

138

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

CR-5283-2023

Date of Decision:- 12.09.2023

BAHADAR AND OTHERS

....Petitioners

Vs.

**GRAM PANCHAYAT MALAB, TEHSIL AND DISTRICT NUH
THROUGH ITS SARPANCH**

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Anas Ahmed, Advocate for the petitioners.

AMARJOT BHATTI, J. (Oral)

1. The petitioners Bahadar and others have filed the present revision for quashing of order dated 20.07.2023 (Annexure P-4) passed by Civil Judge (Senior Division), Nuh directing the learned trial Court to decide the application under Order 39 Rules 1 & 2 CPC during the pendency of the suit.

2. Learned counsel for the petitioners pointed out that in the case in hand, suit was filed for declaration with consequential relief of permanent injunction against Gram Panchayat Malab, Tehsil Nuh, District Nuh on 10.03.2022. Copy of plaint is Annexure P-1. Along with suit, application under Order 39 Rules 1 and 2 CPC read with Section 151 CPC was also filed which is Annexure P-2. The defendant did not turn up and the case was fixed for ex-parte evidence. In the meantime, application was

filed to decide the application under Order 39 Rules 1 and 2 CPC which is Annexure P-3. The said application was declined by passing order dated 20.07.2023 which is Annexure P-4. It is prayed that till date the learned trial Court has not decided the application under Order 39 Rules 1 and 2 read with Section 151 CPC. Hence, the present civil revision.

3. I have considered the pleadings and the documents relied upon by the learned counsel for the petitioners/plaintiffs. It is matter of record that the plaintiffs filed suit for declaration with consequential relief of permanent injunction along with the application under Order 39 Rules 1 and 2 read with Section 151 CPC. The defendant – Gram Panchayat is *ex parte* in this case. Even if the defendant is not contesting the suit, it is the duty of the trial Court to dispose of the application under Order 39 Rules 1 and 2 CPC on merits. The application cannot be kept pending in case the suit is not contested by the defendant. Therefore, considering the aforesaid factual position, the Court of Civil Judge (Senior Divn.), Nuh is directed to dispose of the aforesaid application on merits, as per law within a period of 4 weeks from today.

The Civil Revision is accordingly disposed of.

12.09.2023

snd

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No