

CR-7682-2017

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2023:PHHC:068874

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7682-2017

Date of Decision :11.05.2023

Darshan Lal and another

....Petitioners

Versus

Tarsem Lal Chadha and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate and
Mr. Sahil Mehndiratta, Advocate and
Mr. Ashutosh Dhankar, Advocate for the petitioners.

Mr. Lekh Raj Sharma, Advocate with
Mr. Abhishek Sharma, Advocate,
Mr. Raj Kumar Sharma, Advocate and Mr. Abhikant Vats,
Advocate for the respondent No.1.

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Harsimran Singh Sethi, J. (Oral)

1. In the present revision petition, challenge is to order dated 24.08.2017 (Annexure P/4) passed by the trial Court by which, application filed by respondents-plaintiffs under Order 39 Rule 1 and 2 of the CPC has been allowed, which order has been upheld by the lower Appellate Court by impugned order dated 30.10.2017 (Annexure P/5).

2. Learned Senior counsel for the petitioners-defendants argues that in the present case, prayer of the respondents-plaintiffs in the suit is that injunction be granted directing the petitioners-defendants to handover the possession of building to the respondents-plaintiffs till they make the

payment of sum of Rs.24 lacs along with interest keeping in view the agreement between the parties dated 11.11.2014 and further direction be issued to remove the holdings affixed in the said building and not to use the brand name 'Super King'.

3. Learned Senior counsel for the petitioners further submits that by way of interim relief, the main relief sought in the suit was prayed in the application filed under Order 39 Rule 1 and 2 of the CPC and the trial Court decided the said application vide impugned order dated 24.08.2017 (Annexure P/4) holding that as per the agreement dated 11.11.2014 once a sum of Rs.24 lacs was to be paid to the respondents-plaintiffs so as to use the said building and the same amount has not been paid, the building cannot be used by the petitioners-defendants and restraint order was passed against the petitioners-defendants so as to restrict them from using the building with further direction not to use the brand name "Super King". Learned Senior counsel for the petitioners-defendants further submits that the said order of the trial Court was upheld by the lower Appellate Court vide order dated 30.10.2017, which orders have also been impugned in the present petition.

4. Learned Senior counsel for the petitioners-defendants straightway submits that he has instructions to say that restraint order qua not to use the brand name 'Super King' is not being challenged in the present petition. Learned Senior counsel for the petitioners-defendants argues that once the main civil suit is for issuance of a direction to handover the possession of the building in question, how come by way of interim order, the use of the building in question can be restrained when the possession of the building in question is temporarily with the defendants.

5. Learned Senior counsel for the petitioners-defendants further argues that without appreciating the said fact, the trial Court as well as lower Appellate Court have passed the order directing the petitioners-defendants not to use the building, which is concededly in the possession of the petitioners-defendants.

6. Learned counsel for the respondents-plaintiffs submits that once a sum of Rs.24 lacs has not been paid, which was required to be paid by the petitioners-defendants so as to become entitled to use a particular portion of the building, in the absence of proof of the payment of Rs.24 lacs, orders passed by the Courts below are perfectly valid and legal.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. Once, it is a conceded position that a portion of building in question is in the possession of petitioners-defendants, no order restraining the use of said building could have been passed by the Courts below and that too while deciding an interim application as the same amounts to grant of main relief in the suit. It is a settled principle of law that main relief claimed cannot be extended by way of interim relief. In case at the end of the trial, trial Court comes to the conclusion that building in question was used by the petitioners-defendants without authorization, an appropriate order can be passed so as to compensate the respondents-plaintiffs in the said situation. Trial Court will be free to pass an order granting compensation for the use of a portion of a building by the petitioners-defendants in case a finding to that effect is recorded by the Court while passing final order in the suit.

9. Keeping in view the above, impugned orders passed by the

Courts below are only modified to the extent that petitioners-defendants will be able to use the portion of building in question, which is in their possession but the same will only be subject to the final order to be passed by the trial Court as to whether the said portion of the building was occupied and used by the petitioners-defendants with permission or not or whether respondents-plaintiffs are liable to be compensated in case the said portion of the building was found to be used by the petitioners-defendants without any valid permission or contrary to the compromise between the parties.

10. Present revision petition stands allowed in above terms.

May 11, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No