

## ARUN KUMAR v. NARESH,(2022-1)205 PLR 462 , 2022 PLRonline 7354

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice H.S. Madaan.

ARUN KUMAR – Petitioner,

Versus

NARESH and others – Respondents.

Civil Revision No. 2493 of 2021

**Civil Procedure Code, 1908 (V of 1908) Order 39, Rule 1, 2 - Application for ad-interim injunction filed by the plaintiff, dismissed - Additional District Judge without due application of mind had directed that operation of impugned order shall remain stayed when vide that order application for ad-interim injunction filed by plaintiff had been dismissed - It is difficult to understand as to what does he mean by staying operation of the order vide which no interim relief had been granted to the plaintiff - Learned Additional District Judge, Karnal is directed to be careful in future while passing orders and not to pass orders in a mechanical manner.**

*Mr. Mayank Gupta*, for the petitioner.

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**H.S. Madaan, J.** - (29<sup>th</sup> October, 2021) - The case has been taken up through Video Conferencing.

2. Plaintiff Arun Kumar had brought a suit for declaration, mandatory injunction, mesne profits and permanent injunction against defendants Naresh Sharma, Udham Singh and Sonu on the averments that he along with one Jeewan Dass had land measuring 624 Sq. Yards having one shop on rent from defendant No. 2 Udham Singh vide rent agreement dated 16.8.2017 for the purpose of starting Dhaba. The rent was agreed to be Rs.22,000/- per month. The plaintiff had paid advance amount of Rs.3 lacs to defendant No. 2. The plaintiff had raised construction on the land so taken on rent/lease and had been running Dhaba under the name and style of 'Rangla Punjab'. Plaintiff had been paying the rent to defendant No. 2 regularly. Although initially Jeewan Dass had joined the plaintiff for taking the land but subsequently he withdrew. Defendant No. 1 with a malafide intention had joined plaintiff to get the Dhaba from him. Subsequently, he hatched conspiracy with defendants No. 2 and 3 to dispossess the plaintiff from the Dhaba and on 25.9.2021 defendants had dismantled the Dhaba of the plaintiff, took away the articles therefrom and threatened him not to come to Dhaba. Plaintiff had reported the matter to the police but to

no effect. Then he had filed suit for grant of permanent injunction in the Court moving an application for grant of ad-interim injunction there with. On notice being issued to the defendants they put in appearance and contested the suit as well application. Vide order dated 13.10.2021, the trial Court of Civil Judge (Junior Division), Karnal had dismissed the application. The operative part of the impugned order being as under :-

“After hearing the arguments and perusing the record it is revealed that the plaintiff is claiming his possession over the dhaba on the basis of lease agreement dated 16.8.2017 executed in between the plaintiff and defendant no. 2. As per the agreement it has been stated that the plaintiff shall pay amount of Rs.22,000/- per month to defendant no. 2 on regular basis. Ld. counsel for defendant has denied that any amount of rent was being paid by plaintiff. On the asking of the Court the plaintiff had produced three receipts of Rs.5,000/- dt. 9. February, Rs. 8,000/- dt. 16 th May and Rs.14,000/- dt. 26th August. Besides there there is one rent receipt for September 2021. A perusal of these receipts at this stage do not prima-facie prove the plaintiff was making regular payment of rent. So, plaintiff has not come to the Court with clean hands. Further more the plaintiff has himself claimed in his plaint that possession of dhaba has been taken by the defendants and only relief sought is that the defendant be restrained from running the dhaba in the premises in question. The plaintiff has further prayed that he be granted damages of Rs.2,00,000/- per month in case the defendants are not restrained from running the Dhaba. Therefore, as damages has been claimed by the plaintiff so no irreparable loss would be caused to him in case injunction is not granted to him. Thus taking into consideration all these facts, this Court does not deem fit to grant any interim relief in favour of plaintiff. Now to come up on 21.10.2021 for filing written statement.”

3. Feeling aggrieved, plaintiff had preferred an appeal before learned Additional District Judge, Karnal, notice of which was given to respondents, who put in appearance. The order passed on 21.10.2021 runs as follows :-

“Power of attorney on behalf of respondent No. 1 and memo of appearance on behalf of respondents No. 2 and 3 filed. On the joint request of learned counsels for the parties, adjourned to 22.11.2021 for arguments. LCR be also summoned for the date fixed. In the meanwhile, operation of impugned order dated 14.10.2021 shall remain stayed.”

4. It is very surprising that learned Additional District Judge without due application of mind had directed that operation of impugned order dated 14.10.2021 shall remain stayed when vide that order application for ad-interim injunction filed by plaintiff had been dismissed. It is difficult to understand as to what does he mean by staying operation of the order vide which no interim relief had been granted to the plaintiff. Sh. Yogesh Chaudhary, learned Additional District Judge, Karnal is directed to be careful in future while passing orders and not to pass orders in a mechanical manner. Now the appeal is fixed for 22.11.2021. Additional District Judge, Karnal is directed to dispose of the appeal on that very date or a short date thereafter. It is further directed that on appropriate application moved by the appellant, such Court would modify order dated 21.10.2021 and may consider passing appropriate order in accordance with law thereon. With such observations, the revision petition is dismissed. *R.M.S.*

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*Petition dismissed.*