

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6025-2022 (O&M)

Date of Decision: March 23, 2023

Rajesh Kumar

...Petitioner

AND

Dinesh Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Japjit Singh Johal, Advocate
for the petitioner.

ARCHANA PURI, J.

CM-5322-CII-2023

Present application has been filed for placing on record
Annexures P-13 to P-17.

In view of the averments made in the application, same is
allowed and the aforesaid documents are taken on record.

CR-6025-2022

Challenge in the present revision petition is to the order dated
17.05.2021 (Annexure P-3) passed by learned Court below, whereby, the
petitioner (defendant No.3 before the Court below) has been restrained from
creating any obstacle/hindrane in ingress and outgress of the respondent
No.1(plaintiff) and his bullock cart, to his field.

Further, the petitioner has also challenged the order dated
11.11.2022 (Annexure P-12) passed by learned Court below, whereby, SHO

concerned has been directed to provide necessary police help to implement the order dated 17.05.2021.

The necessary facts, as culled out, from the paperbook are that, initially, respondent No.1-Dinesh Kumar (who is plaintiff before the Court below) had filed a suit against State of Haryana, Collector, Hisar as well as the present petitioner, who had been impleaded as defendant No.3. Through the said suit respondent No.1(plaintiff) sought declaration qua his entitlement to get corrected the entries in the jamabandies, regarding the land, as detailed in the headnote of the plaint as 'Passage' which has been wrongly shown as 'agricultural land'. Besides the same, consequential relief of injunction had also been sought to restrain the petitioner (defendant No.3) from blocking the passage of 11 feet in width, in the land as detailed in the headnote of the plaint and also to restrain the petitioner (defendant No.3) from creating any obstacle/hindrance in ingress and outgress of respondent No.1(plaintiff) and his bullock cart etc., to his field, on the basis of the wrong entries.

It is evident that the notice was ordered to be issued to the defendants. However, on 17.05.2021, when the service of petitioner (defendant No.3) was duly effected, following order was passed:-

'Notices issued to defendant no.3 received back duly served, but none has appeared on his behalf, despite repeated calls. In view of Covid-19, adverse order could not be passed against defendant no.3. Now to come up on 08.07.2021 for further proceedings. Till then, defendant No.3 be restrained from creating any obstacle/hindrance in engressing and outgressing the plaintiff and his bullock cart etc. to his field.'

Thereafter, an application for setting aside/vacation of the stay

order was filed by the petitioner(defendant No.3), copy whereof is **Annexure P-4** and reply to the said application was also filed by respondent No.1(plaintiff), copy whereof is **Annexure P-5**. Furthermore, another application was also filed by the petitioner for appointment of the Local Commissioner in the case, copy whereof is **Annexure P-6**. However, no reply to the said application had yet been filed. Also, it has been brought to the notice of the Court by learned counsel for the petitioner that both the aforesaid applications are still pending. Further, it is submitted that the petitioner (defendant No.3) had filed his written statement as well as reply to the application under Order 39 Rule 1 and 2 CPC, copies whereof are **Annexures P-8** and **P-9**. However, the application under Order 39 Rule 1 and 2 CPC, has still not been disposed of.

Further, it is evident from the paperbook that besides the aforesaid two applications, still being pending, an application was also filed by respondent No.1(plaintiff), for seeking police help, for compliance of the order dated 17.05.2021. Copy of the said application is **Annexure P-10**. Reply to the said application was also filed, copy whereof is **Annexure P-11**. Upon hearing the aforesaid application, the impugned order dated 11.11.2022 was passed, thereby extending police help to the respondent No.1(plaintiff), to comply with the order dated 17.05.2021.

Since the main application under Order 39 Rule 1 and 2 CPC is pending adjudication and the application for vacation of stay is also pending adjudication, it is essential that these applications should be decided, at first instance.

Now, learned counsel for the petitioner submits that petitioner

shall be satisfied, if a time-bound direction is given to the Court below, to decide the application under Order 39 Rule 1 and 2 CPC, as written statement and reply to the said application have already been filed.

In the given circumstances, the impugned order dated 11.11.2022 is hereby set aside, with a specific direction to learned Court below to dispose of the application under Order 39 Rule 1 and 2 CPC. At this stage, it has been brought to the notice of this Court that next date of hearing before the Court below is 19.04.2023. In the given circumstances, learned lower Court shall hear the arguments, on an application under Order 39 Rule 1 and 2 CPC, on the date of fixed or if, for one reason or the other, due to some constrained circumstances, the arguments could not be heard on the said date, then learned lower Court shall hear the arguments and dispose of the aforesaid application, within a period of 15 days, since 19.04.2023.

Accordingly, the present revision petition stands disposed of.

March 23, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No