1.

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

**CM-60-FACOM-2022 &**
**CM-58-FACOM-2022**
**FAO-COM-21-2022**

**Date of decision: 29.09.2022**

**KULVINDER SINGH SANDHU**

**.....APPELLANT**

**Versus**

**DEVELOPER GROUP INDIA PVT. LTD. AND ANR.**

**.....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**
**HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Naresh Kumar Bansal, Advocate,
for the appellant.

Mr. R.S.Rai, Sr. Advocate,
with Mr. Jatin Sehgal, Advocate,
and Mr. Aman Pal, Advocate,
and Ms. Rubina, Advocate,
for the respondent No. 1.

Mr. R.D.Gupta, Advocate,
for respondent No. 2.

**AUGUSTINE GEORGE MASIH, J.**

**CM-60-FACOM-2022**

C.M. is allowed subject to just exceptions. Annexures A-1 to A-26 are taken on record.

**FAO-COM-21-2022**

Notice of motion.

On the asking of the Court, Mr. Jatin Sehgal, Mr. Aman Pal and Ms. Rubina, Advocates, accept notice on behalf of respondent No. 1 and Mr. R.D.Gupta, Advocate, accepts notice on behalf of respondent No. 2.

Caveat stands discharged.

It is the contention of the learned counsel for the appellant that the order dated 08.09.2022 passed by the Additional District Judge-cum-Commercial Court, Ludhiana, vide which application under Order 39 Rule 1 and 2 CPC read with Section 151 CPC preferred by respondent No. 1/plaintiff/applicant stands allowed by granting interim injunction in favour of respondent No. 1 restraining the appellant and his family members, agents, assignees, representatives, associates, employees etc. from interfering into the peaceful possession of the contesting respondent No. 1 over the suit property illegally and forcibly except in due course of law during the pendency of the suit as also the restraint order passed from causing obstruction in free ingress and egress of respondent No. 1, its representatives, associates, employees, agents and assignees to the suit property, which is not sustainable as it has been passed without appreciating the correct facts, misreading of the documents and ignoring the basic principles for grant of an injunction, rather the balance of convenience is in favour of the appellant.

2. Submission, as has been made by the learned counsel for the appellant, is that there is no privity of contract between the appellant and respondent No. 1. No money was paid by respondent No. 1 to the appellant and there is no agreement between them. Co-sharers of the land are not a party but injunction has been granted qua 25 acres of land, out of which, the appellant and his family owns only 5 acres. The co-sharers are, therefore, the necessary party and the restraint order qua them is illegal as they are neither party to the suit nor have they been heard.

3. Assertion has also been made by the counsel for the appellant that no consent has been taken by respondent No. 1/plaintiff for

development of the land, of which the appellant is the owner. There is no document placed on record which would show any connection between the appellant and respondent No. 1/plaintiff. Even if reliance has been placed on the Award dated 04.01.2020 and the original agreement dated 05.04.2007 by the Commercial Court while allowing the application of respondent No. 1/plaintiff, interim injunction could not have been granted by the trial Court. The original contract and the agreement which have been entered into is between the appellant and M/s Aerens Entertainment Zone Ltd., which is not even a party to the suit and the same could not be enforced and made applicable nor could it bind the appellant qua respondent No. 1. On this basis, counsel for the appellant contends that the impugned order cannot sustain and deserves to be set aside.

4. On the other hand, learned senior counsel appearing on behalf of respondent No. 1 contends that the factum that the initial agreement was entered into between the appellant and M/s Aerens Entertainment Zone Ltd., with whom the collaboration agreement dated 05.04.2007 was entered into, remains the same. There is an irrevocable letter of consent given by the appellant with regard to the agreement, which pertains to 25 acres of land, with M/s Aerens Entertainment Zone Ltd. Possession was also handed over for carrying out the development as per the clause in the agreement.

5. On 05.02.2008, M/s Aerens Entertainment Zone Ltd. assigned all its rights and obligations under the Collaboration Agreement to Yashraj Promoters Pvt. Ltd., which has been duly accepted, signed and confirmed by the appellant. There was a dispute, which had arisen between Yashraj Promoters Pvt. Ltd. and the appellant, which resulted in Arbitration, where a

Settlement Deed dated 15.12.2020 was entered into leading to the passing of the Award by the Arbitrator on 04.01.2020. Yashraj Promoters Pvt. Ltd.-defendant No. 1 paid an amount of Rs. 8,15,52,100/- to the appellant. In the Award, it has come clearly that the builder has made a site office in the portion of the subject property and entire ground floor area of the residential portion is given to the builder and the appellant along with his family is living in the first floor. On this basis, learned senior counsel for respondent No. 1 contends that the appellant cannot run away from the fact that the possession of the ground floor was with Yashraj Promoters Pvt. Ltd., who in the year 2014 through Fortune R Buildco Developers Pvt. Ltd. (earlier known as PMC Entertainment Pvt. Ltd.), represented respondent No. 1-plaintiff for development of the project, approached the appellant. The vacant possession was handed over by the appellant. Therefore, with regard to the privity of contract, he asserts that the appellant cannot run away from the said fact. Respondent No. 1-plaintiff derives its force from the agreement and various steps having been taken to implement the project, which includes seeking approvals from the National Highway Authority of India and other authorities for carrying out the development projects. All these documents, the counsel contends, established the factum that the appellant was very much in know how of the factual position and had also accepted the same.

6. As regards the non-impleading of the co-sharers as a party to the suit, learned senior counsel for respondent No. 1 contends that the threat was only posed by the appellant and the co-sharers have never raised any such objection. In any case, it is asserted that the appellant has taken the consent of the other co-sharers and has also represented himself and his

family members but also the other co-owners when the collaboration agreement was entered into and he has received an amount of Rs.8,15,52,100/- from Yashraj Promoters Pvt. Ltd. The threat having come from the appellant with regard to the peaceful possession of the property including ingress and egress of the same, the suit has been preferred against him. Counsel has further pointed out that Yashraj Promoters Pvt. Ltd. has supported respondent No. 1-plaintiff in the suit and all the documents have been admitted. He, on this basis, contends that the order, as has been passed by the trial Court, does not call for any interference as it is based upon proper appreciation of the pleadings and the documents on record.

7. Having considered the submissions made by the learned counsel for the parties, we are not inclined to interfere in the order as has been passed by the Commercial Court, Ludhiana on 08.09.2022 allowing the application for interim injunction, as prayed for by respondent No. 1-plaintiff.

8. The documents, as have been pointed out above, clearly establish the agreement between the parties i.e. appellant and respondent No. 2-Yashraj Promoters Pvt. Ltd. The agreement clearly falls back upon the rights and obligations, as assigned vide agreement dated 05.04.2007, which was the collaboration agreement between the appellant and the initial developer i.e. M/s Aerens Entertainment Zone Ltd. Thereafter, as to how respondent No. 1-plaintiff has stepped into the shoes has been explained and given in the order and in the submissions, as made by the learned senior counsel for respondent No. 1 as recorded above. It, therefore, cannot be said that respondent No. 1-plaintiff has no locus to file the present suit or the application.

9. As regards the plea that a restraint order qua 25 acres of land, which is the suit property, has been passed, whereas the appellant and his family is the owner of only 5 acres of land out of this, suffice it to say that the co-sharers have not interfered or threatened invasion with regard to the peaceful possession of the suit property and the ingress and egress of the same. Therefore, respondent No. 1-plaintiff has rightly sought injunction against the appellant. Since the suit property is one consolidated piece of land, the injunction, as has been sought for and granted, cannot be faulted with.

10. A detailed and well-reasoned order has been passed by the trial Court which does not call for any interference by this Court in the light of the pleadings and the documents, which have been brought on record.

11. Finding no merit in the present appeal, the same stands dismissed.

**CM-58-FACOM-2022**

In view of the dismissal of the main appeal, the present application for stay has been rendered infructuous and the same is disposed of as such.

**(AUGUSTINE GEORGE MASIH)**
**JUDGE**

**29.09.2022** **(ALOK JAIN)**
PJ **JUDGE**

*Whether speaking/reasoned* *Yes/No*
*Whether reportable* *Yes/No*