

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

112+269

CR-3831 of 2023(O&M)
Date of Decision: 06.10.2023

Somany Bath Fittings Pvt. Limited

....Petitioner

Versus

Saurav Chemicals Ltd. and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Aashna Aggarwal, Advocate
Mr. Vishal Pundir, Advocate
for the petitioner.

Mr. Gaurav Datta, Advocate
for respondent No.1.

SANJAY VASHISTH, J.(Oral)

CM-15345-CII of 2023

i) Present application has been filed by the applicant-
respondent No.1, under Section 151 C.P.C. for placing on record the
copy of Site Plan as Annexure R-1.

ii) For the reasons enumerated in the application, the same
is allowed and the site plan (R-1) is taken on record, subject to all just
exceptions.

iii) Disposed of.

CR-3831 of 2023(O&M)

1. Present revision petition has been filed by the plaintiff-Somany Bath Fittings Pvt. Ltd., challenging the order dated 31.05.2023 (Annexure P1), passed by learned Additional District Judge, S.A.S., Nagar (Mohali), whereby an application under Order XXXIX Rule 1 and 2 C.P.C., filed by the plaintiff was dismissed by learned Civil Judge (Junior Division), Derabassi vide order dated 13.04.2023 (Annexure P-19) .

2. Infact order dated 13.04.2023 passed by learned trial Court has been set aside by learned Appellate Court, directing the trial Court to decide the application under Order XXXIX Rule 1 and 2 C.P.C. afresh, by seeking assistance of local Commissioner or some expert, on following grounds:-

- i) whether the ramp was constructed by the defendant?
- ii) whether such a ramp would hamper the water from flowing in natural way?
- iii) whether water is being diverted towards the premises of the plaintiff?

3. Brief facts of the case are that:

A civil suit for seeking a decree of permanent injunction and damages was instituted by plaintiff-Somany Bath Fittings Pvt. Limited (petitioner herien) against/Vs. (i) Saurav Chemicals Ltd.; (ii) Chandigarh Spinning Mill; (iii) M/s SD Associates; (iv) Mrs. Bhumika Garg; (v) Mr. Gupta.

Infact the contesting defendant (respondent herein) is defendant No.1-Saurav Chemicals Ltd.

4. Plaintiff and defendant No.1 are two different entities, located in the area of Bhagwanpura, Tehsil Derabassi, SAS Nagar, Punjab. Both the business companies are located opposite to each other across a 55 feet road. The other defendants i.e. defendants No.2 to 5 are pleaded to be proforma parties, having their separate industrial plants/manufacturing facilities, on the 55 feet road, although not directly in contest with defendant No.1

5. Plaintiff has pleaded that in the last few decades, several industrial units were constructed alongwith the said 55 feet road , thus, the road is essential for ingress and egress of trucks and other heavy vehicles from these industrial units. Any obstruction or hindrance to the said 55 feet road would adversely impact the day to day business activities of not only the plaintiff, but also of all the industrial units along the 55 feet road.

It is specifically pleaded by plaintiff that as per sanction plan issued by various authorities, including the Chief Inspector of Factories, this 55 feet road is indentified as '*a common path way (Sanjha rasta)*' for several decades.

6. Defendant No.1 started constructing Re-enforced Cement Concrete Ramp (RCC) on the said 55 feet road in front of its main gate. This RCC ramp, would not only obstruct easy movements of trucks and other vehicles, but also fire trucks, Ambulances and other

emergency vehicles. Even RCC Ramp would divert the rain water towards the premises of the plaintiff leading to water logging in front of plaintiff's premises. Thus, construction of RCC Ramp would interfere with the plaintiff's beneficial enjoyment of its property. On making complaint to the Sub Divisional Magistrate, activity of construction by defendant No.1 got stopped. However, defendant No.1, by relying upon a report of the Tehsildar prepared in December 2022 continued its illegal construction. A report of Tehsildar is reproduced in paragraph No.8 of the plaint and for the sake of convenience same is reproduced here below:-

“...As per inspection report, land comprising in 412, 413, 416, 417. 420, 429, 430, 431, 432, 433 434 436 in village Bhagwanpura belongs to Gourav (Sourav) Chemical and a factory has been constructed thereonAs per this report6 Gatha (30 foot) as a path has been left out from the land consisting of Kh No. 412, 413, 416, 417 & 420. Chandigarh Spinning Mills Limited factory is situated in Kh No. 410, 409, 403, 415 and 418 and a 25 feet pathway has been left out from Kh No. 415 and 418. Both owners have left out there own pathway. It is not a common (Sanjha) pathway.”

7. Plaintiff further pleaded in his plaint that the report of Tehsildar is correct to the extent of calling it road of width of 55 feet, but, denied the fact that 30 feet of it belongs to defendant No.1 and 25 feet in the opposite to it belongs to the plaintiff.

8. In fact, report of Tehsildar would mean that 55 feet road is belonging to both the sides privately as their private property, whereas plaintiff pleaded that same to be a common path (*Sanjha*

Rasta), thus, on the basis of the aforementioned pleadings, prayer made in the plaint is reproduced here below:

“
Prayer
In view of the aforesaid facts and circumstances, the Plaintiff most humbly prays that this Hon'ble Court may be pleased to-
a. pleased to pass a decree of permanent injunction restraining the Defendant No. 1 from interfering in the Plaintiff's easementary rights to use the 55 feet common path way, in any manner whatsoever;
b. pass a decree of permanent injunction restraining the Defendant No. 1 from diverting or directing the rain water towards the Plaintiff's premises;
c. pass a decree in the sum of Rs.50,000/- towards damages suffered by the Plaintiff on account of harassment and other costs, including legal costs, etc., incurred because of illegal conduct of the Defendant No.1; and
d. pass any other orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.'
”

9. On the other hand, in the written statement filed by the defendants, it is pleaded that though the *rasta* is 55 feet but as per the sale deeds passage is of 30 feet and is a private passage belonging to defendant No.1 and United Biotech and plaintiff is not having any concern with the 30 feet road towards the side of the defendant No.1. It is further clarified in the written statement that on the other side plaintiff and others are having a separate passage of 25 feet for their own use, who purchased the land in their respective Khasra Numbers.

There is a specific pleading in paragraph No.7 of the written statement, which is necessary to be reproduced hereunder:

'7. That the plaintiff has wrongly filed the present case on the basis that the passage in question is 55 feet and it is jointly left for the use of both the parties, whereas, the above said annexure D-1 to D-4 clearly shows that the passage is of 30 feet and it is private passage of

answering defendant and united biotech and the plaintiff and others are having a separate passage of 25 feet for its as well as use of other industries purchased the land in those khasra numbers. But, they do not have any concern with the passage of answering defendant and united biotech i.e. 30 feet, which is constructed by answering defendant with concrete by spending huge amount, whereas, the passage of plaintiff and others is Kacha, so, they do not have any right to interfere or claim any injunction qua the passage of answering defendant and United biotech. The photographs showing the actual and factual at the spot i.e. concrete as well as kacha passage are annexed as Annexures D-5 to D-8 with the present plaint. It is further stated that the passage of 30 feet is meant for the use of answering defendants and United biotech and further the passage of 25 feet is separately meant for the use of plaintiff and perform defendants.'

10. Broadly speaking defendants did not allege any kind of interference or claiming of any right at the instance of plaintiff, over 30 feet wide road towards the side of defendant No.1. Thus, prayer made in the suit was strongly opposed by defendant No.1.

Alongwith the suit there was an application under Order XXXIX Rule 1 and 2, which was dismissed by learned trial Court and concluding part of its dismissal says as under:

'7. The plaintiff has filed the present suit for permanent injunction and damagesThe plaintiff is claiming the relief of temporary injunction by way of present application on the ground that he was peacefully enjoying the easementary right for more than 21 years in relation to the alleged passage of 55 ftroadin question for ingress and outgress of trucks and other heavy vehicles from there as well as from other industrial units and the said easementaryrights remained unintertupted. Further, the plaintiff has vehemently argued that in the sale deeds dated 29.11.2002 and dated 25.11.2002 vide which, the defendant no.1 had purchased their propertyit has been specifically mentioned that the said passage of 6 Gatha would be use as a common passage and therefore, the defendant no.1 has no right to raise illegal

construction of re-enforced Cement Concreat Ramp as it would interfere with the rights of the plaintiff to enjoy his own property as it would lead to accumulation of water in front of the plaintiff's main gate. On the other hand, Ld. counsel for the defendant has argued that the property where the construction of the ramp is being raised by the defendant no. 1 is owned and possessed by defendant no.1 and the plaintiff has no concern with that. He has further argued that as per the plaintiff the concerned SDM had prepared a report in the year 2022, wherein it was mentioned by the Concerned Tehsildar that 30 feet passage as a path has been left out from the land consisting of Khasra no. 412, 413, 416, 417 and 420 and a 25 ft. path has been left out from Khasra no.415 and 418. Both the owners have left out their own pathway and A is not a common path way. If the plaint, the plaintiff has referred about the above said report but he has not challenged the said report in the preset suit wherein. the concerned SDM has categorically stated that 6 Gatha passage measuring 30 ft. is not a common passage. Moreover, mere perusal of the sale deeds of defendant no.1 shows that 6 Gatha passage was left from the property which was purchased by defendant no.1 for the common use of defendant no. 1 and his seller i.e. M/s A.P. Paper Mill Limited, Bhagwanpur. So, by no stretch of imagination, it can be said that in the sale deeds of the defendant no.1, the said passage of 6 Gatha was left for the use of everyone because there is a clear recital to the effect that the said passage would be used by both the parties i.e. M/s A.P. Paper Mill, the seller and the defendant no.1, buyer Further, the plaintiff is seeking the relief of temporary injunction solely on the ground of easementary right. It means that the property from where he is claiming his easementary rights is not owned by the plaintiff and any other owner of the same has not been stated by the plaintiff. It clearly implies that the said passage is owned by defendant no. and it was left for common use of defendant no. 1 and his seller.

8. *It is also pertinent to mention that as per Section 15 of Easement Act, 1882, the easementary right must have been enjoyed atleast for 20 years. On the other hand, the sale deed of the plaintiff is dated 28.08.2017 and the said path is not consisting in any of the Khasra number of the plaintiff. It has been mentioned in the sale deed dated 04.09.2017. From the said sale deed, it is clear that the plaintiff had purchased their property in 2017 and the period of 20 years has not been elapsed since then. Therefor, the plaintiff cannot claim easementary rights in the present suit*

in relation to the above said passageThe said fact that the alleged passage is not common passage is also duly corroborated by the report of concerned SDM, which has not even been challenged in the present suit. Therefore, no prima facie. case has been made out in favour of the plaintiff for grant of temporary injunctionFurther, in the plaint the suit property i.e passage in question has not been specified with a particular Khasra number or with any boundarieswhereas as per Order 7 Rule 3 of CPCwhere the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identity it, and in case such, property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

9. In view of above discussion, no ground has been made out to allow the present stay application and same is hereby dismissed and disposed of accordingly.'

12. After failing before the trial Judge, plaintiff took the issue of interim injunction by way of appeal before the learned Appellate Court, as its second attempt. While dealing with the appeal and passing of an impugned order dated 31.05.2023, in the concluding part of the order some observation is made which infact appears to be different to the pleadings of the parties. For the convenience, relevant and concerned findings given in paragraph No.12 is reproduced as under:

'12. From the submissions of the learned counsel for the parties, and from the record of file, it is an admitted fact that the plaintiff Somany Bath Fittings Pvt. Ltd. is company. It is adjoining to the defendant no. 1 which is also a registered company and it is also admitted fact there is one road of 55 feet. The plaintiff claims that he has a easementary right over the said property but on the other hand, the case of the defendant is that on the said property, the plaintiff has no right as property of 55 feet belongs to defendant.

Learned counsel for the plaintiff during the course of argument put the main stress that the defendant has constructed a ramp in the middle of the passage of 55 feet. Due to that it is hampering

the water flowing from the property of respondent no. 1 towards the property of plaintiff. Even the rain water is flowing from the premises of the defendants towards the plaintiff. The learned trial court has dismissed the application of the plaintiff on the grounds that the khasra numbers of the property is not mentioned. It is also hold that the plaintiff has no easementary right over the said property. The evidence is yet to be recorded whether the plaintiff have any easementary right over the passage i.e. 55 feet in area, It is also admitted that some factories/premises has been constructed around 55 feet road and there is use of frequent use of 55 ft passage. The learned trial court has not given any finding on the issue whether the flow of water due to rain or factory has been diverted to the property of plaintiff or not Although, it is an admitted fact that 55 feet road is passage of the defendant but it is well settled law that no person can use his property in such a way which causes inconvenience to the other party to use his property.

Hence, this Court is of the considered view that the learned trial court erred in dismissed the application under Order 39 Rules 1 and 2 CPC. Accordingly, the present appeal is partly allowed and the order dated 13.04.2023 is set aside and the case is remanded back to the learned trial court for 05.07.2023 for deciding the application under Order 39 Rules 1 and 2 CPC afresh because the learned trial court can seek the assistant of Local Commissioner or some expert on the following grounds:-

- 1. Whether the ramp was constructed by the defendant?*
- 2. Whether such a ramp will hamper the water from flowing in natural way?*
- 3. Whether water is being diverted towards the premises of the plaintiff appellant.*

However, it is made clear that any observations made in this order shall not have any affect on the merits of the case. Record of trial court alongwith copy of this judgment be sent immediately and the appeal file be consigned to the record room.'

13. While making submissions, learned Senior counsel for the petitioner/plaintiff submits that the learned appellate Court has misguided itself by noticing the wrong facts. Actually the facts recorded are against the pleadings. It has never been pleaded by the defendants in their written statement that the questioned 55 feet road

belongs to defendant No.1. Even there is no admission in any manner, made by the plaintiff accepting the ownership/belongingness of 55 feet road with defendant No.1, thus, while referring to the operative part of the order passed by learned Appellate Court, learned senior counsel submits that the findings are perverse and thus, same require to be set aside and therefore, the same have been assailed before this Court.

14. It has been noticed by this Court also that as per the case of the plaintiff the questioned 55 feet road is a common way (*Sanjha Rasta*), thus, same is obviously managed and controlled by the Village Panchayat or if the area falls within municipal Committee then the Management and control would lay with such Municipal committee.

15. However, for the reason best known to the plaintiff neither any Gram Panchayat nor Municipal Committee has been impleaded as party to the suit; nor the report dated december, 2022 of Tehsildar (reporduced in paragraph No.6 of the judgment) has been assailed.

Both the sides have left the dispute for the Court to decide as to whom the *rasta* of 55 feet road belongs or managed and controlled without impleading any one of them as a party to the suit.

16. This Court has taken note of some of the photographs appended with the present revision petition, wherein apparently due to construction of divider and road of concrete there is water logging,

which undoubtedly is not a sign of good hygiene. It would be a different question altogether as to by whom, problems are being faced for running their business (plaintiff or defendants) smoothly, but otherwise also if the 55 feet rasta/road belongs to the private parties, they cannot be permitted to cause hindrance resulting into inconvenience to the people/residents/business occupants of the nearby area. Even, on going fresh construction is clearly visible in the digital photographs taken in the month of Feb/March 2023 and appended with the petition.

17. Be that as it may, it is apparent that the Appellate Court has remanded the issue to learned trial Court for its re-decision by recording some wrong facts, however, still one fact is correctly noticed that the disputed area is 55 feet road and on the both sides of it, plaintiff and defendant No.1 are running their business.

Taking into consideration the pleadings of the parties, arguments addressed before this Court and the material available on the record of the revision petition, I do not feel any necessity to set aside the order passed by learned Appellate Court because the learned Appellate Court has already asked for re-decision of the issue at the instance of First/Original Court of jurisdiction and while remanding for its re-decision, some questions have also been framed by the Appellate Court.

18. Therefore, I deem it appropriate to add something more for the trial Judge to re-decide the application, by considering the

observation made herein by this Court, regarding the causing of inconvenience and unhygienic atmosphere/situation to the other people especially during the rainy season. Therefore, trial Court would also give its findings as to whom the area in question i.e. 55 feet road belongs/controlled/managed.

Said issue would be decided at the first instance and if it is found that the disputed rasta/road is owned or managed or controlled for public benefit by Gram Panchayat or the Municipal Committee, appropriate action would be recommended to such authority after giving its finding over the issues recommended by the First Appellate Court in its operative part of the order.

Trial Court would also find out and then give its finding regarding the construction of divider on the middle of the road by defendant no.1, whether it is fresh construction or already existing.

19. Let the exercise of re-decision by the learned trial Court be completed after giving due opportunity to all the parties to the suit in accordance with law within a period of eight weeks from the date of receipt of the certified copy of this order with the observations, terms and directions recorded hereabove, the present petition stands disposed of.

However, it is made clear that any observation made by this Court shall not be construed a finding on merits of the case and trial is expected to proceed for its final conclusion by following due

21. This order shall also dispose of all the pending miscellaneous application(s).

October 06, 2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no