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

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Date of Decision: 22.02.2023

Jaspal Singh and others

....Petitioners

Versus

M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. N.K. Verma, Advocate &
Mr. Ankush Verma, Advocate
for petitioners.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for seeking direction to Ld. Court below to finally dispose of the application for ad interim injunction filed under Order 39 Rules 1 & 2 CPC filed by respondent/plaintiff.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Respondent/plaintiff filed an application for ad interim injunction under Order 39 Rules 1 & 2 CPC along with a civil suit for decree of possession by way of specific performance of agreement to sell dated 21.03.2015 (Annexure P-1) *qua* land of petitioner/defendants, measuring 28 Kanals 18 Marlas situated in Village Bansepur, H.B. No.168, Tehsil Majri, District S.A.S. Nagar, Mohali on the basis of assignment agreement dated 11.05.2017 executed between M/s NRI City Developers Pvt. Ltd. Chandigarh & M/s Omaxe Chandigarh Extension Developers Pvt. Ltd. However, petitioner/defendants are not even party to the said assignment agreement dated 11.05.2017 and the same is not binding on petitioners. Ld. Court below after granting

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ex parte ad interim injunction in favour of respondent/plaintiff is adjourning the matter again and again and is not disposing of the application for ad interim injunction finally as required under Order 39 Rule 3A CPC, which is against the said provisions as well as settled law.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent as no legal prejudice would be caused to it. Notice to respondent is thus dispensed with.

4. Having heard learned counsel for petitioner, it transpires that petitioners herein are aggrieved *qua* pendency of application filed by respondent/plaintiff under Order 39 Rules 1 & 2 CPC despite the fact that an *ex parte* ad interim injunction was granted in favour of respondent/plaintiff way back on 14.12.2018. After service was effected upon petitioners, they filed their written statement on 16.08.2019 and the case was thus pending for consideration and disposal of pending application under Order 39 Rules 1 & 2 CPC. In fact, the sequence of zimni proceedings before Ld. Trial Court convey telling tale of the state of affairs which are self-explanatory and reflective of the lackadaisical approach by Ld. Court below. Same are reproduced herein below in the chronology right from the date when the suit was instituted:

“Nov. 2018: Suit was filed:

28.11.2018: Ld. Civil Judge: Case Adjourned for filing of Court Fee.

07.12.2018: Ld. Civil Judge: Court Fee not filed.

14.12.2018: Ld. Civil Judge: Court Fee filed, Ex-Parte, Ad-interim was granted to the Respondent/plaintiff.

16.01.2019: Ld. Civil Judge: POA filed by petitioner.

08.02.2019: Ld. Civil Judge: Court is on leave.

05.03.2019: Ld. Civil Judge: App u/O 39 Rule 3 & an application u/O 11 Rule 12 & 14 CPC filed for production of documents and for supply of Copies of documents filed by petitioner/defendant.

15.03.2019: Ld. Civil Judge: Reply to the above said application filed by petitioner/defendant not filed by plaintiff. Adjourned for 05.04.2019 for reply.

05.04.2019: Ld. Civil Judge: Reply of above said applications were filed. Come up for arguments for 26.04.2019.

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- 26.04.2019: Ld. Civil Judge: Consideration to application Or 39 Rule 3 not made today.
- 17.05.2019: Ld. Civil Judge: Documents received by counsel for Petitioner/defendant, therefore, Application u/O 11 Rule 12 & 14 CPC disposed off. Consideration to an application Or 39 Rule 3 not made today.
- 12.07.2019: Ld. Civil Judge: Petitioner/ Defendant placed on record registered cover and contended that only the copy of plaint received and no other documents were attached with plaint, as such Court found that the respondent/plaintiff has not complied with the status quo Order u/o 39 Rule 3 CPC.
Now come up on 16.08.2019 for consideration.
- 16.08.2019: Ld. Civil Judge: Written statement & Reply filed by the Defendant, copy supplied. Consideration not made. Fixed for 06.09.2019 for filing replication by the plaintiff and for consideration.
- 06.09.2019: Replication not filed by the Plaintiff. Consideration not made today.
- 27.09.2019: Ld. Civil Judge: Court on leave.
- 30.10.2019: Ld. Civil Judge: Replication not filed by the Plaintiff. Consideration not made today.
- 29.11.2019: Ld. Civil Judge: Consideration not made today.
- 06.12.2019: Ld. Civil Judge: Application by petitioner/defendant moved for sending the case to Commercial Court. Copy supplied. Let reply be filed on application.
- 20.12.2019: Ld. Civil Judge: Court on Leave.
- 03.01.2020: Ld. Civil Judge: Fresh POA filed on behalf of Respondent/plaintiff. Reply of application for sending case to Commercial Court not filed.
- 21.01.2020: Ld. Civil Judge: Reply filed by plaintiff on application. Copy supplied. Come up for Consideration on above application.
- 18.02.2020: Ld. Civil Judge: Consideration not made today. Last Opp.
- 17.03.2020: Ld. Civil Judge: Consideration not made today. Last Opp.
- 15.04.2020: Ld. Civil Judge: Covid-19
- 18.05.2020: Ld. Civil Judge: Covid-19
- 01.07.2020: Ld. Civil Judge: Covid-19
- 03.08.2020: Ld. Civil Judge: Covid-19
- 03.10.2020: Ld. Civil Judge: Covid-19
- 01.10.2020: Ld. Civil Judge: Covid-19
- 12.11.2020: Ld. Civil Judge: Covid-19
- 05.02.2021: Ld. Civil Judge: Consideration not made on application.
- 05.03.2021: Ld. Civil Judge: Consideration not made on application.
- 23.04.2021: Ld. Civil Judge: Covid-19
- 27.05.2021: Ld. Civil Judge: Covid-19

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- 26.08.2021: Ld. Civil Judge: Arguments to send matter to Comm. Court not addressed.
- 03.09.2021: Ld. Civil Judge: Pr. Off. on leave, Adjourned by Duty magistrate 12.11.2021
- 11.11.2021: Ld. Civil Judge: Adjourned as Court would be on leave on 12.11.2021
- 06.12.2021: Ld. Civil Judge: On request case adjourned for consideration.
- 25.02.2022: Ld. Civil Judge: Consideration on application, petitioner withdraw the application to send the matter to Comm. Court. App, dismissed as Withdrawn, Come for arguments on the stay application.
- 04.03.2022: Ld. Civil Judge: POA filed on behalf of Plaintiff. Arguments on addressed. Adjourned for consideration on stay application.
- 11.03.2022: Ld. Civil Judge: Arguments not addressed, adjourned for consideration.
- 08.04.2022: Ld. Civil Judge: Arguments not addressed, adjourned for consideration.
- 26.05.2022: Ld. Civil Judge: File put up being Duty Judge, Ld. PO availing joining time, adjourned for purpose already fix.
- 08.07.2022: Ld. Civil Judge: Counsel for plaintiff stated that he wanted to file replication, matter adjourned for replication & for Consideration.
- 29.07.2022: Ld. Civil Judge: Replication filed, Copy supplied, Counsel for defendant request for adjournment on consideration of stay application.
- 02.09.2022: Ld. Civil Judge: Arguments not addressed. On request of Counsel for Plaintiff adjourned.
- 23.09.2022: Ld. Civil Judge: Arguments not addressed. On request of Proxy Counsel for parties matter adjourned for consideration of the stay application.
- 28.10.2022: Ld. Civil Judge: Counsel for Petitioner/defendant stated that he is ready for the arguments but counsel for the plaintiff was not ready, matter adjourned for arguments & Consideration. Stay Extended.
- 24.11.2022: Ld. Civil Judge: Court on leave.
- 06.01.2023: Ld. Civil Judge: Court on leave, Adjourned to 27.01.2023.
- 30.01.2023: Ld. Civil Judge: Court was on leave on 27.01.2023, matter is fixed for 17.02.2023 for the purpose already fixed.
- 17.02.2023: Order not available. Next Date 03.03.2023.”

5. Perusal of the above sequence of date/s of hearings before Ld. Trial Court reveals that no doubt there was a certain zero period in between starting somewhere around March-2020 until May-2021 caused by the intervening pandemic, during which physical hearings in Courts in the entire country were suspended. To that extent, no fault can be found with Ld. Court below in further progress for disposal of the pending application. Except for that, however, this Court is unable to

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countenance the most lackadaisical manner in which Ld. Trial Court has proceeded in complete disregard of the duty cast upon it as per provisions under Order 39 Rule 3A CPC, which is reproduced herein below:-

“3A. Court to dispose of application for injunction within thirty days.— Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.”

6. Perusal of the above leaves no manner of doubt that ordinarily Ld. Trial Court is under a legal obligation as per Rule 3A *ibid* to dispose of injunction application in the prescribed time frame in those cases where *ex parte* indulgence has been shown. The reasons are not far to seek. At the *ex parte* stage, Ld. Court does not have the benefit of the version of other side and there is a higher probability of its being misled into passing *ex parte* orders. Therefore, the duty has been cast by way of self-contained protection in those cases where *ex parte* injunctions are required to be revisited after hearing both the sides. No doubt, due to heavy pendency of work in Courts, it may not sometimes be possible to finally dispose of the stay applications within a period of 30 days as envisaged, but at least the record should bear out and speak for itself that it was despite the endeavor of the Court that the application could not be heard or disposed of, for whatever reason it may be worth. To that extent, there is also further legal obligation on the part of the Court to record the reasons for non-disposal of the application within 30 days.

7. Trite it is to say, procedures are handmaid of justice and should not come in the way of discharge of substantial justice but learned Trial Court should not in a mechanical manner use the principles of law and the procedure prescribed by rules to not perform its duty. I am conscious of the fact that there are judicial precedents to the effect that procedural provisions ordinarily are directory in nature and not mandatory but having noticed the way this case has been dealt with by Court below, there seems no justification to overlook as many as 51 adjournments granted,

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most of which without recording any reason by simpliciter stating '*Adjourned for consideration*'.

8. In the premise, it needs to be made clear that Ld. Trial Court shall henceforth make earnest endeavor to finally dispose of injunction application filed under Order 39 Rules 1 and 2 CPC within a period of 30 days in all those cases where *ex parte* injunctions have been granted in favour of plaintiff(s). However, where it may not be possible to do so, duty is cast on Ld. Trial Courts to record valid reasons for not being able to do so. The said reasons are required to be recorded in writing in the proceedings while adjourning the matter.

9. Resultantly, the present revision petition is allowed. Ld. Trial Court shall dispose of pending application within a period of 4 weeks from the date of receipt of the instant order or a copy of the web print being produced before it by petitioner/defendants. Registry to convey this order to Ld. Presiding Officer of the Trial Court as well as to Ld. District Judges of the States of Punjab, Haryana and U.T. Chandigarh for sensitizing Ld. Presiding Officers of Trial Courts about the significance and importance of timely disposal of injunction applications in such like pending cases.

10. In the parting, I may also hasten to add here that I am fully alive to the situation that delay is not attributable to any one particular Presiding Officer. From the date of filing of the suit until the date, it is the third Presiding Officer, in the interregnum, dealing with the application. Even he has not taken note of statutory duty cast on him, inasmuch as, case was listed before him for first time on 08.07.2022, but he has been adjourning the disposal of the application without recording any acceptable reasons, knowing fully well that *ex parte* injunction was granted way back on 14.12.2018. It is thus not the negligence of any singular Presiding Officer. However, it is a duty of every Presiding Officer to be self vigilant and mindful of the duty as envisaged under the provisions of Order 39 Rule 3A CPC. The current incumbent though joined as Presiding Officer in the Court in question

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only in the month of July, 2022 but ought to have been careful in mechanically adjourning the pending application even that the same had already been pending before his predecessors for about 4 years.

11. Furthermore, there is another conspectus of the matter viz. the petitioner having not availed his appellate remedy before first Court of appeal. This Court is not interfering in *ex parte* injunction with liberty to petitioner to seek his remedy of appeal in case he so choses but given that the Ld. Trial Court has already been asked to decide the same within 30 days it is for the petitioner to take a call on his options. The power reposed with Trial Court to pass *ex-parte* injunctions is contained under Order XXXIX Rule 1 CPC which reads as under:

“1. Cases in which temporary injunction may be granted.—

Where in any suit it is proved by affidavit or otherwise—
(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.”

12. It is thus clear that any *ex parte* interim orders can only be passed under the aforesaid rule and the same has since specifically been made appealable under Order 43 Rule 1 CPC which reads as under:

“1. Form of appeal.

What to accompany memorandum—

(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the Judgment.

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Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.

13. In view of the aforesaid provision, it was thus open to petitioner to seek mitigation of his grievance by approaching learned Appellate Court due to inordinate delay in disposing the application under Order 39 Rules 1 and 2 CPC owing to which the *ex parte* injunction continued to be in operation.

14. Be that as it may, revision petition is being disposed of in above terms without interfering with the subsistence of the impugned order.

15. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 22, 2023
ashish/mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

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