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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : May 08, 2023

HARPREET SINGH AND ANR.

-Petitioners

V/S

STATE OF PUNJAB & ORS.

-Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Abhijeet Partap Singh Chaudhary, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. Vikas Prakash, Advocate for
Mr. G.S. Virk, Advocate
for the respondents No.5 and 6.

SURESHWAR THAKUR, J.(ORAL)

1. The present petitioners become aggrieved from the issuance of Annexure P-8, and, of Annexure P-9, whereby, the purported illegal occupation, as made by petitioners over the village street, has been asked to be forthwith removed.

2. A reading of Annexures P-8, and, P-9, reveals that a civil suit has been instituted at the instance of the petitioners, before the civil court of competent jurisdiction, but covering the dispute as becomes encompassed in Annexures P-8, and, P-9, but since on an application, if any, thus instituted within the said civil suit, and, as cast under Order 39 Rules 1 and 2 CPC, no ad interim injunction has been granted in favour of the plaintiffs, petitioners herein, thereby it appears that the authorities were led to draw the impugned Annexures P-8, and, P-9.

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3. Assuming that the recouring of the remedy of institution of a civil suit, at the instance of the petitioners herein, may not be an able remedy for the relevant purpose, but if it has been recoured, thus if no application under Order 39 Rules 1 and 2 CPC, has been filed within the civil suit, and, if filed it has resulted in either no order being passed thereon, or, an order adversarial to the petitioner being made thereon, by the civil court concerned, thereupon either an application under Order 39 Rules 1 and 2 CPC, is the apposite application to be filed within the civil suit, by the petitioners herein, thus seeking therein an interim relief rather for restraining the authorities concerned to not draw any further action in pursuance to the alleged encroachment being made by them, over the Gair Mumkin Street, and/or, in case an adversarial decision is made on the said application, by the learned civil court of competent jurisdiction, thereupon to make an appeal thereagainst, before the learned first appellate authority concerned.

4. Though the above remedies are available to be recoured by the petitioners, but there is complete silence in the petition as well by the counsel for the petitioners, who has not been able to assist this Court, whether the above application has been filed, or, whether an adverse order, has been made thereon, and/or, whether an appeal has been made thereagainst thus before the first appellate authority concerned.

5. As stated above, since the above are the apt remedies, especially when the civil suit covering the lis at hand, has been instituted before the civil court of competent jurisdiction, but yet the said remedy has not been availed, and yet the petitioners rushing to this Court, with the instant writ petition, thus this Court is led to treat the instant writ petition to

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be completely misconstituted, but leaving liberty to the petitioners to assail, the Annexures (supra), if not earlier assailed through an application for amendment of the plaint being instituted, and, if in the suit, there is a challenge to the said Annexures, and, if no application for interim relief, has been filed, to institute an interim application under Order 39 Rules 1 and 2 CPC before the civil court concerned, claiming therein an interim injunction for restraining the respondent(s)/defendant(s) thereins, from asking the plaintiffs, petitioners herein, to remove the encroachment, as purportedly made upon the Gair Mumkin Street. Such an application, if not earlier filed, be forthwith filed, and, on its preferment, the same shall be positively decided within 15 days of its preferment, but after hearing all affected persons. Moreover, in case, an adversarial order has been made on the said application, thereupon, it is permissible for the petitioners to, if not made, make a challenge thereagainst before the first appellate court concerned.

6. Disposed of with the above observation.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 08, 2023
devinder

Whether speaking/reasoned. : Yes/No
Whether Reportable : Yes/No