



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

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**CR-4625-2024 (O&M)
Date of Decision : 30.08.2024**

RAMESH Petitioner

VERSUS

MANOJ AND ANR Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. D.K. Tuteja, Advocate for the petitioner.

None for respondent No.1.

Mr. Sandeep Parkash Chahar, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

1. As per the Office report, the respondents stand duly served. However, no one has put in appearance on behalf of respondent No.1 despite service. Mr. Sandeep Parkash Chahar, Advocate has appeared and has filed his memo of appearance on behalf of respondent No.2. The same is taken on record.
2. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 05.08.2024 passed by the learned Civil Judge (Senior Judge), Rohtak whereby the stay granted vide order dated 08.01.2024 is deemed to have been set aside.
3. Brief facts relevant to the present *lis* are that on 22.12.2023 the plaintiff-petitioner filed a suit for permanent injunction along with an application under Order 39 Rules 1 and 2 CPC. On 22.12.2023 itself the

Trial Court issued notice of the suit and the application to the defendant-respondents for 04.01.2024. On 04.01.2024 the defendant-respondent No.2 was proceeded against *ex parte*. On 06.01.2024 the defendant-respondent No.1 was also proceeded against *ex parte*. Thereafter, on 08.01.2024 the Trial Court ordered maintenance of status quo till the final disposal of the suit and the matter was fixed for *ex parte* evidence on 03.04.2024. Subsequently, vide order dated 26.04.2024 the *ex parte* order dated 04.01.2024 against defendant-respondent No.2 was set aside subject to payment of ₹1,000 as costs and defendant-respondent No.2 (Gram Panchayat) was permitted to file the written statement as well as reply to the stay application. It is a matter of record that the said order was never challenged by the plaintiff-petitioner. Subsequently, on 05.08.2024 an application was filed by the plaintiff-petitioner for framing of the issues. Vide the impugned order dated 05.08.2024 the application for framing of the issues was dismissed and the order dated 08.01.2024, whereby *ex parte* status quo was ordered, was deemed to have been set aside. Hence, the present revision petition by the plaintiff-petitioner.

4. Learned counsel for the plaintiff-petitioner would contend that there was no application for vacation of stay and hence there was no occasion for the Trial Court to have set aside the order dated 08.01.2024.

5. *Per contra*, learned counsel for defendant-respondent No.2 (Gram Panchayat) would contend that on 26.04.2024 while setting aside the *ex parte* order the defendant-respondent No.2 was permitted to file written statement as well as the reply to the stay application. Learned counsel has

further pointed out to the order dated 12.08.2024 whereby the case has now been adjourned to 04.09.2024 for arguments on the stay application.

6. Heard.

7. In the present case an order of status quo was passed by the Trial Court on 08.01.2024. Both the defendant-respondents had been proceeded against *ex parte* at that point. Thereafter, on 26.04.2024 the *ex parte* order dated 04.01.2024 qua defendant-respondent No.2 was set aside and the defendant-respondent No.2 was permitted to file written statement and reply to the stay application. The order granting status quo on 08.01.2024 was not varied by the Trial Court on 26.04.2024 and the Trial Court itself held “*Thus, the order dated 08.01.2024 would not have adverse consequences if defendant No.2 would be allowed to present his case*”. Thus, on 05.08.2024 there was no occasion for the Trial Court to *suo-moto* order that the earlier order dated 08.01.2024 is deemed to be set aside. On 05.08.2024 there was neither any application for vacation of the status quo order nor any arguments were raised regarding the status quo having been granted *ex parte*. In **Bachhaj Nahar vs. Nilima Mandal [(2008) 17 SCC 491]** the Hon’ble Supreme Court inter-alia held that “*A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings*”. It was further held that “*This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the*

course which litigation on particular causes must take”. Para 12 of the said decision reads as under :

“12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.”

The Trial Court has since itself fixed the matter for arguments on the stay application on 04.09.2024.

8. In view of the above, the impugned order dated 05.08.2024 cannot be sustained to the extent wherein it has been held that the order dated 08.01.2024 is deemed to have been set aside. Accordingly, the present revision petition is allowed and the impugned order dated 05.08.2024 is set aside to the extent mentioned above.

9. Admittedly, the Trial Court is seized of the application under Order 39 Rules 1 and 2 CPC. As such, the status quo already ordered shall continue till the Trial Court decides the application under Order 39 Rules 1 and 2 CPC. The Trial Court shall decide the said application in accordance with law and uninfluenced by any observations made by this Court. Pending applications, if any, also stand disposed off.

30.08.2024

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No