the respondent society, new office bearers wanted their own man to operate the swimming pool and a drama was in fact enacted to dispossess the petitioner. Learned counsel submits that while passing the impugned orders the Courts below misinterpreted the letter dated 12.03.2021 (Annexure P-3) by taking it to be a letter vide which the petitioner had applied for a fresh lease, though it was just a quotation letter for carrying out renovations, sent by the petitioner.

I have heard learned counsel and perused the material on record.

It cannot be over-emphasized that the relief of injunction being an equitable and discretionary relief, cannot be claimed as a matter of right. The Court at the stage of deciding an application under Order 39 Rule 1 and 2 CPC is not required to delve into the merits of the case. The test to be applied while granting temporary injunction are (i) whether the plaintiff has a prima facie case (ii) whether the balance of convenience lies in favour of the plaintiff and (iii) whether the plaintiff would suffer irreparable loss in the absence of temporary

injunction.

All the aforementioned three factors must co-exist and in the absence of even one out of the aforementioned three, an application under Order 39 Rule 1 and 2 CPC shall fail.

Adverting to the case in hand, admittedly a new lease deed has since been executed by the respondent society in favour of one Mumtaz Ahmad who has carried out the renovations and necessary repairs in the demised premises i.e. swimming pool which finds duly incorporated in the reply filed by the respondent before the trial Court. Therefore, it can be safely inferred that the petitioner is no more in possession of the demised premises. Merely because some belongings of the petitioner are lying in a small room inside the premises of the respondent society would not amount to the petitioner's possession over the demised premises. In the circumstances, the balance of convenience cannot be said to lie in the petitioner's favour. Furthermore, whether the new lease deed is a ploy for ousting the petitioner or is a genuine document would be a matter which would be decided during trial. This Court cannot be expected to embark upon an enquiry into the same at this stage. If the lease as alleged by the petitioner has been wrongfully terminated, the petitioner would always be at liberty to avail all the alternate remedies under the law, including for recovery of damages, from the respondent society.

Dismissed.

11.05.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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