

CR-6184-2023 (O&M)

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

Sr. No.128

CR-6184-2023 (O&M)
Date of Decision: 03.04.2024

**RAJ KUMAR (SINCE DECEASED) THROUGH LEGAL
REPRESENTATIVES AND ANOTHER**

....Petitioners

Versus

CHATAR PAL

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Parminder Singh, Advocate,
for the petitioners.

ARCHANA PURI, J. (Oral)**CM-22163-CII-2023**

The present application has been filed for placing on record the zimini orders passed in appeal i.e. CMA-39-2022, as Annexure P-10 and zimini orders passed in CS-266-2021 as Annexure P-11.

In view of the averments made in the application, same is allowed and the requisite zimini orders are taken on record.

Main case

In continuation of the submissions, as observed in the order dated 19.10.2023 passed by this Court, learned counsel for the appellant has also made reference to various zimini orders passed by learned Appellate Court, as well as learned Trial Court and submitted that in the civil suit, in pursuance of the notice issued on 20.04.2022, though, Power of Attorney was filed on behalf of the defendants, but written statement/reply, was not filed and the case was fixed further for 07.05.2022. However, it is submitted

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that vide the same order, the petitioners (who were defendants before learned Trial Court), were restrained from interfering in the use of tubewell connection bearing No.3003131000 by the respondent/plaintiff, for irrigating the suit land, till the decision of the stay application.

Feeling aggrieved by the aforesaid order, an appeal was filed by the petitioners/defendants. In this regard, learned counsel has made reference to the zimini orders, which have been placed on record as Annexure P-10 and submitted that during the pendency of the appeal, an application was filed before learned Trial Court, at the instance of the respondent/plaintiff, for seeking police help and same was allowed vide the impugned order. It is submitted that the case was being adjourned simultaneously, for addressing arguments on the application under Order 39 Rule 1 and 2 CPC and also on the application for seeking police help. However, the application for seeking police help was allowed, even though, the appeal qua the order dated 20.04.2022 was under challenge before learned Appellate Court and an application under Order 39 Rule 1 and 2 CPC was also pending adjudication. Moreover, it is submitted that the appeal is also not being disposed of by learned Appellate Court.

Considering the aforesaid fact situation, which is evident from the various zimini orders passed, on query by the Court, learned counsel for the petitioners submits that he would be satisfied, if any time bound direction is given, for disposal of an application under Order 39 Rule 1 and 2 CPC and he shall also withdraw the appeal filed before learned Appellate Court to assail the order dated 20.04.2022.

In view of the submission, so made by learned counsel for the petitioners and also considering the anomalous situation, which has arisen in

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pursuance of the order for police help having passed by learned Trial Court, more particularly, when an application under Order 39 Rule 1 and 2 CPC and also the appeal before learned Appellate Court, were pending adjudication, the instant revision petition is hereby accepted, subject to withdrawal of the appeal i.e. CMA-39-2022, filed before learned Appellate Court, within a period of one week from today onwards.

On withdrawal of the appeal, it is requested to learned Trial Court to hear the arguments on an application under Order 39 Rule 1 and 2 CPC, on the date fixed i.e. 19.04.2024, or within a period of seven days thereafter.

In the given circumstances, the impugned order stands set aside.

However, the aforesaid observations are circumscribed only for the purposes of disposal of the present revision petition and learned Trial Court shall decide the application under Order 39 Rule 1 and 2 CPC, uninfluenced by the observations made by this Court, as aforesaid, or in the order passed on the application for police help, made by itself.

In view of the aforesaid terms, the instant revision petition stands disposed of.

03.04.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No