

**(2010) 08 P&H CK 0362**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Gian Chand and Another

APPELLANT

Vs

Sat Pal

RESPONDENT

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**Date of Decision:** Aug. 27, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 227

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

L.N. Mittal, J.

Defendants have filed the instant revision petition under Article 227 of the Constitution of India impugning judgment dated 09.08.2010 (Annexure P-1) passed by learned Additional District Judge, Kurukshetra.

2. Respondent-plaintiff Sat Pal filed suit against the defendants-petitioners. Along with the suit, the plaintiff moved application for temporary injunction restraining the defendants from running and operating the Gobar Gas Plant till final decision of the suit and also to remove the waste dung lying adjacent to plaintiff's house as interim relief.

3. The plaintiff's case is that defendants have installed Gobar Gas Plant adjacent to plaintiff's house and waste of the said plant gets flung on the walls of plaintiff's house and thereby, the said walls have been damaged and have developed cracks. Foul smell is also emitted from the Gobar Gas Plant making the life of the plaintiff very miserable.

4. Defendants denied the plaint allegations and pleaded that the suit has been filed to harass them on account of village politics. It was alleged that no damage is being caused to the house of the plaintiff by the Gobar Gas Plant of the defendants, which

was installed in June 2005 with permission of the State Government. The said plaint is not injurious to health nor foul smell is being emitted from the plaint.

5. Learned Civil Judge (Junior Division), Kurukshetra, vide order dated 05.02.2010 (Annexure P-2), dismissed the plaintiff's application for temporary injunction. However, appeal preferred by the plaintiff against the said order of the trial court has been allowed by learned Additional District Judge, Kurukshetra, vide impugned judgment dated 09.08.2010 (Annexure P-1). Feeling aggrieved, defendants have preferred the instant revision petition.

6. I have heard Learned Counsel for the petitioners and perused the case file.

7. Learned Counsel for the petitioners vehemently and emphatically contended that cracks in plaintiff's house have occurred on account of poor construction and no damage to the house has been caused by the operation of Gobar Gas Plant of the defendants. The contention cannot be accepted. Local Commissioner was appointed in the case by the trial court. Local Commissioner has reported that minor cracks exist in the walls of the plaintiff's house and there is also dampness in the said walls. It has also been reported that cracks in the walls have developed due to poor construction as well as due to seepage of waste of Gobar Gas Plant. Consequently, it cannot be said that only poor construction of plaintiff's house is responsible for appearance of cracks in the walls. On the contrary, there is specific report by the Local Commissioner that cracks have also developed on account of seepage of waste of Gobar Gas Plant. Moreover, the walls also remained damp on account of said seepage. It is thus manifest that operation of Gobar Gas Plant by the defendants is causing damage to the walls of the plaintiff's house. Consequently, defendants have prima facie no right to operate the Gobar Gas Plant, which is causing damage to the plaintiff's house. There is no illegality in the impugned judgment of the lower appellate court, whereby temporary injunction has been granted against operation of the Gobar Gas Plant.

8. Learned Counsel for the petitioners contended that lower appellate court should not have interfered with the discretion exercised by the trial court in the matter of temporary injunction. The contention cannot be accepted. There is provision of statutory appeal against order of refusal or grant of temporary injunction. The said provision of statutory appeal would be rendered infructuous if there has to be no interference at all in the order of the trial court in the matter of temporary injunction. In the instant case, the trial court failed to properly exercise jurisdiction or discretion vested in it and therefore, lower appellate court was justified in interfering with the order of the trial court. The defendants cannot be permitted to operate the Gobar Gas Plant at the cost and expenses of the plaintiff i.e. at the cost of causing damage to the plaintiff's house.

9. For the reasons aforesaid, I find no illegality in the impugned judgment of the appellate court so as to warrant interference in exercise of revisional jurisdiction.

The revision petition is without any merit and is accordingly dismissed in limine.

10. However, nothing observed hereinbefore shall be construed as expression of opinion on the merits of the suit.