

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.153 of 2023

Date of Decision: 11.01.2023

Surender Singh

..... Petitioner

Versus

Mittal Tulip City & Others

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ramesh Goyat, Advocate for the petitioner.

Nidhi Gupta, J.

Present Revision Petition has been filed seeking a direction to the learned Civil Court, Sonapat to consider and decide the petitioner's application under Order 39 Rules 1 and 2 CPC (Annexure P2) in a time bound manner.

It is submitted by learned counsel for the petitioner that the petitioner had filed a suit bearing No.CS-912-2021 for permanent injunction under Sections 37 and 38 of Specific Relief Act titled as "Surender Singh Vs. Mittal Tulip City & Others" seeking a direction restraining the respondents/defendants No.1 and 2 from causing obstacles and hindrances in the path leading to temple of "Jaharveer Baba and Gorakhnath Sthal" situated at Rewali, Sonapat and damage and pollution in the temple zone.

It is the petitioner's pleaded case that the petitioner is in-charge of the said temple since the past 25 years. However, respondents no.1 and 2 have started illegal factory of cemented bricks which is causing huge damage and pollution in the area and is causing damage to the plants

and trees of the temple. It is stated that there is a path that leads to the temple which though is Government property however, as the said respondents have been continuously damaging the said path and blocking it from time to time by putting raw material on it and even keeping modifying the path according to their will, the petitioner had filed the above said suit along with an application under Order 39 Rules 1 and 2 CPC. Learned counsel for the petitioner refers to Annexure P6 which are satellite images of the area to show how the respondents No.1 and 2 have modified the path from 2020 till 2022. It is accordingly submitted that in view of the continuing transgression on part of the respondents, a direction be given to the learned Civil Court to decide the petitioner's application under Order 39 Rules 1 and 2 CPC at the earliest.

I have heard learned counsel for the petitioner.

A perusal of the record shows that the petitioner's Civil Suit was registered on 29.07.2021. Vide order dated 04.08.2021, it was noted that the service was complete. Thereafter, the matter was adjourned on 02.09.2021, 06.09.2021 and 27.09.2021 at the request of the petitioner/plaintiff. Subsequently, an application under Order 1 Rule 10 read with Section 151 CPC for impleading, along with an application under Order 6 Rule 17 for amendment of the plaint was filed on behalf of plaintiff-applicant-Surender/petitioner herein which was eventually allowed by the learned Court below vide order dated 23.11.2021, and notice was issued for 03.12.2021 to newly impleaded defendants i.e. Director of Mittal Tulip City, Nagar Nigam, Sonapat, and Forest Department/defendant Nos. 2 and 4 respectively/respondent Nos. 2 and 4 herein respectively. On subsequent

dates proceedings are recorded as follows:- Vide order dated 12.1.2022 it is recorded that notice issued to newly impleaded defendants were not received back. Vide order dated 21.2.2022 it is recorded that memo of parties was filed on behalf of newly impleaded defendant No. 2. Vide order dated 22.3.2022 it is recorded that part of attorney was filed on behalf of defendant Nos. 2 and 3. Vide order dated 25.4.2022 it is recorded that written statement was filed on behalf of defendant Nos. 1 and 2 in the Civil Suit, as well as the application under Order 39 Rules 1 and 2 CPC. Order dated 5.5.2022 records that written statement on behalf of defendant No. 3 Municipal Corporation, Sonapat, is not filed; and notice issued to defendant No. 4 is not received back. Vide order dated 17.10.2022, fresh notice was issued to newly-added defendant No. 4. Subsequently, written statement to the petitioner's suit was filed in December, 2022 by the respondent/defendant No. 3 Municipal Corporation, Sonapat, wherein it has inter-alia, been submitted that the public passage in question still vests with the answering defendant and is still in existence and nobody has any right to encroach upon the said passage.

Accordingly, I find from the above facts that delay, if any, has been caused due to impleadment of newly-added defendant No. 4 to whom notice issued was not received back even till 17.10.2022, and accordingly fresh notice along with dasti was issued to said defendant yet again. Moreover, none of the Zimni orders note that any specific prayer has been made on behalf of the petitioner/plaintiff before the learned Court to hear the application under Order 39 Rules 1 and 2 on urgent basis. Even no such averment has been made in the petition. Even no early hearing

application has been filed by the petitioner in this behalf. In my view it is clear from the above facts that the learned Court below is well-apprised of the matter and no extraordinary delay is being caused.

In view of the above facts, I find no ground is made to interfere in the matter. Present Civil Revision is accordingly, dismissed.

11.01.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No