

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

CR-3899-2019 (O&M)

Date of Decision: August 29, 2022

Parkash Singh

...Petitioner

VERSUS

Meharban Singh

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.R.S.Athwal, Advocate
for the petitioner.

Mr.Parvinder Singh, Advocate
for the respondent.

ARCHANA PURI, J.

Present revision petition has been filed for issuance of directions to the lower Court to decide an application dated 29.10.2018 (Annexure P-3), which is the application filed by the petitioner-plaintiff before the lower Court for taking up the file on the day i.e. 04.12.2018 and to pass an order on stay application.

The background facts, in nutshell are as follows:-

That, initially, the petitioner-plaintiff had filed a suit for permanent injunction to restrict the defendant-Meharban Singh from alienating more than his share, raising any kind of construction over the suit property and further not to allow any brick kiln owner to dug the land for the purpose of moulding the bricks and further changing the existing

position of the suit land. Along with the suit, an application under Order 39 Rule 1 and 2 CPC, was filed, which is Annexure P-2. However, no order was allegedly passed on the said application, only on which account, the petitioner had filed an application (Annexure P-3), for issuance of directions to the lower Court to decide the stay application.

Notice of the present petition was given to the respondent, who made appearance through counsel.

Copies of the zimni orders have been placed on record. Perusal of the same reveals that the case was adjourned, time and again, for arguments on the stay application, but it was still pending at the time of filing of the present revision petition.

Now, it is submitted by learned counsel for the respondent that vide order dated 22.10.2019, in view of the interim stay granted by this Court, the lower Court had passed the order that it does not deem it appropriate to pass any order on the application under Order 39 Rule 1 and 2 CPC, in order to avoid any conflict with the order passed by this Court. Moreover, he has submitted that despite availing several opportunities, no evidence by the petitioner-plaintiff has been led before the lower Court and vide order dated 22.07.2022, the lower Court was constrained to close the evidence of the petitioner by order. Now, it is submitted that the case is fixed for evidence of the defendant.

Copies of the zimni orders, so passed, have been placed on record by learned counsel for the respondent. From the perusal of seriatim of the zimni orders, so passed, it is evident that case had reached at its fag end. At the time of entertaining the revision petition, the interim stay was

granted, precisely on this account that application under Order 39 Rule 1

and 2 CPC, was not decided by the lower Court, at first instance. It was, thereafter, fixed for evidence. However, no evidence, as such, has been led.

Keeping in view the aforesaid fact situation, no case is made out for issuance of any directions in the present revision petition. Hence, the same is dismissed.

August 29, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No