

205.

2024:PHHC:038986

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

I.

Civil Revision No.7595 of 2019 (O&M)  
Date of decision: 18.03.2024

Vijay Pal and others

.... Petitioners

Versus

Smt. Lali Devi and others

.... Respondents

2.

Civil Revision No.7597 of 2019 (O&M)

Vijay Pal and others

.... Petitioners

Versus

Smt. Lali Devi and others

.... Respondents

3.

Civil Revision No.7598 of 2019 (O&M)

Vijay Pal and others

.... Petitioners

Versus

Smt. Lali Devi and others

.... Respondents

4.

Civil Revision No.7599 of 2019 (O&M)

Vijay Pal and others

.... Petitioners

Versus

Smt. Lali Devi and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Hitesh Malik, Advocate, for the petitioners.

Mr. Akshay Jindal, Advocate, for respondent No.1.

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**GURBIR SINGH, J.**

1. By this common order, the above said four revision petitions are being disposed of as they arise out of the same proceedings.

2. Challenge in these revision petitions is to the order dated 08.08.2019 passed by learned Additional District Judge, Gurgaon where the appeal filed by the petitioners against the order dated 01.10.2018 passed by learned Civil Judge (Junior Division), Pataudi, has been disposed of as not maintainable.

3. Brief facts necessary for disposal of these revision petitions are that the petitioners-plaintiffs filed a suit for declaration with consequential relief of permanent and mandatory injunction against the respondents-defendants. Along with the suit, an application under Order 39 Rule 1 & 2 CPC read with Section 151 CPC for grant of temporary injunction restraining the issuance of warrant of possession of the suit land and for grant of stay of execution of judgment dated 30.05.2018 till final decision of civil suit and further restraining defendant No.1 not to interfere in the peaceful possession of the plaintiffs and also restrain defendant Nos.53 to 55 to obtain any procedure for delivery of possession to defendant No.1 for the suit property.

4. During the pendency of suit, learned trial Court, after hearing learned counsel for the plaintiffs and defendant No.1 and authorized representatives of defendants No.62 to 64 passed a detailed order whereby request for grant of ad interim injunction was declined vide order dated

01.10.2018 and the case was adjourned for filing written statement. The plaintiffs filed appeal under Order 43 Rule 1(r) CPC. The learned Additional District Judge, while relying upon ***Iqbal Singh Versus Chanan Singh, 1966 AIR (P&H) 165***, disposed of the appeal being not maintainable and directed the parties to appear before the learned trial Court.

5. Both the parties agree that the order declining grant of ad-interim injunction has been passed by the trial Court after hearing both the parties, so, appeal was maintainable. There is no dispute that the remedy under Article 227 of the Constitution of India is available to the petitioners only when no appeal lies against the order.

5.1 Since the order was passed by the learned trial Court after hearing the parties, so in view of provisions of Section 104, Order 43 Rule 1(r) CPC, appeal is maintainable. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in ***A. Venkatasubbiah Naidu Versus Chellappan and others, AIR 2000 Supreme Court 3032***. Paras 11 and 20 of said judgment read as under:-

*"11. It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43, Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate court or to approach the same Court which passed the ex parte order for any relief."*

*"20. Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the constitutional powers of the High Court it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition."*

5.2 In the case in hand, learned trial Court after hearing both the sides passed a detailed order dated 22.10.2018 and held that there was no ground to grant ad interim injunction and request of the plaintiff in that regard was declined. The learned trial Court passed speaking order, after hearing both the parties and after applying mind whether plaintiff is entitled for ad interim injunction or not. Whether the order is passed ex-parte on an application under Order 39 Rule 1 and 2 CPC or is passed after hearing the parties, then appeal is maintainable. The only requirement is that the order is passed under Rules 1 and 2 of Order 39 CPC. Any order granting or declining an injunction cannot be passed under Rule 3 of Order 39 independently of Rule 1 or 2 CPC. If the Court just give notice of the application under Order 39 Rule 1 and 2 CPC to the other party without expressing any opinion declining the ad interim injunction, then appeal is not maintainable. In the case in hand, order declining ad interim injunction

was passed after hearing the parties, so appeal against said order is maintainable under Order 43 Rule 1 (r) CPC.

6. In the light of above discussion, the impugned order passed by the learned appellate Court that appeal is not maintainable is hereby set aside and the learned appellate Court is directed to decide the appeal after hearing the parties in accordance with law. All the four revision petitions are allowed accordingly.

7. Parties are directed to appear before the learned appellate Court concerned on 08.04.2024.

8. Pending application, if any, shall also stand disposed of.

**(GURBIR SINGH)**  
**JUDGE**

**March 18, 2024**  
sanjeev

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