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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-7050-2024

Date of decision : 10.12.2024

Gauri Shankar Sahu and others

... Petitioners

Versus

Municipal Corporation Gurugram

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Kunal Dawar, Advocate
for the petitioners.

Mr.Jagdish Manchanda, Addl.A.G. Haryana.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the order dated 21.07.2022 passed by the Civil Judge (Jr.Div.), Gurugram (Annexure P-1) vide which the ad-interim stay granted vide order dated 19.01.2022 (Annexure P-5) upon an application under Order 39 Rules 1 and 2 CPC has been vacated. Challenge is also to the order dated 08.11.2024 vide which the Ist Appellate Court had dismissed the appeal filed by the petitioner against the vacation order of ad-interim injunction.

2. Learned counsel for the petitioners has submitted that the petitioners had filed a suit for permanent injunction with the consequential relief of mandatory injunction on 18.01.2022 and along with the suit, had

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filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC. It is submitted that vide order dated 19.01.2022, the Civil Judge (Jr.Div.), Gurugram, had restrained the defendant-respondent from removing the vending carts of the plaintiffs from the location mentioned in the receipts attached with the plaint till the next date of hearing. It is submitted that however on 21.07.2022 the said interim order was not extended and thus, in effect was vacated. It is further submitted that the appeal filed by the petitioners against the said order has been dismissed vide order dated 08.11.2024. It is argued that the application under Order 39 Rules 1 and 2 CPC has not been decided as yet and the same is pending and since once the interim order was passed in favour of the petitioners and since the petitioners had their vending carts since 2015, thus, it is prayed that till the time the application under Order 39 Rules 1 and 2 CPC is decided, the interim order dated 19.01.2022 be continued. It is stated that the petitioners would not delay the decision on the said application and would fully assist the trial Court to expeditiously decide the same. It is pointed out that the respondent-Municipal Corporation has not filed the written statement till date and instead of filing the written statement, has filed an application under Order 7 Rule 11 CPC.

3. On 04.12.2024, this Court was pleased to pass the following order:-

“On the asking of the Court, Mr. Jagdish Manchanda, Addl. A.G. Haryana, who is present in the Court and is authorized to appear on behalf of the Municipal Corporation, Gurugram, prays for a short adjournment to get instructions in



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*the matter.**Adjourned to 10.12.2024.**04.12.2024”*

4. In pursuance of the abovesaid order, the learned Additional Advocate General, Haryana, has got instructions from the Commissioner, Municipal Corporation, Gurugram vide letter dated 09.12.2024 in which on merits of the case, the department is opposing the case of the petitioners but has submitted that the Municipal Corporation has no objection in case a period of one month is granted.

5. Learned Additional Advocate General, Haryana, has very fairly submitted that although the application filed by the Municipal Corporation under Order 7 Rule 11 CPC is pending adjudication but to do complete justice with the parties, they would file the written statement within a period of 10 days from today. It is submitted that the filing of the said written statement should not be taken as an estoppel against the Municipal Corporation from pursuing their application under Order 7 Rule 11 CPC, although they have no objection in case the application under Order 39 Rules 1 and 2 CPC is decided within a time frame. It is further submitted that only till the time the said application under Order 39 Rules 1 and 2 CPC is decided, the status quo order be maintained and grant of the status quo order should not be construed as an expression on the merits of the case and the trial Court be directed to decide the said application independently, in accordance with law, and after hearing both the parties concerned, as expeditiously as possible, preferably within a period of one month from the

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date of filing of the written statement.

6. Learned counsel for the petitioners has submitted that the petitioners would file a replication within a period of three days from the date the written statement is filed.

7. Keeping in view the abovesaid facts and circumstances and the fair stand taken by both the sides, the present petition is disposed of with the following observations / directions:-

i) The respondent- Municipal Corporation, Gurugram would file the written statement within a period of 10 days from today and would give an advance copy to learned counsel for the plaintiffs-petitioners in the trial Court. The filing of the said written statement would not be construed as an estoppel against the respondent from pursuing their application under Order 7 Rule 11 CPC.

ii) The petitioners have undertaken to file a replication, if any, within a period of three days from the date the written statement is filed by the respondent-Municipal Corporation.

iii) The trial Court is requested to decide the application under Order 39 Rules 1 and 2 CPC prior to deciding the application under Order 7 Rule 11 CPC and to decide the same as expeditiously as possible, preferably within a period of one month from the date of filing of the replication.

iv) Till the time the said application under Order 39 Rules 1 and 2 CPC is decided, the parties are directed to maintain status



quo as it exists today. However, grant of the said interim order should not be construed as an expression on the merits of the case and the trial Court would decide the application under Order 39 Rules 1 and 2 CPC independently, in accordance with law, after taking into consideration the arguments raised by both the parties and the pleadings on record of both the parties and also by not being influenced by the order dated 08.11.2024.

(VIKAS BAHL)
JUDGE

December 10, 2024.
Davinder Kumar

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