

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No.7765 of 2021

Date of Decision: 23.02.2022

P.C. Gupta and Another

..... Petitioners

V/s.

State of Haryana and Others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Rohit Samhotra, Advocate for the petitioners.

Mr. P.P. Chahar, DAG, Haryana
for respondent No.3.

Ms. Divya Sharma, Advocate for respondent Nos.4 and 5.

Sureshwar Thakur, J. (Oral)

1. In the instant petition, petitioner No.2, the daughter of the co-petitioner No.1, is seeking the making of a mandamus upon co-respondent Nos.1 to 3, to give adequate protection to the life and liberty of co-petitioner No.1, and, co-petitioner No.2., as they rear a life endangering apprehension to their lives, and, also qua an infringement of her purported rights of inheritance, at the instance of co-respondent Nos.4 and 5. Moreover, in the petition, a direction is also asked to be made, upon respondent Nos.1 to 3 to decide a sub judice representation dated 17.07.2021 (Annexure P-11), as filed by co-petitioner No.2, before the authorities concerned. From the above made submissions, it appears that *inter se* co-respondent No.5, and co-petitioner No.1, there is a matrimonial discord, and it has resulted in the institution of a divorce petition, before the Civil Court concerned. Furthermore, it is argued by the learned counsel appearing for respondent Nos.4 and 5, that an order has been obtained, from the learned Judicial Magistrate concerned, in a petition

in the relevant premises, qua the wife of the co-petitioner No.1, have been preserved.

2. The apprehension of the co-petitioner No.2, the daughter of petitioner No.1, is that unless, respondent No.5, is restrained from permitting the entry of respondent No.4, into the relevant premises, thereupon, there is every possibility of respondent No.4, rather deploying exploitative measures, to grab the property of co-petitioner No.1. Insofar as the afore is concerned, it has been rested, through a verdict pronounced in a litigation between petitioner No. 1, and, co-respondent No.4. The above litigation, was constituted, in a suit for permanent injunction *inter se* co-petitioner No. 1, and, co-respondent No.4 wherein, a decree was pronounced, hence, injunction the defendant therein, who is the co-respondent No.4, herein to hand over the vacant, and, physical possession of House No.15, Sector, 16, Panchkula, to the plaintiff therein, who is the co-petitioner No.1, in the instant petition. Insofar as the decree of mandatory injunction (*supra*) is concerned, it cannot become breached by the contesting litigants concerned, in the civil suit concerned.

3. However, also a claim is made in this writ petition, by the co-petitioner No.2, that yet co-respondent No.5, the mother of respondent No.4, and who is also the wife of co-petitioner No.1, *inter se* whom there is a matrimonial discord, being restrained from permitting the accessings into her portion of the relevant premises, by co-respondent No.4, as, thereupon there is every possibility, that in the afore-event, the respondent No.4 would deploy a stratagem to extort from his father-co-petitioner No.1, the property owned by the latter.

4. However, *prima facie*, even the afore prayer cannot be granted to the petitioner, as the learned counsel for the respondents concerned, has placed on record, a verdict made by the Judicial Magistrate, Panchkula, in a judgment drawn

portion of the verdict which is extracted hereinbelow, the above injunction has rather not been granted:

“No restriction can be imposed neither on the complainant, nor on the respondent No.1 to deprive them from having visiting terms/ relation with their children as per their own desire. Hence, no relief is made out against the respondent Nos.2 to 4 in this case. Ordered accordingly. With these observations, present petition is hereby partly allowed and disposed off accordingly.”

5. Therefore tentatively, in case, this Court proceeds to restrain respondent No.4, from visiting the relevant portion of the premises, in occupation of his mother-arrayed, as respondent no.5-wife, thereupon the afore made order, rather would become breached.

6. The learned counsel appearing for the petitioners, has argued that the above made verdict, has been modified by the learned appellate Court concerned. The operative portion of the verdict, as made by the learned Additional Sessions Judge, Panchkula, upon Case No.286/2017, is extracted hereinbelow:

“11. Hence, appeal of the appellant against the judgment dated 12.05.2017 passed by the learned trial Court is partly accepted and qua payment of maintenance in the sum of Rs.15,000/- per month by the appellant (husband) to the respondent (wife) is set aside. In case the appellant has made payment in pursuance of the said order, the same shall be adjustable in the maintenance to be paid by the appellant to the respondent in pursuance of the order passed in the proceedings under Section 125 of Cr.P.C., in future. However, the directions issued by the learned trial Court directing the appellant not to get vacated the portion of H.No.15, Sector-16, Panchkula from the respondent shall remain intact.”

7. A reading of the afore-extracted paragraph of the judgment (supra) does not support, the contention as made before this Court, by the learned counsel for the petitioners.

8. Consequently, the aforeprayed restriction cannot become imposed upon co-respondent No.5., as reiteratedly, it would obviously breach the aforemade verdict by the learned Courts concerned. Moreover, also insofar as the occupation of a specific portion of the relevant premises by co-respondent No.5 is concerned, it cannot be argued by the learned counsel for the petitioners, hence, to be illegal.

9. Be that as it may, given the Co-ordinate Bench of this Court on 19.08.2021, upon CRM-M-31746 of 2021, wherein, became embodied a lis *inter se* co-respondent No.5, Veena Gupta therein arrayed as a sole petitioner, and, co-petitioner No.2, Aradhna Gupta and one Abhinav Gupta, the son of Aradhna Gupta, all of whom became arrayed therein as co-respondents, rather making the hereinafter injunction against the co-respondent No.4.

“3.The son of the petitioner, namely, Rajesh Kansal, who has his own house at Zirakpur and who has no ownership concern in the present house would not be permitted to enter the house, however, that does not stop the petitioner from going and meeting him in his house at Zirakpur or any other place”

10. Therefore, thereupon, all the effects of the verdict (supra) as drawn respectively by the learned Judicial Magistrate concerned, and in appeal thereagainst by the learned Additional Sessions Judge concerned, become completely eclipsed.

11. Keeping in view the above, the contentions as raised by the learned counsel for the petitioners, that yet there is a threat on the part of the co-respondent No.4, and, as arises from his making an entry into the relevant premises, for his interacting with his mother, who is residing in a specific portion of the relevant premises, becomes also amenable, for becoming not accepted by this Court.

12. With the afore observations, the petition is disposed of.

23rd February, 2022

Sonia Puri

(SURESHWAR THAKUR)
JUDGE