

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

CR-731-2024 (O&M)

Date of Decision: 07.02.2024

Som Nath

...Petitioner

Versus

Bahadur Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Shivam Chaudhary, Advocate
for the petitioner.

GURBIR SINGH, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 13.12.2023 (Annexure P-9) passed by the Ld. Civil Judge (Jr. Division), Chandigarh whereby fresh notice was issued to respondent No.1, who was already proceeded against ex parte.

2. Learned counsel for the petitioner submits that the suit was filed on 23.06.2023 along with an application for temporary injunction. The notice was issued to the defendants/respondents. Defendant No.2 appeared in the Court through Sh. Aman, JE vide order dated 05.07.2023 and later on through counsel. Defendant No.1 was proceeded against ex parte (Annexure P-4). Defendant No.2 did not file the written statement. The Court did not pass any order on the temporary injunction application despite making request to the concerned Court. On 20.10.2023, written statement was filed by defendant No.2. The order dated 20.10.2023, is reproduced as under:-

“Written statement filed by defendant no.2. copy supplied. Now to come up on 13.12.2023 for filing replication.”

3. On the next date i.e. 13.12.2023 of hearing (Annexure P-9), the following order was passed:

“Notice issued to defendant received back served. Let, in the interest of justice, let, fresh notice to defendants be issued for 21.12.2023. Dasti summons be issued if so desired.”

4. Without any reason, notice to the defendant was issued. When defendant No.1 was already proceeded against exparte and defendant No.2 was appearing then there was no question of issuing fresh notice to defendant. It seems that order dated 13.12.2023 is passed by mistake. An interim order which is result of mistake can be even suo moto corrected but learned trial Court failed to correct the same. The plaintiff even moved an application (Annexure P-10) for transfer of the case. The learned District Judge passed the order dated 16.01.2024 (Annexure P-11) with the directions to the court concerned to expedite the matter and dispose of the same specifically the application under Order 39 Rule 1 and 2 read with Section 151 CPC by giving short possible adjournments by way of adjustment of work. The trial Court even failed to take note of the same. The Civil Courts are constituted to determine the rights of parties in accordance with the law. Whenever any suit is filed along with application for temporary injunction, it is duty of the Court to dispose of the application for temporary injunction without any delay. If a person who knocks the door of the Court and is not even able to get decision as his application for temporary injunction, then faith of common man would erode from judicial system.

5. Learned counsel for the petitioner further submits that the petitioner would be satisfied if his application for temporary injunction (Annexure P-2) is disposed of in a time bound manner as defendant No.1 is already proceeded against exparte. Counsel for defendant No.2 had appeared.

6. Keeping in view that application was for grant of temporary injunction and same is pending since June, 2023 and after proceeding of exparte against defendant No.1, against whom temporary injunction is sought so this petition is disposed of with direction to the concerned Court to decide the same immediately. The learned Court is directed to decide the application under Order 39 Rule 1 and 2 CPC within a period of one month and till then parties are directed to maintain status quo as to the construction on the suit property.

7. Copy of this order be given under the signature of the Bench Secretary.

07.02.2024

Parveen kumar

(GURBIR SINGH)
JUDGE

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