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

CIVIL REVISION No.1345 of 2021 (O&M)

RESERVED ON : 27.10.2022

DATE OF DECISION : 09.11.2022

Jagmohan Bakshi

.....Petitioner

versus

M/s Sumeet Enterprises and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Prateek Gupta, Advocate for the petitioner

Mr. Neeraj Grover, Advocate for respondent No.1

Mr. Arvind Seth, Advocate for respondent No.2

Mr. Gaurav Jindal, Advocate for respondent No.3

..

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed by the defendant No.1-petitioner against the order dated 28.05.2021 (Annexure P-1) passed by the Appellate Court dismissing his appeal against the order dated 02.04.2021 (Annexure

P-2) passed by the Trial Court on an application filed by the plaintiff-respondent No.1 under Order 39 Rules 1 and 2 CPC.

The brief facts relevant to the present *lis* are that in 1984 the plaintiff-respondent No.1 applied for an industrial plot in Sector 18, Gurugram. A regular allotment letter was issued in its favour on 17.03.1986 qua Plot No.49, Sector 18, Gurugram measuring 450 sq. meters. On 08.03.1991 the letter of allotment dated 17.03.1986 was cancelled by Haryana Urban Development Authority (HUDA) for non-construction and the suit property was resumed. On 02.04.1991 the plaintiff-respondent No.1 approached the civil court for the appointment of an Arbitrator. On 24.11.1992, HUDA allotted the suit property to one M/s Vishal Exports for valuable consideration which is stated to have been duly paid. On 01.02.1994 the Conveyance Deed was also executed in favour of M/s Vishal Exports. On 15.07.1996 M/s Vishal Exports transferred the suit property to one Mohan Gandhi and Harbans Gandhi vide a registered sale deed, transfer fee was also paid to HUDA. On 10.01.2005 the Civil court directed HUDA to appoint an Arbitrator. On 19.02.2007 an arbitral award was passed rejecting the prayer of the plaintiff-respondent No.1 for re-allotment. However, the plaintiff-respondent No.1 was directed to make a representation to HUDA for allotment of an alternate plot and HUDA was directed to consider the case sympathetically. The said arbitral award attained finality in as much as the same was not challenged by the plaintiff-respondent No.1. On 04.06.2007 a representation was sent by the plaintiff-respondent No.1 to HUDA requesting for the re-allotment of the same plot. Meanwhile, on 31.05.2018 Mohan Gandhi transferred his share in the suit

property in favour of Harbans Gandhi vide a registered deed. On 11.07.2018 Harbans Gandhi transferred his share in the suit property in favour of his son Rahul Gandhi under a registered deed. On 29.10.2018 the defendant No.1-petitioner purchased the suit property from Rahul Gandhi by way of a registered sale deed. On 17.12.2018 the defendant No.1-petitioner was recorded as an owner and was issued a fresh letter of allotment in his favour by HUDA. In 2019 the plaintiff-respondent No.1 filed an execution petition praying for execution of the Award dated 19.02.2007. On 20.02.2021 the defendant No.1-petitioner is stated to have commenced construction on the suit property. On 25.03.2021 the present suit was filed by the plaintiff-respondent No.1 for permanent injunction and mandatory injunction. The plaint was accompanied with an application under Order 39 Rules 1 and 2 CPC for inter-alia restraining the defendant No.1-petitioner from raising any construction on the suit property and from creating any third party interests. The Trial Court vide order dated 02.04.2021 granted *ad interim* injunction in favour of the plaintiff-respondent No.1 and directed the parties to maintain *status-quo* qua alienation and construction over the suit property. The said order was challenged in appeal by the defendant No.1-petitioner and vide the impugned order dated 28.05.2021 his appeal was also dismissed.

Learned counsel for the defendant No.1-petitioner has addressed oral arguments and also filed written submissions. It is contended that the plaintiff-respondent No.1 has based his claim on the doctrine of *lis pendens*. It is the contention that the defendant No.1-petitioner is a *bonafide* purchaser for valuable consideration as the earlier

vendor had a clear title. It is further the contention that the Courts below have erroneously relied upon the doctrine of *lis pendens* as envisaged under Section 52 of the Transfer of Property Act, 1882 which applies only during the pendency of a suit. It is further the case that the *lis* came to an end with the passing of award dated 19.02.2007 by the Arbitrator. The learned counsel would further contend that in 2019 when the plaintiff-respondent No.1 filed for execution of the award dated 19.02.2007, therein also the claim was for the allotment of an alternate plot. The learned counsel has relied upon the judgments in **Nirmaljit Singh & Ors. vs. Harnam Singh (Dead) by LRs & Ors. [(1996) 8 SCC 610]**; **Best Sellers Retail (India) Private Ltd. vs. Aditya Birla Nuvo Ltd. & Ors. [(2012) 6 SCC 792]**; **Thomson Press (India) Ltd. vs. Nanak Builders & Investors Pvt. Ltd. & Ors. [(2013) 5 SCC 397]**; **Madhukar Nivrutti Jagtap & Ors. vs. Pramila Bai Chandulal Parandekar (dead) through LRs & Ors. [(2020) 15 SCC 731]**; and **Nirbhay Singh Brar & Anr. vs Jagdeep Singh Dhindsa and Another [CR-1727-2022 decided on 21.07.2022 & affirmed by the Supreme Court vide order dated 10.10.2022 passed in SLP No.17132/2022]**. The learned counsel for the defendant No.1-petitioner has further argued that the injury caused to the plaintiff-respondent No.1 should not be such which cannot be compensated in monetary terms in case the *ad-interim* injunction is not granted.

The learned counsel for the plaintiff-respondent No.1 has addressed oral arguments and also filed written submissions and *per contra*, it has been contended that it is not in dispute that the plaintiff-respondent No.1 is the original allottee of the suit property and that in the

order dated 05.10.2021 (Annexure R-2/1), which has been placed on the record by the Haryana Shehri Vikas Pradhikaran (HSVP), it has been stated by the Chief Administrator, HSVP that “*the resumption of plot in question falls flat in the eyes of law*” and that the suit property was wrongfully resumed in March 1991. It is further the contention that no construction was done on the suit property since 1991 up to March 2022 and hence the plaintiff-respondent No.1 was compelled to approach the Civil Court. It is also submitted that the application under Order 39 Rules 1 and 2 CPC has been argued without filing the written statement and on 27.05.2021, before the Appellate Court, an undertaking was given that the appellant therein i.e. the defendant No.1-petitioner herein would not insist on a separate adjudication of the *ad interim* injunction application or file a reply to the said application before the Trial Court. The learned counsel has further contended that the scope of interference in a revision petition is limited and has placed reliance on the decisions in **Wander Ltd. & Ors. Vs. Antox India P. Ltd. [(1990) Supp. SCC 727]** and **Mohd. Mehtab Khan & Ors. vs. Khushnuma Ibrahim & Ors. [(2013) 9 SCC 221]**. It is further the contention that the impugned order is a well reasoned order and that all three parameters for grant of *ad interim* injunction were in favour of the plaintiff-respondent No.1. Reliance has been placed upon **Dalpat Kumar & Ors. Vs. Prahlad Singh & Ors. [(1992) 1 SCC 719]** and **Dev Prakash & Ors. Vs. Indra & Ors. [(2018) 14 SCC 292]**. The learned counsel would further contend that the principle of *lis pendens* as envisaged under Section 52 of the Transfer of Property Act, 1882 would be fully applicable to the present case and that fraudulent transfers were made during the

pendency of the *lis*. It is submitted that the *lis* started with the invocation of the arbitration on 02.04.1991 and continues till date. Reliance has been placed upon **Jagan Singh (Dead) through LRs vs. Dhanwanti & Ors. [(2012) 2 SCC 628]**, **Maharwal Khewaji Trust, Faridkot vs. Baldev Dass [(2004) 8 SCC 488]** and **Raj Kumar vs. Sardari Lal & Ors. [(2004) 2 SCC 601]**. It is contended that fraud vitiates every transaction and that the transfer in favour of the defendant No.1-petitioner is a result of a fraudulent transfer.

Heard.

In the present case the plaintiff-respondent No.1 was allotted the suit property vide a regular allotment letter dated 17.03.1986. The suit property stood resumed for non-construction on 08.03.1991. On 02.04.1991 a suit was filed by the plaintiff-respondent No.1 for the appointment of an Arbitrator. The arbitral award finally came to be passed on 19.02.2007 (Annexure P-3). The concluding portion of the said award reads as under :

“Keeping in view the above facts and circumstances and a perusal of file reveals that the appellant’s plot has been resumed due to non setting up of unit/construction on 8.3.1991. A perusal of record shows that possession has to be offered as per clause No.7 of the allotment letter dated 17.3.1986 but the same was never offered/delivered after the issuance of allotment letter. The letter produced by the appellant Xen, HUDA Divn. No.2, Gurgaon dated 2.1.2006 also

confirm the completion of development works in the year 1988-89, therefore, without completion of the development works, deliver/offer of the possession, resumption is uncalled for since the plot has already been transferred to M/s Vishal Exports and further to Sh. Mohan Gandhi, the prayer of the appellant though germane and justified cannot be accepted at this stage. However, the appellant can only be considered against allotment of a plot out of available vacant plots for which the competent authority is a constituted committee at the Headquarter Level. Therefore, taking a realistic approach it will be in the fitness of things that the case of the appellant is recommended to the constituted Committee for sympathetic consideration for allotment of a Industrial Plot as per HUDA Policy as the earlier plot has already been allotted and transferred. The appellant can file a detail representation to the competent authority. The arbitration case is disposed of accordingly.”

The said award dated 19.02.2007 was made a rule of the Court on 21.08.2007. Thereafter, the case as set up by the plaintiff-respondent No.1 is that, numerous applications, representations and reminders were sent to Haryana Shehri Vikas Pradhikaran (HSVP) [earlier known as Haryana Urban Development Authority (HUDA)]. It is apt to note that at no point of time were any objections or appeal filed challenging the award dated

19.02.2007. In August 2019, as per the list of dates supplied by the learned counsel for the plaintiff-respondent No.1, an execution petition was filed before the Court at Gurugram seeking a direction for re-allotment of the same plot i.e. the suit property and in the alternative a plot in the same vicinity. Before the Executing Court, on 19.11.2019, Shri Hanuman Singh, Clerk, HSVP, vide his separate statement recorded, stated that an alternate plot would be allotted as per the draw and for that purpose a list had already been sent by the Administrator, HSVP to Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC). On 06.08.2020 (Annexure P-6) the following order was passed by the Executing Court :

“In compliance of Order of Learned District & Sessions Judge, Gurugram dated 30.07.2020 received vide endorsement No.3509, file has been put up before me being Duty Magistrate. Perusal of the file shows that on dated 19.11.2019 Sh. Hanuman Singh, Clerk, HUDA, Gurugram turned up in the court and submitted that on 24.09.2019 a letter to allot alternate plots have been sent to Administrator Head Quarter alongwith list of alternate plots. All the alternate plots are to be given after draw of plots. This statement was given by him as per records available with him at that time.

Thereafter, learned counsel for DH requested that a direction be passed to Chief Administrator, HUDA to grant alternate site as nothing has been done so far.

However, learned counsel for JD Sh. Anil Sura submitted that they are trying their best to do the needful in this case. However, due to outbreak of Covid-19 Pandemic the movement of the files is at snail pace, hence, sufficient time be given for reconsideration of representation of Decree Holder. Heard. In view of that situation, Chief Administrator, HUDA is directed to consider the representation so made by DH well within 90 days of receiving of this order and to pass speaking order thereupon. Meanwhile, this execution petition shall be pending before this court. Now, to come up on 26.11.2020 for compliance. Copy of this order be sent to Chief Administrator, HUDA for compliance.”

On 25.03.2021 the present suit was filed by the plaintiff-respondent No.1 for permanent injunction and mandatory injunction along with an application under Order 39 Rules 1 and 2 CPC. Vide order dated 02.04.2021 (Annexure P2) the Trial Court directed the parties to maintain *status quo* qua alienation and construction over the suit property. The case was adjourned for filing written statement and reply to the injunction application. Aggrieved by the said order an appeal was preferred by the defendant No.1-petitioner. Before hearing arguments in the appeal, on

27.05.2021, the counsel for the appellant-defendant no.1 i.e. the defendant No.1-petitioner herein furnished an undertaking to the effect that the appellant shall not insist on a separate adjudication of the interim injunction application or to file a reply to the said application before the Trial Court. It was recorded by the Appellate Court in it's order dated 27.05.2021 that *"The counsel for the appellant-defendant no.1 has furnished an undertaking to the effect that the appellant shall not insist on a separate adjudication of the interim injunction application or to file a reply to the said application before the Trial Court. The Ld. counsel has placed reliance upon the decision of Hon'ble Supreme Court in case titled as 'A. Venkatasubbiah Naidu Vs. S. Chellappan and Ors.' reported as (2000) 7 SCC 695 to contend that the impugned order has also been passed under Order XXXIX Rule 1 CPC and is appealable as indicated in the Order XLIII Rule 1 CPC and the choice is for the party affected by the order, either to move to the Appellate Court or to approach the same Court"*. Vide the impugned order dated 28.05.2021 passed by the Appellate Court the defendant No.1-petitioner was restrained from raising any construction over the plot in question and was also restrained from alienating the plot during the pendency of the suit. The appeal of the defendant No.1-petitioner was dismissed.

The entire case of the plaintiff-respondent No.1 before the Courts below and also before this Court hinges on the claim that the doctrine of *lis pendens* would apply. The argument raised by the learned counsel for the plaintiff-respondent No.1 is that with the filing of the suit for appointment of an Arbitrator in 1991 the *lis* commenced and continues

till today and hence during the pendency of the *lis* the construction on the suit property would render the claim of the plaintiff-respondent No.1 as infructuous.

The award was passed by the Arbitrator on 19.02.2007 (Annexure P-3) and a perusal of the same reveals that the prayer of the plaintiff-respondent No.1 for re-allotment of the suit property was not accepted. However, as the suit property had already been allotted and transferred, the case for allotment of an alternate plot to the plaintiff-respondent No.1 was directed to be considered sympathetically and the plaintiff-respondent was directed to file a representation to the competent authority in this regard. The plaintiff-respondent No.1 in it's wisdom chose to accept the award dated 19.02.2007 (Annexure P-3) passed by the Arbitrator and did not challenge it further. The said award was also made a rule of the Court on 21.08.2007. Various representations, copies of which have been handed over in Court by the learned counsel for the plaintiff-respondent No.1, reveal that starting 04.06.2007, the plaintiff-respondent No.1 represented to the Chief Administrator, HSVP for re-allotment of the suit property and, despite having accepted the award dated 19.02.2007 and having chosen not to challenge the same, the plaintiff-respondent No.1 continued to represent regarding re-allotment of the suit property. The representation of the plaintiff-respondent No.1 was decided by the Chief Administrator, HSVP vide order dated 05.10.2021 (Annexure R-2/1) wherein it was *inter-alia* stated that HSVP could not take a decision regarding the allotment of an alternate plot since the industrial sectors of

HSVP stood transferred to HSIIDC and that the MD, HSIIDC was the competent authority to take a call in the matter.

Firstly, dealing with the contention of *lis pendens*, the *lis* regarding the suit property *prima facie* came to an end with the passing of the award dated 19.02.2007 (Annexure P-3) which has attained finality. The award was passed by the Arbitrator on 19.02.2007 and the prayer of the plaintiff-respondent No.1 for re-allotment of the suit property was not accepted. However, since the suit property had already been allotted and transferred, the case for allotment of an alternate plot to the plaintiff-respondent No.1 was directed to be considered sympathetically. Thus, the *lis* qua the suit property had ended and what remained was consideration for allotment of an alternate plot. From 2007 to 2019 the plaintiff-respondent No.1 sent representations and reminders contrary to the award passed and only sought re-allotment of the same plot i.e. the suit property even though the prayer of the plaintiff-respondent No.1 for re-allotment of the suit property was not accepted by the Arbitrator. The plaintiff-respondent No.1 did not challenge the award passed by the Arbitrator and the said award was also made a rule of the Court but the plaintiff-respondent No.1 tried to keep the suit property in the loop by making requests for its re-allotment.

Section 52 of the Transfer of Property Act, 1882 reads as under :

*“52. Transfer of property pending suit relating thereto
- During the pendency in any Court having authority
within the limits of India excluding the State of Jammu*

and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.”

The learned counsel for the plaintiff-respondent No.1 has not been able to convince this Court that any *lis qua* the suit property survived after the passing of the award by the Arbitrator on 19.02.2007. The only argument raised by the learned counsel for the respondent is that the plaintiff-respondent gave several representations for re-allotment of the suit property and hence the principles of *lis pendens* would apply. This Court, ex-facie, is unable to accept that even in the absence of any proceedings pending before a Court of law qua the suit property it can be canvassed that the principles of *lis pendens* would apply merely because the plaintiff-respondent No.1 was repeatedly sending representations for re-allotment of the suit property in it's favour which prayers were in any case contrary to the Arbitral award which stood accepted by the plaintiff-respondent No.1 and which award attained finality not having been challenged in any Fora.

In the case of **Jagan Singh** (*supra*), referred to by the learned counsel for the plaintiff-respondent No.1, the sale had taken place prior to

the filing of the second appeal but before the limitation period for filing the second appeal had expired. Though in the present case the award was passed on 19.02.2007 the same was never challenged and hence attained finality. The prayer of the plaintiff-respondent No.1 for re-allotment of the suit property was not accepted by the Arbitrator. Thus, at first blush, there is no way that it can be said that the suit property was subject matter of any *lis* once the arbitral proceedings concluded with the award being made rule of the Court and not being challenged further.

Having kept quiet from 2007 to 2019, when the execution petition was filed, the plaintiff-respondent No.1 now cannot turn around and claim his lien on the suit property. Rather, the Arbitral award did not accept the claim of the plaintiff-respondent No.1 for re-allotment of the suit property and recommended sympathetic consideration for allotment of an alternate plot which appears to be, from the documentation placed on record, under active consideration. However, the counsel for HSVP and HSIIDC were not in a position to make a statement regarding this since the stand taken by HSIIDC was that it was not aware that the matter was now pending before it. Be that as it may, at this stage, to hold that *lis pendens* would apply in the face of the facts as brought before this Court, would be rather far-fetched. The judgment relied upon by the learned counsel in the **Jagan Singh's** case (*supra*) being totally distinguishable on facts would not come to the aid of the respondent. As regards the judgment referred by the learned counsel for the plaintiff-respondent No.1 in the case of **Raj Kumar** (*supra*), there can be no manner of doubt that even a person though not arrayed as a party to the *lis* but a transferee *lis pendens* would be bound

by the orders passed. In the present case, the transfer of the suit property in favour of the defendant No.1-petitioner or his predecessors-in-interest was not during the pendency of the proceedings before the Arbitrator and hence the said judgment is also of no avail to the plaintiff-respondent No.1.

The second argument of learned counsel for the plaintiff-respondent No.1 is that the scope of interference in a revision petition is limited and in support of this argument he placed reliance on the decisions rendered by the Supreme Court in **Wander Ltd.** (*supra*), **Mohd. Mehtab Khan** (*supra*), **Dalpat Kumar** (*supra*) and **Dev Prakash** (*supra*). Para-9 of the judgment in the case of **Wander Ltd.** (*supra*) reads as under :

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not

be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

“... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

The appellate judgment does not seem to defer to this principle.”

In the present case, the plaintiff-respondent No.1 has not been able to make out a *prima facie* case in it's favour in as much as after the Arbitral award was passed vide which his claim for re-allotment of the suit property was not accepted and only a recommendation for allotment of an

alternate plot was directed to considered sympathetically, the plaintiff-respondent No.1 cannot claim to have an inherent right in the suit property. Both the Courts below have erred in treating the present case as if the plaintiff-respondent No.1 had an inherent right in the suit property and have failed to appreciate that the claim for re-allotment was not accepted by the Arbitral award and only a recommendation for an alternate allotment was to be considered sympathetically. The said Arbitral award attained finality and was never challenged by the plaintiff-respondent No.1. That being so, it cannot be said that a *prima facie* case is made out in favour of the plaintiff-respondent No.1.

In the case of **Best Sellers Retail (India) Pvt. Ltd.** (*supra*), referred to by the learned counsel for the defendant No.1-petitioner, the Supreme Court while dealing with a case for grant of temporary injunction has held as under :

“26. It has been held by this Court in Kishoresinh Ratansinh Jadeja v. Maruti Corpn., (2009) 11 SCC 229 that it is well established that while passing an interim order of injunction under Order 39 Rules 1 and 2 CPC, the Court is required to consider:

- (i) whether there is a prima facie case in favour of the plaintiff;*
- (ii) whether the balance of convenience is in favour of passing the order of injunction; and*

(iii) whether the plaintiff will suffer irreparable injury if an order of injunction would not be passed as prayed for.

Hence, we only have to consider whether these well-settled principles relating to grant of temporary injunction have been kept in mind by the trial court and the High Court.”

As discussed above, no *prima facie* case has been made out in favour of the plaintiff-respondent. The balance of convenience is also not in favour of passing an *ad-interim* order of injunction in favour of the plaintiff-respondent No.1.

Whether the plaintiff-respondent No.1 would suffer an irreparable injury in case an order of *ad-interim* injunction is not passed in it's favour is also not tilting in it's favour in as much as any construction which would be carried out by the defendant No.1-petitioner would be at his own risk and responsibility and would be subject to the outcome of the present case. However, restraining the defendant No.1-petitioner from raising construction on the suit property would cause him an irreparable loss and injury more so in the absence of a *prima facie* case and balance of convenience in favour of the plaintiff-respondent No.1. It is apt to note that the transfers in favour of the predecessors-in-interest of the defendant No.1-petitioner and the transfer in his favour are all sanctioned by HSVP and the same have not been challenged till date in any Court of law. Even the present suit is only for permanent injunction. Merely because the

plaintiff-respondent No.1 claims to have an inherent right in the suit property is not sufficient to grant an ad-interim injunction in it's favour.

In the case of **Makers Development Services Pvt. Ltd. vs. M. Visvesvaraya Industrial Research and Development Centre [2012 (1) SCC 735]** the Hon'ble Supreme Court reiterated the principles for passing of an interim order of injunction under Order XXXIX Rules 1 and 2 CPC and held as under :

“11. It is settled law that while passing an interim order of injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, the court is required to consider three basic principles, namely, (a) prima facie case, (b) balance of convenience and inconvenience, and (c) irreparable loss and injury. In addition to the abovementioned three basic principles, a court, while granting injunction must also take into consideration the conduct of the parties.

12. It is also established law that the court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof and in dealing with such matters the court must make all endeavours to protect the interest of the parties.”

In the matter of **Dalpat Kumar (supra)** it was inter-alia held that :

“5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is

“a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to

find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

The above judgment relied upon by the counsel for the plaintiff-respondent No.1 rather furthers the case of the defendant No.1-petitioner.

There can be no quarrel with the law laid down in the case of **Maharwal Khewaji Trust** (*supra*) referred to by the learned counsel for the plaintiff-respondent No.1. However, the same would also not come to his aid in as much as it has repeatedly been held by the Supreme Court that before temporary injunction can be granted three basic principles need to be seen - (a) *prima facie* case, (b) balance of convenience and inconvenience, and (c) irreparable loss and injury. In addition to the abovementioned three basic principles, a court, while granting injunction, must also take into consideration the conduct of the parties. In the present case, as discussed above, all three ingredients for grant of temporary injunction are woefully missing.

The judgment relied upon by the counsel for the plaintiff-respondent No.1 in the case of **HUDA vs Shashi Bansal and Ors. [2000 (3) RCR (Civil) 617]** is a case where basic facilities were not provided by HUDA and hence it was held no interest accrued in favour of HUDA on the unpaid amount. This is not the question which arises in the present case.

In **Rubinder Singh vs. Rajasthan Financial Corporation [(1995) Supp. SCC 93]** the Supreme Court held that a direction which amounted to practically decreeing the suit was beyond the purview of granting interlocutory orders. It was held as under :

“2. The respondent filed the suit on November 1, 1989 impugning the validity of the sale and also his liability to pay arrears as claimed by the Corporation. He also sought for an ad-interim injunction pending suit. Initially, interim injunction was granted but later it was dissolved. On appeal, the High Court in the impugned order allowed the appeal practically set aside the sale and has given certain directions to conduct the sale in the manner indicated therein. We have heard the counsel for the parties. On the facts and circumstances of the case, we are of the view that the High Court was not justified at this stage to give those directions as indicated in the judgment. It would practically amounts to decreeing the suit which is beyond the purview of granting interlocutory orders. It

is, therefore, clear that the High Court has committed an error of law in granting the relief at the stage of miscellaneous appeal.....”

In view of the fact that the plaintiff-respondent No.1 has failed to show a *prima facie* case in it's favour as well as make out a case that the balance of convenience is in it's favour nor a case of irreparable injury which might be caused in case of non-grant of temporary injunction has been made out, the orders passed by the Courts below cannot be sustained.

It is also to be noticed that in the suit the plaintiff-respondent No.1 has not prayed for setting aside the sale deed in favour of the defendant No.1-petitioner or the sale deeds/allotment in favour of his predecessors-in-interest. The suit is for simplicitor permanent injunction. Taking the best case scenario in favour of the plaintiff-respondent No.1 that it's suit is decreed, the suit property would still remain the ownership and in possession of the defendant No.1-petitioner. The plaintiff-respondent No.1 would still not become the owner or in possession of the suit property. In such a situation restraining the defendant No.1-petitioner from enjoying his property by passing a restraint order against him during the pendency of the suit would be unjustified especially when his ownership is not under challenge in the suit.

In view of the above, the present revision petition is partly allowed. The order dated 28.05.2021 (Annexure P-1) passed by the Appellate Court and the order dated 02.04.2021 (Annexure P-2) passed by the Trial Court on the application filed under Order 39 Rules 1 and 2 CPC

are set aside. It is, however, made clear that any construction carried out by the defendant No.1-petitioner during the pendency of the suit would be at his risk and responsibility and would be subject to the final outcome of the suit and he would not be entitled to raise the plea of equity in his favour. Though both counsel did not argue on this aspect, however, to avoid any multiplicity of litigation, it is also ordered that the defendant No.1-petitioner shall not create any third party rights during the pendency of the suit.

Any observation made in this order shall have no bearing on the merits of the case.

The revision petition is disposed off in the above terms.
Pending application, if any, also stands disposed off.

(ALKA SARIN)
JUDGE

09.11.2022
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<u>NOTE:</u> Whether speaking/non-speaking : Speaking Whether reportable : YES/NO
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