

(2020) 08 SHI CK 0418
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 349 Of 2020

Miss Ritagya Sharma

APPELLANT

Vs

Gopi Nand Sharma And Others

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)

Citation : (2020) 08 SHI CK 0418

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Ravinder Singh Chandel

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. By way of instant petition filed under Article 227 of the Constitution of India, challenge has been laid to order dated 26.6.2020, whereby prayer for grant of ex-parte ad-interim injunction made on behalf of the petitioner/plaintiff by way of an application filed under Order 39 Rule 1 and 2 CPC, came to be rejected (Annexure P-5).

2. Having carefully perused the aforesaid order passed by learned Civil Judge-cum- JMIC, Chopal, District Shimla, H.P., this Court has no hesitation to conclude that the present petition is not maintainable because there is specific remedy provided under the Code of Civil Procedure to lay challenge to the order passed under Order 39 Rule 1 and 2 CPC. Order 43 Rule 1(r) CPC, prescribes for appeal in the superior court of law, if injunction is refused or granted by the Court while considering the prayer made by way of an application under Order 39 Rule 1 and 2 CPC.

3. Mr. Ravinder Singh Chandel, learned counsel representing the petitioner made serious attempt to persuade this Court to agree with his contention that since

notice on the application filed by the petitioner/plaintiff under Order 39 Rule 1 and 2 CPC came to be issued, it cannot be said that on 26.6.2020 court below passed order, if, any, on his application of injunction, rather he postponed the hearing by issuing notice to the opposite party and as such, appeal would not lie under Order 43 Rule 1(r) CPC. However, this Court is not inclined to accept the aforesaid submission made by learned counsel for the petitioner because bare perusal of order dated 26.6.2020, itself suggests that learned Court below having heard learned counsel representing the parties and perused the record, deemed it not proper to grant ad-interim injunction in favour of the plaintiff, rather issued notice and as such, it cannot be said that on 26.6.2020, prayer for ad interim ex-parte injunction, as prayed for, was not considered, rather Judge below after having heard parties and perused the pleadings adduced on record by the petitioner, deemed it not proper to grant ad-interim injunction and as such, appropriate remedy for the petitioner/plaintiff in the case at hand is/was to file appeal under Order 43 Rule 1(r) Code of Civil Procedure before the learned District Judge.

4. Consequently, in view of the above, the present petition is wholly misconceived and disposed of accordingly with liberty reserved to the petitioner to file appropriate proceedings in appropriate Court of law, if required and desired. Pending application(s), if any, also stands disposed of.

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