
(2006) 01 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 6636 of 2005 (O and M)

Lakhbir Singh Dhillon

APPELLANT

Vs

Baldev Singh and Others

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227

Citation : (2006) 142 PLR 866

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Akshay Bhan, for the Appellant; Rakesh Garg, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The defendant has filed this petition under Article 227 of the Constitution of India for setting aside the order dated 30.11.2005 passed by the Additional District Judge (Adhoc), Fast Tract Court, Bathinda whereby the order dated 31.10.2005 passed by the Civil Judge (Sr. Division), Bathinda dismissing the application of the plaintiff-respondents for interim injunction has been set aside and the petitioner was directed not to raise any further construction of the marriage palace till the disposal of the suit.

2. In this case, the petitioner was raising construction of a marriage palace on his land after obtaining due permission from the Municipal Corporation, Bathinda. When the construction of the marriage palace was at progress, the instant suit was filed by the respondents alongwith an application for restraining the petitioner from raising the construction on the ground that the area in which the marriage palace is being constructed by the petitioner is surrounded by hundred of houses and already one marriage palace known as Green Marriage Palace is existing in the said area, and the construction of another marriage palace in the residential area of the colony will cause great inconvenience to the residents of the area. It has been stated that the people coming to the marriage palace used

to drive the vehicles in drunken condition, therefore, the accidents often take place and the cultural functions in the marriage party will also cause noise pollution. It has been stated that necessary permission from various departments for raising the construction of the marriage palace has not been taken.

3. The suit as well as the application under Order 39 Rules 1 and 2 C.P.C. was contested by the petitioner on the ground that he is constructing the marriage palace at his own land after taking permission from the Municipal Corporation. The plaintiff-respondents have not impleaded Municipal Corporation as a party to the suit which has been filed with malafide intention to cause harassment and financial loss to the petitioner, it has been stated that the locality in question is fully developed and is residential as well as commercial. A marriage palace in the name of Green Marriage Palace is already in existence. The area has not been declared by the Municipal Corporation as exclusively residential area. It has been further submitted that the petitioner has completed all the formalities for construction. He has also made full arrangement for parking inside the marriage palace. Sufficient open space has been left for passing of the vehicles.

4. The trial Court after hearing the counsel for the parties, declined to grant interim, injunction to the plaintiff-respondents while following the law laid down by this Court in Prem Kumar Ghai and Ors. v. Dr. Bir Bhan Garg 2005 (1) P.L.R. 58, while observing as under:-

The plaintiffs have filed the suit in public interest capacity. The suit has been filed by four plaintiffs alone. The site plan shows the houses of the plaintiffs in green colour. The defendant has also submitted the site plan. The site plan filed by the defendants shows that the entry of the marriage palace is on 100 feet wide road, which has no concern with the houses of the plaintiffs. There is land of about 1 acre on the back side of the covered area of the marriage palace. The defendant has made sufficient arrangement for the parking of the vehicles inside the marriage palace. The marriage palace will be sound proof. The houses of the plaintiffs are situated on the streets which have different routes than the road in front of the marriage palace. The other residents of the locality, the management of Guru Nanak Dev Public Senior Secondary School, Bathinda, President of Gurdwara Shri guru Arjan Dev Ji, Bathinda, Principal, Mata Sahib Kaur Memorial Public School existing in that area, have no objection to raise the construction. The evidence on the file shows that it is a suit, really not in public interest but it is only interest of the plaintiffs, for the reasons best known to them. The plaintiffs have approached the Executive Authorities against the construction of the marriage palace. The defendant is going to construct the marriage palace with the permission of Municipal Corporation, Bathinda. The photo copy of the order dated 14.5.2004 of the Municipal Corporation, Bathinda shows that the permission has been granted to the defendant to raise construction of the Marriage Palace. The said order of the Municipal Corporation, Bathinda finds mention of the conditions, violations of which will lead to the cancellation of the licence of marriage palace. The plaintiffs thereby have the remedy to approach

the Municipal Corporation, Bathinda in case of any of the problems of traffic, parking or public difficulty comes into picture.

5. Against the aforesaid order, the plaintiffs filed an appeal, which was allowed by the Additional District Judge, Bathinda and the petitioner was restrained from raising any further construction of the marriage palace till the disposal of the suit, while observing as under:-

I have considered these submissions and am of the view that Prem Kumar Ghai's case is distinguishable on facts from the present case. In that case, proposed construction of the marriage palace as well as Nursing home of the plaintiffs, both were situated in the commercial area. In the instant case it is alleged by the plaintiffs that the marriage palace is being constructed in the residential area. Defendant has not produced any document to prove that it is a commercial area. Further more in that case sanction of the Deputy Commissioner was obtained. Sanction of the Central Public Works Department was also obtained. Senior Town Planner Ludhiana had also granted sanction of the construction of the marriage palace. Deputy Commissioner had also approved the construction of the marriage palace on that site. It was accordingly held by the Hon'ble High Court that construction of the marriage palace cannot be stopped under such circumstances. It is well settled law that a person who resides in commercial area shall have to bear the difficulties which are connected with the commercial area. However, a person who resides in a residential area, has a fundamental right to live in peace and can prevent any type of noise pollution by filing proper proceedings. Law on the point was laid down by Hon'ble supreme Court of India in ruling reported as *Forum, Prevention of Env'n. & Sound Pollution v. Union of India* and Anr. 2005 (3) R.C.R. 449, wherein it was held that it is fundamental right of every citizen of India to live in peace and to prevent any type of noise pollution.

6. After hearing the counsel for the parties and going through the orders passed by the Courts below, in my opinion, this petition deserves to be allowed.

7. Undisputedly, in this case the petitioner is raising construction of a marriage palace on his land, which is abetting to the main road. He has obtained the prior sanction for raising the construction of a marriage palace from the Municipal Corporation, Bathinda, the building plan of which has been duly sanctioned by the competent authority. Thereafter he started raising construction. The permission was granted by the Municipal Corporation for construction of a marriage palace. It also came on the record that the area on which the marriage palace is to be constructed falls within the municipal limits. Already a marriage palace is functioning in the said area. No material has been placed by the plaintiffs on the record that the said area is exclusively a residential area. The existence of the marriage palace itself shows that the area is not exclusively a residential area, If the Municipal Corporation has sanctioned the building plans for construction of a marriage palace in the area, then it show that the area was not exclusively a residential area. The first Appellate Court has restrained the

petitioner from raising any further construction of the marriage palace till disposal of the suit, while ignoring the fact that the permission has been granted to the petitioner for raising construction of a marriage palace by the competent authority under the law. Merely on the basis of apprehension that in future there will be noise pollution or there will be some traffic hazards, the construction of a marriage palace cannot be stopped, permission of which has been granted by the competent authority. The construction of the building is one thing and running of the marriage palace is another thing. While granting permission for raising the construction, certain conditions were imposed, which have been mentioned in the permission letter, copy of which has been annexed as Annexure P-3. Those conditions have to be followed by the petitioner while raising construction of the marriage palace. But, in my opinion, granting interim injunction against the petitioner restraining him to raise the construction, has caused great prejudice to his rights as the construction has already been started and he will suffer great loss if the construction is not completed.

8. In a similar situation, this Court in Prem Kumar Ghai's case (supra) has observed that the Court must take into consideration the elements of prima facie case, balance of convenience and irreparable loss and actual injury to be caused by grant or non-grant of interim injunction which is the yardstick for dealing with an application under Order 39 Rules 1 & 2. In that case, injunction sought against a marriage palace going to be established in a commercial area because it adjoins a nursing home, was declined as defendant granted permission to establish the marriage palace by the authorities in accordance with law and rules. It was held that the Court cannot ignore the orders of the competent authority unless found and declared to be contrary to the relevant provisions of law and cannot issue injunction against a thing being done in accordance with law. In that case, the trial Court refused to grant the interim injunction and the said order was set aside by the Additional District Judge. While setting aside the order of Additional District Judge, Faridkot, this Court has observed that while reversing the order of the trial Court, perhaps the Appellate Court did not take into consideration that grant of permission for construction etc. lay within the exclusive domain of public authorities and a judicial officer is not expected to deal with the grant of sanction or permission etc. It was further held that while reversing the judgment, the Additional District Judge has not applied his mind correctly to the facts and circumstances of the case inasmuch as he has not taken into consideration the elements of prima facie case, balance of convenience and irreparable loss, which ought to have been the yardstick on the basis whereof, he should have proceeded to deal with an application under Order 39 Rules 1 and 2 C.P.C. He should also have given due regard to the fact as to what was the actual injury that was being committed without entering into presumptions recorded in his order.

9. In my opinion, the case of the petitioner is fully covered by the aforesaid decision and the Appellate Court has wrongly distinguished the said judgment. In my opinion, in the instant case, the balance of convenience lies in favour of the

petitioner and in case the interim order passed by the Additional District Judge is not vacated, irreparable loss will be caused to the petitioner. Thus, in my opinion, the first Appellate court has illegally reversed the order passed by the trial Court, which has resulted into an injustice to the petitioner.

10. Hence, this petition is allowed and the order dated 30.11.2005 passed by the Additional District Judge is set aside. It is, however, made clear that while raising construction of the marriage palace, the petitioner will be bound by all the terms and conditions which have been imposed by the concerned authority while sanctioning the building plans.