

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

137

CR-4695-2023

Date of Decision: 21.08.2023

Satpal and others

....Petitioners

Versus

Municipal Committee , Ganaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sushil Jain, Advocate
for the petitioners.

SANJAY VASHISTH, J.(Oral)

1. Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 10.08.2023 (Annexure P-8) passed by learned Additional District Judge, Sonapat.

2. Petitioners (plaintiffs) filed a suit for declaration, mandatory injunction and permanent injunction under Sections 34, 39, 37 and 38 of Specific Relief Act against the respondents (defendants). Alongwith the suit, an application under Order XXXIX Rule 1 and 2 CPC was also instituted seeking injunction order against the respondents (defendants), because there was an apprehension of raising construction at that time. Vide order dated 11.05.2023, learned Trial Court dismissed the application for interim stay, after hearing the concerned parties.

3. Against the said order, petitioners (plaintiffs) went in appeal before the Court of District Judge, Sonipat under Order XLIII Rule 1 CPC and alongwith the memo of appeal also, an application for interim stay was filed. Relevant paragraph of the application alongwith its prayer reads as under:

'2. That the respondents/defendants who are strong and hot headed authorities and are threatening the applicants/plaintiffs to dispossess the plaintiff from the suit property forcibly and illegally and also threatening to interfere in the peaceful possession of the applicants/plaintiffs over the suit property forcibly and illegally or in any other manner. If the respondents succeed in their evil designs and illegal acts, then the applicants/plaintiffs would suffer an irreparable loss and injury which can not be compensated in any manner. That the applicants/plaintiffs is having good prima facie case and balance of convenience in their favour.

It is, therefore prayed respondents/defendants may that kindly restrained from dispossessing be the applicants/plaintiffs from the suit property forcibly and illegally and also be restrained from interfering in the peaceful possession of the applicants/plaintiffs over the suit property forcibly and illegally or in any other manner, may kindly be passed in favour of the applicants/plaintiffs and against the respondents/defendants till final decision of the appeal, in the interest of justice.

Any other relief which this Hon'ble court may deem fit and proper also be granted.'

4. While referring to the orders passed by the learned trial Court, counsel for the petitioners submits that on 25.05.2023, learned Appellate Court took cognizance of Civil Miscellaneous appeal alongwith the stay application and issued notice to the respondents (defendants) for 31.05.2023.

On 31.05.2023, on request of the respondents (defendants), hearing in the application was fixed for 06.09.2023. During this period, respondent/State started the process of raising the constructions over the site in question. While submitting so, counsel refers to the photographs appended with the petition and thus, prays for issuance of directions to the Appellate Court for early disposal of the interim stay application appended with the appeal.

5. He further submits that if a long wait is made till the next date of hearing, respondents (defendants) would succeed in raising construction over the site in question and the whole purpose of filing of the application would get frustrated, even before its decision.

6. Learned counsel for the petitioners contends that the application filed by the petitioners seeking preponement of the date of hearing in the interim stay application was also dismissed by the Appellate Court vide order dated 10.08.2023, which is impugned before this Court. For the sake convenience, the said order is reproduced as under:

' ***Satpal etc. vs. MC Ganaur***

*Present: Sh Ashish Vats, Advocate for
appellants/plaintiffs.*

*Sh. D.S. Boora, GP for
respondent No.2*

Reply to miscellaneous application for pre-ponement of present CMA not filed. Heard. This Court does not see any ground to pre-ponement of present CMA, which was adjourned to 06.09.2023 and so, request for preponement through application for early hearing, stands declined. Adjourned to 06.09.2023, date already fixed for argument in this CMAS.

(Dr.Sanjeev Arya)
MACT, Sonipat.
10.08.2023.{UID HR0246}

7. On hearing the submissions addressed by the counsel for the petitioners, this Court does not consider it necessary to issue even notice to the other side i.e. respondents, rather, the present petition can be disposed of by issuing an appropriate direction, which in any manner, would not prejudice the rights of the respondents also.

8. Therefore, learned Appellate Court i.e. the Court of learned Additional District Judge, Sonapat, is hereby directed to decide the application filed by the petitioners (plaintiffs) seeking interim stay on or before 06.09.2023, the date already fixed in accordance with law, after giving adequate opportunity/opportunities to the concerned parties. For compliance of the directions, if preponement of the hearing of the application or of the appeal is required, that would also be done by the Court.

9. With the aforesaid terms, **the present petition stands disposed of.** However, '**Status quo**' in regard to the construction shall be maintained only till 06.09.2023, on which the Court might take up

the application for its hearing for considering the prayer of interim injunction or till any other date, if preponed by the Court concerned.

It is made clear that the Court would not get impressed with any submission, observation or the interim order of status quo granted by this Court. It is also expected that the findings be given by the Appellate Court on the basis of the material available on record before it.

[SANJAY VASHISTH]
JUDGE

August 21, 2023
rashmi

Whether speaking/reasoned	Yes/no
Whether reportable?	Yes/no