

Naresh Kumar

....Petitioner

versus

Om Parkash and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sandeep Kumar Yadav, Advocate for petitioner.

Mr. Gopal Sharma, Advocate for respondents No.1 and 2.

Mr. R.S. Longia, Advocate for respondents No.3 to 5.

ARUN MONGA, J. (ORAL)

Revision petition herein is for setting aside impugned order dated 30.09.2022 passed by learned Additional District Judge, Narnaul, whereby, order dated 21.09.2022 (Annexure P-4) passed by learned Additional Civil Judge (Senior Division), Kanina, was set aside and pro forma respondents No.3 to 5/defendants No.2 to 4 have been restrained from releasing electricity connection to petitioner/defendant No.1.

2. Learned counsel for petitioner/defendant No.1 contends that respondents No.1 and 2/plaintiffs filed suit for permanent injunction against petitioner. Alongwith suit, respondents No.1 and 2 also filed an application under Order XXXIX Rules 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC'), which was dismissed by learned trial Court vide order dated 21.09.2022 (Annexure P-4). Aggrieved, respondents No.1 and 2 filed an appeal before learned Appellate Court, which has been allowed vide impugned order dated 30.09.2022, whereby, pro forma respondents No.3 to 5 have been

restrained from releasing electricity connection to petitioner-defendant No.1, till further orders.

3. I have heard learned counsel for the parties and perused the record.

4. Having heard rival contentions, it emerges that the controversy is with regard to location of the poles, which are required to be erected for supplying power to the poultry farm of petitioner (defendant in the suit). Petitioner's learned counsel would contend that same are to be erected in public area/ road which abuts the land of petitioner (defendant) on which the poultry farm is situated.

4.1 Per contra, learned counsel for respondents No.1 and 2/plaintiffs argues that same is factually incorrect and states that poles to be erected are passing through land owned by plaintiffs. He further contends that electricity Department is colluding with petitioner (defendant) to provide him captive power supply for his poultry farm by using land of petitioner and putting cultivation of the agriculture produce under peril as high powered electricity cable is being made to pass over his land underneath which, necessarily means that owners of the land have to work all through to carry out works for cultivation on the land.

4.2 Be that as it may, on a Court query, both learned counsels are *ad idem* that if a Local Commissioner is appointed, he can physically verify the land in question and give his report for assistance of learned Court below.

5. In the premise, without commenting on rival contentions of learned counsels as noted hereinabove, revision petition is disposed of with a request to learned counsels to file an appropriate application for appointment of Local Commissioner before learned trial Court or the Court on its own volition, may appoint a Local Commissioner to carry out physical verification of the land and submit a report for further assistance of the Court to pass appropriate orders afresh on the application under Order XXXIX Rules 1 & 2 of the CPC filed by plaintiffs.

CR-4370-2022 (O&M)

6. In the premise, impugned order dated 30.09.2022 passed by learned Appellate Court as well as order dated 21.09.2022 (Annexure P-4) passed by learned trial Court are set aside with liberty to the learned trial Court to pass afresh orders.

7. Disposed of, accordingly.

8. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 22, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No