(2011) 09 P&H CK 0202

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 4259 of 2011 (O and M)

Rajesh	APPELLANT
Vs	
Mussadi Lal and Others	RESPONDENT

Date of Decision: Sept. 1, 2011

Citation: (2012) 4 RCR(Civil) 155

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Rajbir Sehrawat, for the Appellant; Pankaj Jain, Advocate for the Respondent No. 1, for the Respondent

Final Decision: Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.

Petitioner herein suffers from a neo rich syndrome that a poor neighbor has no place to live and coexist. Petitioner who has become affluent, by demolishing three shops, has built a new modern contemporary showroom, whereas respondent neighbor is in occupation of shop which is partly made of a tin roof and mortar terrace. Furthermore respondent, who is a tenant is involved in a litigation with his landlord. Can such a person be allowed to suffer to his peril and give way to the riches of the petitioner? Therefore, this case is to be tested on the principle of ''Live and let live''. Above said being essence of the case, this Court shall now proceed to deal with the pleadings, orders passed by both the Courts below and the law cited by counsel for the petitioner.

2. Respondent-plaintiff had instituted a suit for mandatory injunction and consequential relief of permanent injunction. In the plaint, it was stated that he is in possession of a shop consisting of two Khans along with a tin shed in the front bearing Municipal No. 259, Ward No. 7, within the municipal limits of Sohna as a tenant under respondent-defendants No. 2 and 3 at a monthly rent of Rs. 14/- p.m.. It was further stated that towards northern side of the shop under the tenancy of the plaintiff, there was a Mori (a drain on the roof of the last khan at point X from

the very inception of tenancy for discharging rainy water from the roof). The rainy water from the Mori at point X is discharged through a pipe and the same was connected and affixed in the southern wall of shop of defendant No. 1 from the very inception of tenancy. This as per the pleaded case was existing for the last more than 100 years without any objection by the petitioner-defendant. It was stated that the defendants who are influential persons and have great political backup in collusion with each other and officials of Municipal Committee, Sohna have blocked the drainage which was passing through the southern wall of the shop of defendant No. 1 in order to cause loss and damage to the tenanted premises in possession of the plaintiff. It was stated that on 23.5.2011, due to heavy rain in the town, there was accumulation of water on the roof. On the request made by the plaintiff to the defendant to remove the blockage, on flat refusal, the respondent-plaintiff was left with no option except to file the suit.

3. The trial Court while dealing with the application for grant of ad-interim injunction, noticed the facts that in the sale deed dated 14.5.1984 executed in favour of defendants No. 2 and 3, existence of the Mori from which the water is to be discharged is depicted. It was stated that defendant No. 1 having blocked the Mori has caused blockage to the discharge of the water which was existing for the last 100 years. The trial Court in its order dated 9.6.2011 concluded as under:-

4...At this juncture I may also observe that existence of mori between the shop in question and the shop of defendant No. 1 is also depicted in the sale deed dated 14.5.84. Therefore, the existence of mori is prima facie proved. It is further pertinent to note that the plaintiff has categorically pleaded that defendant No. 1 has blocked the mori and resultantly the rainy water collected on the roof of his shop during rain on 23.5.2011. At the cost of repetition it may be observed that the averments of plaintiff have not been denied by defendant No. 1 as he did not appear despite service. It is also noteworthy that it is common knowledge that if the rainy water collects on the roof of any property, that property is endangered as the water will seep into the property and thereby damage its walls. Thus there is prima facie case in favour of plaintiff and he will suffer irreparable loss and injury if interim mandatory injunction is not granted. Balance of convenience is also in favour of plaintiff as he will suffer irreparable loss and injury if the injunction is not granted while the defendant No. 1 will not suffer any irreparable loss and injury if he is directed to remove the blockage from the mori.

4. Aggrieved against the same, the present petitioner-defendant filed an appeal. Before the lower Appellate Court, it was urged that the respondent-plaintiff had raised the construction only on his land and, therefore, no one can be allowed to discharge the water over other''s property. It was further pleaded that the petitioner-defendant had completed the construction of the shops about six months back but the respondent-plaintiff had filed the suit only on 25.5.2011. The lower Appellate Court noticed that the present petitioner-defendant-appellant had built a

three storey building, whereas respondent-plaintiff was only having a single storey shop on rent.

5. This Court, considering the fact that the parties may co-exist, on the asking of counsel for the petitioner on 15.7.2011, had appointed the Local Commissioner to find out an alternative mode of drainage of the water which is acceptable to both the parties. Order dated 15.7.2011 passed by this Court reads as under:-

This Court at the outset was reluctant to cause any interference in the discretion exercised by the trial Court which has been upheld by the lower appellate Court. However, on a very fair offer made by Mr. Rajbir Sehrawat, Advocate appearing on behalf of the petitioner, that an alternative to the satisfaction of both the parties can be worked-out which will serve the purpose in a better way, this Court has accepted the prayer made by the counsel for appointment of a Local Commissioner.

Learned counsel contends that the petitioner has raised a construction and if the ad-interim injunction is carried out it will cause irreparable loss to his property and business. Counsel states that an alternative can be suggested to drain the water from the shop of the respondent without causing any damage to the property or loss to the business of the petitioner. It is prayed that a Local Commissioner be appointed to visit the spot and suggest an alternative mode of drainage of the water which is acceptable to both the parties.

Mr. Sehrawat states that a young member of the Bar, Mr. Mayank Mathur, Advocate who is present in the Court, be appointed as a Local Commissioner. Ordered accordingly. Counsel for the petitioner states that a copy of the paper book shall be handed over to Mr. Mayank Mathur, Advocate during the course of the day.

As suggested by counsel for the petitioner, Rs. 20,000/- is fixed as remuneration for the visit of Local Commissioner besides his conveyance charges. The Local Commissioner, if so requires, may seek the help of a draftsman, photographer and a civil engineer to acquaint this Court as to whether any solution can be found which is acceptable to both the parties. The Local Commissioner shall give a prior notice of his visit to the respondent and his counsel in the trial Court. The charges for services of the draftsman, photographer and civil engineer shall also be borne by the petitioner.

To await the report of Local Commissioner, adjourned to 22nd July, 2011. Till then, the existing arrangement shall continue.

A copy of this order, duly attested by the Court Secretary of this Court, be supplied to Mr. Mayank Mathur, Advocate.

6. A perusal of the above order reveals that on that day also, this Court was reluctant to cause any interference in the discretion validly exercised by the trial Court. The Local Commissioner had visited the spot and submitted his report. The Local Commissioner has stated that shop of the petitioner appears to be a newly

constructed three storey building wherein he is doing the business of spare parts of the motor vehicles, whereas the respondent-plaintiff was a tenant in the adjoining shop and not a owner. The shop of the respondent-plaintiff is one storey building, old construction with a tin roof in the front and mortar terrace on the back. The Local Commissioner, for appreciation of this Court had attached the photographs also. Photograph attached as Annexure ''C'' depicts shop of the respondent-plaintiff. A perusal of the same shows that huge wall of three storey building has been constructed by the petitioner-defendant. The wall so built extend the front of petitioner''s shop to large extent. Extension of the face/front of the shop has resulted into the blockage of Mori existing since ages. Photograph, Annexure ''F'' also shows that due to the construction of the wall, the Mori which was on the roof of the shop of the respondent-plaintiff has been blocked. The Local Commissioner has suggested that: if the slope of the terrace of the shop of the respondent-plaintiff is changed from the existing side to the opposite direction, then a pipe can be fixed near the stairs of the shop which will discharge the water in the public drain present on the front of the shop.

7. Counsel for the respondent-plaintiff has submitted that the suggestion given by the Local Commissioner will affect and eclipse the tenancy rights of the respondent-plaintiff, as the landlord in the on-going litigation will evict him for material alterations of the tenanted property.

8. At this stage, Mr. Sehrawat, counsel for the petitioner-defendant has stated that he will bear the entire expenses for changing the slope of the roof to make the drainage of the water from opposite side of the shop. Of course, this will put the tenant at the risk and at the mercy of the landlord, who will be well within his rights to seek eviction of the respondent-plaintiff. Thus, he is entitled to refuse such a course suggested by the Local Commissioner. From the site plan and the photographs, it is evident that petitioner had taken the front of the shop too ahead and thereby has blocked the Mori from which rainy water used to flow. It was incumbent upon the petitioner that while raising such a huge wall, he should have taken care of interest of his neighbor also. Thus, both the Courts below have very rightly held that the respondent-plaintiff is entitled to ad-interim injunction.

9. Mr. Sehrawat, counsel appearing for the petitioner has relied upon Surja Vs. Har Chand to contend that case of the respondent-plaintiff in no way falls under the easement of necessity. It has been pleaded by the respondent-plaintiff that in the rainy season due to blockage of rain water, the loss and damage will be caused to the shop. It is a common knowledge that if outlet is not provided to the rain water, it will result into seepage and cause irreparable loss to the roof which is existing for the last 100 years. Thus, necessity to survive of the respondent-plaintiff''s business requires that outlet for the flow of the rain water ought to be available to the respondent-plaintiff. Further reliance has been placed upon Justiniano Antao and Others Vs. Smt. Bernadette B. Pereira, to say that one should claim easementary

right by prescription as a matter of right and there is no such pleading in the plaint. It has been specifically noticed by the trial Court that in the sale deed of the petitioner-defendant the existence of Mori has been noticed. Thus, for the last more than 100 years, the rain water from the shop of the respondent-plaintiff was being discharged through the Mori. It has only been blocked because of the construction raised by the petitioner-defendant. Hence, no interference is warranted in the present revision petition and the same is hereby dismissed.