

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

CR-80-2019(O&M)

Date of decision:-15.12.2022

Narender

...Petitioner

Versus

Sub-Divisional Officer and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

Mr.Randeep Tanwar, Advocate for
Mr.P.K. Dwivedi, Advocate
for respondents No.1 and 2.

Mr.CP Tiwana, Advocate
for respondent No.3.

H.S. MADAAN, J.

1. In nutshell, facts of the case are that plaintiff Narender had filed a suit for declaration and injunction against Sub-Divisional Officer, Operation Sub Division UHBVN Pundri, District Kaithal and Uttar Haryana Bijli Vitran Nigam Ltd. (hereinafter referred to as UHBVN Ltd.) through Managing Director, Panchkula restraining the defendants from disconnecting the electricity connection bearing No.AP-1019 installed in land bearing Khewat No.1762-63, khatoni No.2191, rect.no.195, killa Nos.18, 19, 20 comprised in two kittas as per jamabandi for the year 2013-14 within the revenue estate of village Pai, Tehsil Pundri, District Kaithal.

2. As per the case of the plaintiff, initially the connection was

issued in the name of Ram Sarup son of Ranpat father of the plaintiff and after his death the plaintiff along with his brother Gajender Singh moved an application before the defendants to get the connection transferred in their name; accordingly, the defendants changed the ownership with regard to connection in the name of plaintiff; since then the plaintiff have been regularly paying the electricity bills, however, the defendants issued notice bearing No.MN-1671 dated 12.6.2017 calling upon the plaintiff to submit original documents regarding change of name of said connection as they were not satisfied with the report of Patwari; the plaintiff did submit those documents but the defendants again issued a notice dated 14.9.2017 threatening to change/cancel the electricity connection from the name of plaintiff; the plaintiff got the demarcation of the land conducted and it transpired that a tubewell is installed in killa no.19, rect. No.195, however due to mistake of revenue officials said tubewell connection was shown in killa no.18 of rect. no.195 and for that reason, defendants threatened to cancel the transfer of said connection in the name of plaintiff and to disconnect the connection forcibly and illegally to which they have no right. On refusal of defendants to concede his claim, the plaintiff had filed the suit in question. Along with that suit, he moved an application for grant of ad interim injunction.

3. On getting notice, the defendants put in appearance and filed written statement and written reply contesting the suit as well as application for grant of ad interim injunction. As per version of the defendants, the plaintiff had applied for changing the name of the electricity connection from the name of his father to his name as well as

that of his brother Gajender Singh in the month of February, 2016 along with the documents, which included copy of jamabandi for the year 2013-14 duly verified by the Halqa Patwari on 22.6.2015 pertaining to land comprised in Khewat No.1762/1626, khatoni No.2191, rect. no.195, killa no.18 and 19 within revenue estate of village Pai Tehsil Pundri, District Kaithal and Aksh-sizra pertaining to killa no.18 of rect. no.195 verified by the patwari on 2.7.2013; the jamabandi revealed that one tubewell connection was installed in killa no.18 and the plaintiff along with his brother Gajender Singh was owner of the land in question; the plaintiff and his brother Gajender Singh had submitted their duly sworn affidavits, therefore, the electric connection was transferred in the name of plaintiff; thereafter, one Raghvinder son of Ram Sarup moved an application in the office of Executive Engineer Operation Division, UHBVN, Pundri contending that connection in dispute is being run in his fields but had been wrongly transferred in the name of plaintiff; he further requested to get spot verification done by revenue patwari; the Executive Engineer vide his letters bearing No.Ch.177/EB-20 dated 24.3.2017 and Ch.179.EB-20 dated 7.4.2017 had directed SDO, Sub Division No.2, UHBVN, Pundri to investigate the matter and submit his report; SDO accordingly inquired into the matter and upon physical verification he found that connection in dispute is being run in village Pai in the name of Ram Sarup son of Ranpat, who died on 27.7.2008; Ram Sarup had four sons namely Narender Kumar, plaintiff, Gajender, Raghuvinder and Rajinder; during inquiry Raghuvinder produced the report by Halqa Patwari from which it was found that a tubewell connection was being run

in killa no.13/8/1 of khasra no.195; Raghuwinder further produced another report of Halqa Patwari wherein no tubewell connection was found in killa No.18 of rect. no.195; defendant No.1 vide office memo no.1671 dated 12.6.2017 asked the plaintiff to explain the facts but the plaintiff did not respond; a reminder was sent to him vide memo dated 14.9.2017; the plaintiff submitted his reply but the same was not found to be satisfactory; on 2.2.2018, defendant no.1 along with Ram Kumar and Vinod Jangra, Junior Engineers and Dharambir, Lineman inspected the fields of the plaintiff in his presence finding the plaintiff to be consuming direct supply of the connection from LT Pole with the help of 4 Core PVC without any connection; accordingly, LL-1 report was prepared, which plaintiff refused to sign; the videography of the proceedings was got done and the plaintiff was served with notice of assessment of penalty dated 5.2.2018 and Rs.30,000/- was imposed as penalty. It is contended that plaintiff had intentionally not impleaded his brother Raghuwinder as a party in the suit, therefore, the suit is bad for non-joinder of necessary parties. The defendants prayed for dismissal of the suit and application.

4. After hearing arguments, the trial Court of Civil Judge (Jr.Divn.), Kaithal vide order dated 8.2.2018 directed the parties to maintain status quo qua the connection till the disposal of the suit.

5. Feeling aggrieved by that order, plaintiff Narender had preferred an appeal before District Judge, Kaithal, which was assigned to learned Additional District Judge, who vide judgment dated 28.9.2018 allowed the appeal partly and order dated 28.2.2018 was modified to the extent that defendants are restrained from recovering whole of the penalty

amount till final disposal of the case.

6. However, the plaintiff Narender felt dissatisfied with the order and has approached this Court by way of filing the present revision petition, notice of which was issued to respondents, who put in appearance.

7. I have heard learned counsel for the parties besides going through the record.

8. Ad interim injunction dealt with by Order 39 Rules 1 & 2 CPC is a discretionary equitable relief, which is to be granted by the Court keeping in view all the facts and circumstances including the conduct of the parties, if the necessary ingredients for grant thereof are fulfilled, to say the plaintiff having a good prima facie case, balance of convenience being in favour of the plaintiff and plaintiff suffering irreparable loss and injury in case of denial of ad interim injunction with all those ingredients existing conjunctively. For laying basis for grant of permanent injunction, a person approaching the Court must do so with clean hands disclosing all the material facts and if he or she tries to conceal any material fact from the Court, then such relief is not to be granted. Clause (i) of Section 41 of the Specific Relief Act provides that an injunction cannot be granted when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.

9. In light of such basic principles if the case of the plaintiff is examined then it comes out that petitioner/plaintiff is certainly not entitled to grant ad interim injunction. The trial Court without due application of mind and keeping in view the relevant legal position disposed of the

application directing the parties to maintain status quo over the connection till disposal of the suit. Such order goes to show that the trial Court lacked clarity of vision in the matter and was unable to reach a clear conclusion under the circumstances of the case. As it borne out from the record plaintiff Narender had applied for changing the electricity connection from the name of his father to his name as well as that of his brother Gajender in the month of February, 2016 enclosing copy of jamabandi for the year 2013-14 with such application. That jamabandi pertained to land Khewat No.1762/1626, khatoni No.2191, rect. no.195, killa no.18 and 19 within revenue estate of village Pai Tehsil Pundri, District Kaithal. Another document attached i.e. Aksh-sizra pertaining to killa no.18 of rect. no.195 also verified by the patwari. The jamabandi reflected that the tubewell connection was there in killa no.18, which was ownership of plaintiff and his brother Gajender Singh. On that basis of affidavits submitted by plaintiff and Gajender Singh, the tubewell connection was transferred in the name of the plaintiff, however, Raghuvinder, a brother of plaintiff had submitted an application in the office of Executive Engineer Operational Division, UHBVNL, Pundri that connection to the tubewell was there in his fields but was wrongly transferred in the name of the plaintiff. He had requested for spot verification. The officers of electricity department had inquired into the matter and it was found that tubewell connection was being run in killa no.13/8/1 of khasra no.195 and as per report of Halqa Patwari no tubewell connection was there in killa no.18 of rect. no.195. When the electricity department asked the plaintiff to explain this fact, he opted to remain mum first, however later

on submitted written response, which was not found to be satisfactory. Rather on spot inspection being carried out by officers of electricity department in his presence, the plaintiff was found to be stealing electricity by consuming a directing supply from LT pole with the help of 4 Core PVC without any connection. The proceedings there were got videographed and plaintiff was served notice for recovery of penalty of Rs.30,000/-. Furthermore, the plaintiff had not impleaded his brother Raghuvinder, who was also an effected party in the matter. For all these reasons, the plaintiff could not be said to have a good prima facie case or balance of convenience being in his favour or he is suffering any irreparable loss and injury in case of denial of ad interim injunction to him. Rather he comes out to be a scheming type of person using unfair means to get the tubewell connection transferred in his name not hesitating to conceal material facts, rather trying to propagate falsehood to achieve his aim. The trial Court in order has though noticed all these things but has conveniently opted not to take those into consideration and found a convenient way of directing the parties to maintain status quo which is vague type of order having grave consequences, many a times giving rise to quarrels and fights between the parties. The order passed by learned Additional District Judge, Kaithal also comes out to be result of a very casual approach without any attempt to consider the mater in a proper perspective after trying to understand the factual and legal position properly. Rather learned Additional District Judge, Kaithal deviated from the main controversy and restrained the defendants from recovering the penalty amount imposed upon the plaintiff till final disposal of the case, in

the process learned Additional District Judge, Kaithal perhaps forgot that one of the basic ingredients for grant of ad interim injunction is suffering of irreparable loss and whenever a loss can be calculated in terms of money normally at ad interim injunction is not granted. Here with specific allegations of theft of electricity being there against the plaintiff/appellant, such type of relief should not have been granted by the learned Additional District Judge to the plaintiff appellant.

10. It may be mentioned here that when the matter came up before this Court, there also petitioner tried to play over smart as is evident from the interim orders passed in the case, the petitioner was successful in getting an order from the Court with regard to restoration of the electricity connection. The order was passed in that regard on 28.5.2019, However, vide order dated 3.7.2019, the Court observed that order dated 28.5.2019 appears to have been obtained by dubious means since in any case the petitioner had failed to implead the applicant Raghuvinder as one of the necessary parties in the revision petition, after suppressing that his application for such impleadment had already been allowed by the trial Court. For that reasons, direction contained in the earlier order dated 28.5.2019 was recalled.

11. Such conduct of the petitioner/plaintiff is to be viewed with all the seriousness and not lightly. Granting a discretionary equitable relief to a litigant who indulges in unfair practise of concealing material facts adopting dubious means and whose conduct is otherwise shoddy is most uncalled for and that would rather result in failure of justice.

12. Here it may be mentioned that both the impugned orders are

arbitrary, perverse and passed ignoring the necessary ingredients provided under Section 41 (i) of the Specific Relief Act, which provides that injunction would be refused when conduct of plaintiff has been such as to disentitle him to the assistance of the Court.

13. The revision petition is without merit and the same stands dismissed. While exercising power under Section 227 of the Constitution of India, the order passed by the trial Court as well as by learned Additional District Judge, Kaithal are also set aside, resultantly, application for ad interim injunction filed by the applicant/plaintiff is dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

15.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No