

2018 C L C 2020

[Lahore]

Before Mujahid Mustaqeem Ahmed, J

NOUMAN AZMAT----Petitioner

Versus

S.A. REHMAN & SONS through Proprietors and 6 others----Respondents

C.R. No. 23787 of 2017, decided on 9th May, 2017.

Civil Procedure Code (V of 1908)---

---O. XXXIX, Rr. 1 & 2---Specific Relief Act (I of 1877), S. 54---Suit for permanent injunction---Temporary injunction, grant of---Ingredients---Trial Court appointed local commission and in the light of report of said commission application for temporary injunction was dismissed---Validity---Pleadings, documents and supporting evidence had to be examined for grant or refusal of injunction---Assessment for grant of temporary injunction was to be made tentatively---Where complicated questions with regard to merits of the case existed requiring framing of issues and evidence then injunctive order might not be passed---Plaintiff had failed to establish necessary ingredients for grant of interim injunction---Defendants were raising construction as per permission granted by the Cantonment Board---Courts below had properly exercised discretion vested with them---Revision was dismissed in limine.

Province of Punjab through Collector, Gujranwala and another v. Alamgir and 3 others PLD 2005 Lah. 401 and Mst. Hajran Begum v. Kh. Muhammad Yousaf and Legal Heirs 2005 MLD 592 ref.

Irshad Husain v. Province of Punjab PLD 2003 SC 344; Pervaiz Hussain and another v. Arabian Sea Enterprises Limited 2007 SCMR 1005; Malik Gulzar Mehmood v. Muhammad Saleem Farrukh 2014 YLR 2506; Mst. Saeeda v. Province of Punjab 2014 CLC 65; Imtiaz Ahmad v. Muhammad Shoaib Shah 2015 CLC 1121; Sarwar Ali and others v. Registrar of Joint Stock Companies and 11 others 2016 CLC 1090 and Marghub Siddiqi v. Hamid Ahmad Khan and 2 others 1974 SCMR 519 rel.

Barrister Haris Azmat for Petitioner.

ORDER

MUJAHID MUSTAQEEM AHMED, J.---The factual matrix giving rise to this civil revision and necessary for its adjudication is that petitioner has filed a suit for permanent and mandatory injunction against the respondents, wherein it has been alleged that petitioner and respondents Nos. 1 to 6 are residing in the same vicinity and respondents Nos. 1 to 6 have started construction work in their premises. The grouce and grievance of the petitioner is that respondents Nos. 1 to 6 without approval of respondent No.7/ Sialkot Cantonment Board have started widening a room (a room used as bakery) adjacent to petitioner's residential portion and thus they are effecting free way of both sides of bakery room. The prayer has been made for permanent injunction restraining the private respondents for making such unauthorized and illegal encroachment. Along with the suit, the petitioner moved an application for interim

injunction with the prayer of restraining private respondents from raising any unlawful/illegal construction on both sides of bakery room and block/encroach upon easement right of the petitioner.

2. Respondents Nos. 1 to 6 by filing written statement and reply of the application, contested the suit as well as the petition for interim-injunction. To ascertain the position at the spot, local commission was appointed, who vide his report dated 3.2.2017 has intimated the court that by the construction being raised by respondents, the width of street is not being reduced. In the light of report of local commission, vide order dated 07.03.2017, the learned Civil Judge, Sialkot dismissed the application for interim injunction. The petitioner knocked the door of learned Additional District Judge, Sialkot but vide order dated 07.04.2017, the appeal was also stood dismissed while concluding as under:-

"Perusal of record shows that suit property and the suit passages are under the control of respondent No. 7, the cantonment board, Sialkot who has granted permission to the respondents Nos. 2 to 6 for repair vide letter No. B98-CBS dated 30.11.2016 and they have not raised any objection to the construction/repair made by the respondents. In written statement submitted by respondent No. 7 it is clearly mentioned that respondents Nos. 1 to 6 have sought prior permission as per rule for repairing of room cum hall. There is no violation of 'permission granting to the defendants Nos. 2 to 6 and repairing work is being carried out within the old structure of the building and no encroachment had been noticed at the spot. The report of local commission dated 03.02.2017 also reflects that the constructions raised by the respondents Nos. 1 to 6 does not amount to encroachment nor it has been narrowed down the width of the suit passage."

Feeling dissatisfied with the impugned order and judgment, the petitioner has assailed the same by filing this civil revision mainly on the grounds of against facts, law, misreading and non-reading of documents on record.

3. During course of arguments learned counsel for the petitioner has maintained that the order passed by learned Additional District Judge is replica of the order passed by learned Civil Judge, Sialkot and is not speaking one. Reliance has been placed on precedent Province of Punjab through Collector, Gujranwala and another v. Alamgir and 3 others (PLD 2005 Lahore 401), wherein it has been held that court must base all its findings on the evidence before it and not on mere surmises and conjectures and that each and every case is to be decided on its own peculiar circumstances and facts. He has further maintained that both the courts below have given undue weight to the report of local commission against which the petitioner has raised valid objections and as such the impugned order and judgment are liable to be set aside. In support of his contention, learned counsel for the petitioner has placed reliance on case law Mst. Hajran Begum v. Kh. Muhammad Yousaf and Legal Heirs (2005 MLD 592 Lahore) wherein mode and manner of demarcation of the landed property has been given.

4. In the light of submissions of learned counsel for the petitioner, I have gone through the record.

5. It is settled law that in order to succeed in petition under Order XXXIX, Rules 1 and 2 C.P.C. it is obligatory for the petitioner to prove the following factors:

(A) The prima facie existence of right in the applicant and its infringement by the respondents or the existence of a prima facie case in favour of the applicant.

- (B) An irreparable loss, damages or injuries which may occur to the applicant if the injunction is not granted.
- (C) That the inconvenience which the applicant will undergo from withholding the injunction will be comparatively greater than that which is likely to arise from granting it or in other words the balance of inconvenience, should be in favour of the applicant.

It is well settled principle of law that for grant of injunction or refusal thereof, pleadings, documents and supporting evidence have to be examined and the assessment whereof shall be made tentatively. However, where complicated question about merits arise, requiring framing of issues and evidence, the injunctive order may not be issued. In precedents *Irshad Husain v. Province of Punjab* (PLD 2003 Supreme Court 344), *Pervaiz Hussain and another v. Arabian Sea Enterprises Limited* (2007 SCMR 1005), *Irshad Hussain v. Province of Punjab and others* (PLD 2003 Supreme Court 344), *Malik Gulzar Mehmood v. Muhammad Saleem Farrukh* (2014 YLR 2506 Lahore), *Mst. Saeeda v. Province of Punjab* (2014 CLC 65 Lahore), *Imtiaz Ahmad v. Muhammad Shoaib Shah* (2015 CLC 1121 Lahore) and *Sarwar Ali and others v. Registrar of Joint Stock Companies and 11 others* (2016 CLC 1090), similar guiding principles have been reiterated for grant of interim injunction.

In landmark judgment delivered in case *Marghub Siddiqi v. Hamid Ahmad Khan and 2 others* (1974 SCMR 519), the apex Supreme Court observed that although the interim injunctions are granted under Order XXXIX Rule 1 of Code of Civil Procedure the principles, which govern the grant of injunctions, contained in the Specific Relief Act have also to be kept in view.

6. If the case of the petitioner is examined in the light of above criteria, to my view the petitioner has failed to establish any of the above ingredients necessary for grant of interim injunction. The learned Civil Judge for fair adjudication of the application moved under Order XXXIX Rules 1 and 2, C.P.C. even appointed local commission, who after spot inspection opined that respondents' party by raising construction was not blocking the street. As such the petitioner could not establish an arguable case in his favour. The courts below have further opined that private respondents are raising construction as per permission granted by respondent No.7/Cantonment Board, Sialkot. As such the courts below have properly exercised discretion vested with them and the impugned judgments cannot be held arbitrary, perverse or without jurisdiction. So the petitioner has failed to establish any valid ground for interference by this Court in exercise of its revisional jurisdiction.

Consequently, the instant civil revision is dismissed in limine.

ZC/N-15/L

Revision dismissed.