

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

139

2023:PHHC:151686

**CR-6132-2022 (O&M)
Date of decision: 29.11.2023**

**MAHARAJA AGRASEN MEDICAL EDUCATION
AND SCIENTIFIC RESEARCH SOCIETY AND ANR ..Petitioners**

Versus

RAKESH ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Raman B. Garg, Advocate
& Mr. Mayank Garg, Advocate
for the petitioners.

Mr. Mohan Singla, Advocate
for Mr. Jasdev Singh, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. In this revision petition, the correctness of the order passed by the trial Court on 22.07.2022, while staying the proceedings in the subsequent suit, is assailed by the plaintiff.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. Maharaja Agrasen Medical Education and Scientific Research Society (hereinafter referred to as the 'Society') claims to be owner of the property. It has leased out the property to run a 'canteen-cum-eating joint' to the respondent (Sh. Rakesh son of Sh. Rajender Kumar). He filed a suit for grant of decree of permanent injunction restraining the defendant i.e. the Society from causing any interference/interruption. The prayer made in the plaint reads as under:-

“It is, therefore, prayed that a decree for Permanent (Prohibitory) Injunction restraining the defendant from causing any interference, interruption and hindrance in the peaceful working and possession of the plaintiff over

the Canteen-cum-Dhaba (Basement) situated in the Shopping Complex, Maharaja Agrasen Medical College, Agroha which is being used by the plaintiff peaceable as per the terms and conditions of the defendant and there is no such infringement of any of the condition of the original Rent Deed Agreement in any manner and further restraining the defendant from illegally and forcible dispossessing the plaintiff from the said Canteen-cum-Dhaba (Basement) or from auctioning the same to any other bidder or allotting the same to anyone except the plaintiff in any manner without due course of law and for mandatory injunction directing the defendant to renew the said Rent Deed Agreement in favour of the plaintiff as per the original terms and conditions by increasing the rent by 5%, may kindly be passed in favour of the plaintiff and against the defendant with costs in the interests of justice. Any other relief to which the plaintiff is found or deemed entitled by this Hon'ble Court may kindly also be granted in his favour."

4. The petitioner i.e. the Society after terminating the lease, filed a suit for possession. The prayer made in the subsequent suit filed by the Society reads as under:-

"It is, therefore, prayed that a decree for possession in respect of the shop fully detailed in the head note of the plaint situated at village Agroha, Tehsil and Distt. Hisar and for recovery of mesne profit for use and occupation of this shop @ Rs.30,000/- per month from the date of expiry of agreement i.e. 30.11.2019 till final realization may kindly be passed in favour of the plaintiffs and against the defendant with cost. Any other relief to which the plaintiffs are found entitled may also be granted."

5. While exercising the powers under Section 10 of the Code of Civil Procedure, 1908, the trial Court has stayed the proceedings in the subsequent suit on the ground that the matter in issue in both the suits is identical and if injunction is granted in favour of Sh. Rakesh Kumar, the suit for possession filed by the petitioner herein cannot be decreed. The Court has also held that the relief of injunction as well as possession would lead to the

same result and therefore, it would not be appropriate to continue two parallel proceedings as per the rules of procedure.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. In the considered view of the Court, the trial Court has failed to understand the basic concept as provided in Section 10 of the Code of Civil Procedure, 1908, which reads as under:-

*“10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in 1 [India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of 1 [India] established or continued by 2 [the Central Government 3***.] and having like jurisdiction, or before 4 [the Supreme Court].*

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in 1 [India] from trying a suit founded on the same cause of action.”

8. It is evident that Section 10 applies only to the cases where the ‘matter in issue’ in both the suits is identical. The expression ‘matter in issue’ does not only relate to either the parties to the suit or the suit property, but in fact, it also relates to the substance of the dispute. In the first suit filed by Sh. Rakesh Kumar, the Court is required to examine whether he is entitled to injunction or not, whereas, in the second suit, which has been filed by the owner-cum-landlord, the Court is required to decide whether the respondent Sh. Rakesh Kumar is liable to be evicted or not. Hence, the matter in issue involved in both the suits is entirely different. The trial Court is also incorrect in observing that the relief of injunction as well as possession would lead to the same result.

In the first suit, the Court can at the most grant an injunction, whereas, in the second suit, relief of possession shall be decided on the basis of rights of the petitioner.

9. Keeping in view the aforesaid facts, the impugned order is set aside. The trial Court is requested to proceed with the suit.
10. Disposed of accordingly.
11. All the pending miscellaneous applications, if any, are also disposed of.

November 29th, 2023
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*