

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

133

CWP-10941-2024 (O &amp; M)

Date of Decision: 13.05.2024

**Harbans Singh**

....Petitioner

Versus

**State of Punjab and others**

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MR. JUSTICE LALIT BATRA**

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**Present:** Mr. S.S.Kamboj, Advocate  
for the petitioner.

Mr. Maninder Singh, Sr. Deputy Advocate General, Punjab.

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**Sureshwar Thakur, J. (Oral)**

1. Learned counsel for the petitioner fairly submits that in respect of the subject matter involved in the instant writ petition, the petitioner has instituted a civil suit claiming therein, the relief of permanent injunction against the mineral concessionaire concerned. He also further submits, that on an application filed within the civil suit, under Order 39 Rules 1 and 2 CPC, the learned Civil Judge concerned, has restrained the defendants therein, to make excavation of the minor mineral concerned, from the sites concerned.
2. Though therebys, the instant writ petition which is post the institution of the civil suit supra, is *prima facie* barred by the principle of *res sub judice*. Nonetheless, in the larger interest of the justice, when it is stated at the bar by the learned counsel for the petitioner, that there is wilful disobedience on the part of the defendants in the civil suit concerned, of the

order passed on an application cast under Order 39 Rules 1 and 2 CPC, whereby, the present petitioner has been led to access the writ court.

3. Naturally, the relief in respect of makings of wilful or intentional disobedience by the defendants to the said suit, qua the order passed against them, on an application filed within the said civil suit under Order 39 Rules 1 and 2 CPC, is again, not through the said order becoming enforced through the instant writ petition, but is rather through a specific remedy carried in Order 39 Rule 2A CPC, becoming recoured by the petitioner before the Civil Court concerned.

4. In consequence, in the wake of the above, the learned counsel for the petitioner seeks and is granted leave to institute the said application before the learned Trial Judge concerned. On the said application being filed, the learned Trial Judge concerned, after drawing an issue, on the contentious pleadings of the parties, shall proceed to make such orders as deemed fit in accordance with law against the errant defendants concerned.

5. Moreover, in case the District Mining Officer, is not impleaded as a party-defendant in the said suit, thereupon it is open to the present petitioner to implead the said District Mining Officer in the said suit.

6. Furthermore, in case, in the said civil suit, only a relief of permanent prohibitory injunction is claimed, but no relief of mandatory injunction is claimed against the District Mining Officer concerned, thereupon, it is open to the petitioner to amend the prayer clause of the said civil suit.

7. If ultimately, the learned Trial Judge records findings in favour of

the applicant/plaintiff on the issues drawn in the application filed under Order 39 Rule 2A CPC, thereupon, the learned Civil Judge concerned shall proceed to take such further action as he deems fit, in accordance with law against the errants concerned, inclusive of a direction being passed upon the jurisdictional SHO concerned, to purvey police help, if required, to further restrain the errant mineral concessionaire from making illegal excavation of the minor mineral concerned, thus from the disputed sites.

8. Disposed of accordingly along with all pending applications, if any.

**(SURESHWAR THAKUR)**  
**JUDGE**

**13.05.2024**

*Varinder Prashad*

**(LALIT BATRA)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No