

(2011) 06 SHI CK 0106
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 185 of 2011

Smt. Rani Kukreja

APPELLANT

Vs

Smt. Prabha Bhagra and Others

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11, 35A
Constitution of India, 1950 — Article 226, 32

Citation : (2011) 2 ShimLC 401

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.

1 This is a rather unusual case where the Petitioner Defendant has approached this Court at the very threshold of the suit praying that the plaint in case No. 59-1 of 2011 be struck off and contempt proceedings be initiated against the Plaintiff for instituting vexatious proceedings after concealing material facts.

2 This case has a long and chequered history. Respondent No. 1 (hereinafter referred to as the Plaintiff) first filed a Civil Suit No. 11 of 1999 in this Court against Smt. Jayanti Devi, Smt. Prabha Singh, Ms. Shelja Singh and Ms. Girja Singh. The aforesaid four Defendants were the legal heirs of late Kr. Ranvijay Singh being his mother, widow and minor children. According to the Plaintiff, she had earlier purchased two big has of land from late Kr. Ranvijay Singh comprised in khasra No. 245/41/3 and entered into possession thereupon. According to her, after she had purchased this land on 30.7.1994, she entered into another agreement for providing a road to this land and consequently late Kr. Ranvijay Singh entered into an agreement with her on 30.7.1994, agreeing to sell one biswas of land comprised in khasra No. 245/41/1 for a consideration of Rs. 25,000/-. It was further alleged that late Kr. Ranvijay Singh was also the owner of other portion of land measuring 1 bigha 10 biswas and he agreed to sell this

land comprised in khasra No. 42 measuring 18 biswas and khasra No. 249/44 measuring 12 biswas in all 1 bigha 10 biswas to the Plaintiff for a total consideration of Rs. 4,50,000/- vide agreement dated 1.7.1995. Plaintiff claimed that she had paid substantial amount in advance and the balance was to be paid later on. She also claimed that she had been put in possession of the land measuring 1-10 bighas which included 1 biswa of land of the road. She claimed that she had enclosed and fenced the land. She specifically stated that the cause of action arose on 30.7.1994 when agreement for transfer of land was entered into and this became part of the agreement dated 1.7.1995 and cause of action again arose on 1.7.1995. This suit was later on transferred to the court of learned District Judge, Shimla due to enhancement of pecuniary jurisdiction.

3. The Defendant in that case contested the suit. The learned Trial Court decreed the suit. Thereafter, Defendant filed an appeal in this Court. One of the main issues which arose in the suit was, whether the same is within limitation. The Plaintiff relied upon an endorsement dated 30th June, 1996, according to it, the agreement dated 1st July, 1995 had been renewed. A learned Single Judge of this Court came to the conclusion that the endorsement dated 30th June, 1996 was a forged and fictitious endorsement and not executed by late Kr. Ranvijay Singh and held that the Plaintiff was not entitled to the discretionary relief of specific performance of the agreement to sell. The Plaintiff filed a SLP being SLP No. 4198 of 2010 before the Apex Court which was dismissed on 19.2.2010.

4. In the meantime, Smt. Jayanti Devi had expired. Sh. Anirudh Singh and Smt. Prabha Singh on her own behalf and on behalf of her minor children executed a sale deed in favour of the present Petitioner qua 1 bigha 10 biswas of land. It is not disputed that the land which was sold to the present Petitioner is the same which was the subject matter of the earlier suit. Thereafter the Plaintiff filed another suit in the Court of Civil Judge (Sr. Division) Shimla against Sh. Anirudh Singh, Prabha Singh, Shelja Singh, Girja Singh and the present Petitioner Rani Kukreja. It is interesting to note that some of the averments made in this suit are virtually identical and lifted from the previous suit. Now, the Plaintiff claimed that she had been put in possession of the entire suit land and she was coming in possession of the same continuously, uninterruptedly, openly and with a hostile animus to the true owners and, therefore, her adverse possession had ripened into title. In this very suit, she also claimed that she had come into possession on the basis of agreement to sell. She, therefore, prayed for a decree of permanent prohibitory injunction in the following terms:

A decree for permanent prohibitory injunction be passed in favour of the Plaintiff and against the Defendants whereby the Defendants may be restrained from interfering into the peaceful possession of the Plaintiff in the land comprised in Khasra Nos. 42, 0-12 (Biswas) and 249/440-12 (Biswas Khewat No. 3 min/32/min in Khatoni No. 3 min in mauja Sadhora, Pargana Kuthangi, Tehsil and District Shimla H.P. measuring 1 bigha 10 biswas and further the Defendants may be restrained from taking forcible possession of the suit land as mentioned above.

5. Alongwith the suit, an application under Order 39 Rules 1 & 2 CPC was filed praying that the Respondents be restrained from interfering in her possession. Only three documents were annexed with the plaint. The first is the agreement to sell dated 1st July, 1995; the second is the Tatima and the third is the copy of Jamabandi in which the true owners are shown to be in possession of the suit land. On 11.5.2011 the learned Trial Court passed the following order in the suit:

P.O.A. filed. Respondent No. 1 has not been served whereas the remaining Respondents have not been served for want of correct address. Let Respondent No. 1 be served by way of affixation whereas remaining Respondents be served on filing C.A. and P.F. within three days. Now be listed for filing reply on behalf of Respondent No. 5 as well as for service of remaining Respondents for on 25.5.2011. In the meanwhile applicant and Respondent No. 5 are directed to maintain status quo qua nature and user of land comprised in Khata Khatoni No. 3/3 Khasra No. 165,166,170,172,174 (old Khasra No. 42 and 299/44) measuring 0-11-86 hectares situated at Mauja Sadhora, Pargana Gutangi, Tehsil & District Shimla till further orders.

6. The Defendant No. 5 has directly approached this Court praying for striking off the plaint and initiating contempt proceedings against the Plaintiff, on the ground that she has obtained the orders by suppressing material facts.

7. In the second suit, there is not a whisper about the previous litigation between the parties. This litigation had continued for almost 11 years and ended in the Hon"ble Supreme Court against the Plaintiff. It was the bounden duty of the Plaintiff to have informed the learned Trial Court about the previous litigation. By suppressing these material facts, she tried to hoodwink the Court. No litigant can be permitted to take the Court for a ride. Any litigant who approaches the Court must do so with clean hands. If any litigant conceals material facts, he cannot be granted any relief. Sh. B.R. Verma learned Counsel for the Plaintiff could offer no valid or reasonable explanation for not mentioning these facts.

8. In both the suits the subject matter of litigation was the same. The Plaintiff even in the present suit has made reference to the agreement dated 1st July, 1995 and states that she was put in possession of the land in consequence to such agreement. She, however, very conveniently and obviously with an ulterior motive failed to mention the facts, that suit filed by her for specific performance of this very contract had been dismissed, after holding that the endorsement made on the agreement was a forged and false one. In the previous proceedings, this Court had found that the Plaintiff was guilty of forging an endorsement on the original agreement to sell. After having lost the case till the Apex Court, the Plaintiff had the audacity and temerity to file a fresh suit with regard to the same suit land, claiming that she is in possession of the same and not making a whisper with regard to the previous litigation.

9. "Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. Any party who

approaches the Court for grant of relief must do so with clean hands. He must place the full facts before the Court. He should neither withhold material facts nor suppress facts. No party should make an attempt to mislead the Court. The claim of such a party who tries to give false facts should be rejected without even considering the merits of the case. Almost a century back Scrutton L.J. speaking for the Court in *R. v. Kensington Income Tax Commissioners* 1917 (1) KB 486 very succinctly laid down the principle in the following words:

It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an *ex parte* statement he should make a full and fair disclosure of all the material facts-it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement.

Viscount Reading C.J. in the same case observed as follows:

Where an *ex parte* application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.

10. The Apex Court in *T. Arivandandam Vs. T.V. Satyapal and Another*, making reference to Order 7, Rule 11 dealt with the duty of the Court and the counsel. The Apex Court held as follows:

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5. We have not the slightest hesitation in condemning the Petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal- reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to

sue, he should exercise his power under Order VII Rule 11, of the CPC taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realized what George Bernard Shaw remarked on the assassination of Mahatma Gandhi

It is dangerous to be too good.

6. The trial Court in this case will remind itself of Section 35-A, CPC and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.

7. We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of *ex parte* orders tempts gamblers in litigation into easy courts. A judge who succumbs to *ex parte* pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramesh for his young candour and correct advocacy. Petition dismissed.

11. A similar matter came up for consideration before the Apex Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, wherein the Apex Court held as follows:

xxx The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the, illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily

thrown out at any stage of the litigation. xxx

12. In *G. Jayashree and Others Vs. Bhagwandas S. Patel and Others*, similar view was taken by the Apex Court.

13. In *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, the Apex Court after citing a number of judgments held as follows:

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38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to pay hide and seek or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The Petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts.

39. If the primary object as highlighted in *Kensington Income Tax Commissioners* is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the Court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place inequitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court. xxx

This well-known principle of law is now an integral part of Indian Jurisprudence.

14. Sh. B.R. Verma contends that the issue of possession, though raised in the previous suit was not decided and, therefore, *resjudicata* would not be applicable. More than the issue of *resjudicata* is the issue of the Plaintiff totally trying to subvert and abuse the process of justice. No litigant can be permitted to subvert the judicial process and it is the duty of the Court to come down with a hard hand on any such attempt by an unscrupulous litigant.

15. Sh. B.R. Verma relies on the judgment of the Apex Court in *State of U.P. Vs. Nawab Hussain*, In my view this judgment does not help the Petitioner at all. The Apex Court after considering the principle of *resjudicata* as applicable in England

and in India went on to hold as follows:

xxx 3. The principle of estoppel per res judicata is a rule of evidence. As has been stated in *Marginson v. Blackburn Borough Council* (1939) 2 KB 426 at p. 437 it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories: (i) The finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of community as a matter of public policy and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.

4. But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and *Somervell L.J.*, has answered it as follows in *Greehalgh v. Mallard* (1947) 2 ALL ER 255 at page 257:

I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive res judicata which in reality, is an aspect or amplification of the general principle. xxx

The doctrine of constructive resjudicata is now recognized as a part of Indian Jurisprudence. If a person is entitled to raise a plea in legal proceedings and does not raise the plea, but contents himself by raising other pleas, then he cannot be permitted to raise this plea which should be barred by principles of resjudicata.

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8. It is not in controversy before us that the Respondent did not raise the plea in the writ petition which had been filed in the High Court that by virtue of Cl (1) of Art 311 of the Constitution he could not be dismissed by the Deputy Inspector General of Police as he had been appointed by the Inspector General of Police. It is also not in controversy that that was an important plea which was within the knowledge of the Respondent and could well have been taken in the writ petition, but he contented himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the case against him in the departmental inquiry and that the action taken against him was mala fide. It was therefore not permissible for him to challenge his dismissal in the subsequent suit on the other ground that he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the principle of constructive res judicata and the High Court erred in taking a contrary view. xxx

16. Reliance placed by Sh. B.R. Verma on the judgment of the Apex Court in P.N. Govindan Vs. Abdul Kari Subaida Beevi, is totally misconceived in view of the fact that the Apex Court has clearly held that the doctrine of constructive resjudicata is applicable in India.

17. Sh. B.R. Verma has placed reliance on the judgment of Apex Court in Mohan Lal and Ors. v. The State of Punjab and Ors. 1971 P.L.J 338 and S.R. Ejaz v. The Tamil Nadu Handloom Weavers Co-operative Society Ltd. 2002 (2) CRJR 14. In both these cases the Apex Court has laid down that the possession of a person who is unauthorizedly in possession cannot be dispossessed except in accordance with law. There can be no quarrel with this proposition of law. A person who is in possession cannot be dispossessed of the land in his possession except by following the due process of law.

18. The moot question is, whether the Petitioner could have sought this relief in the earlier suit. She while praying for a decree for grant of specific performance of contract could have also prayed that her possession be protected. She did not do so and applying the principle of constructive resjudicata is deemed to have given up this plea. Sh. B.R. Verma has strenuously urged that the plea of adverse possession was not available to the Petitioner at that time. This may be true, but even today such plea on the basis of the allegations made in the plaint and the material placed on record is definitely not available to the Petitioner. She herself admits that she came into possession of the land on the basis of the agreement to sell. Therefore, her possession was permissive and not hostile. The Defendants in the first suit denied the allegations that the Plaintiff was in possession. She did not press that any issue be framed in this regard and only pressed for a decree for specific performance of contract. The suit was finally dismissed. Even if the Plaintiff was in possession, her possession would be permissive and not hostile till the decision of the suit. Therefore, her case that she has become the owner of the suit land by adverse possession on the face of it is totally false.

19. This Court is not oblivious to the fact that it is dealing with a matter where

the suit is still at the initial stage and even written statement has not been filed by the contesting Defendants. Will this mean that the Court should not exercise its supervisory jurisdiction and force the parties to face vexatious litigation for years on end? In my view there have to be unusual remedies in unusual cases. When a party tries to hoodwink the Court, misstates facts, conceals material facts, deterrent action must follow. A message has go to the society that Courts will not entertain vexatious litigation.

20. The Apex Court in a recent pronouncement in M/s Atma Ram Builders Pvt. Ltd. v .K. Tuli and Ors. in Contempt Petition (C) N Os 140-144/2011 In S.L.P.(C) Nos. 27759 of 2010 has strongly deprecated the practice of litigants approaching the learned Trial Courts and obtaining stays after having lost litigation till the highest level. The Plaintiff lost her case till the Apex Court and filed the fresh suit without making a whisper about the earlier litigation. The following observations of the Apex Court are relevant:

xxx It is deeply regrettable that in our country often litigations between the landlord and tenant are fought up to the stage of the Supreme Court and when the tenant loses in this Court then he starts a second innings through someone claiming to be a co-tenant or as a sub-tenant or in some other capacity and in the second round of litigation the matter remains pending for years and the landlord cannot get possession despite the order of this Court. The time has come that this malpractice must now be stopped effectively. xxx

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It seems to us that in this country certain members of the Subordinate Courts do not even care for orders of this Court. When this Court passed an order dated 06th October, 2010 granting six months" time to vacate, the contemnor Archana Sinha, Additional District Judge had no business to pass the order dated 23rd April, 2011 but instead she has stayed the warrants of possession, meaning thereby that she has practically superseded our order and overruled us.

We are constrained to say that a certain section of the subordinate judiciary in this country is bringing the whole judiciary of India into disrepute by passing orders on extraneous considerations. We do not wish to comment on the various allegations which are often made to us about what certain members of the subordinate judiciary are doing, but we do want to say that these kind of malpractices have to be totally weeded out. Such subordinate judiciary Judges are bringing a bad name to the whole institution and must be thrown out of the judiciary.

In this case, the contemnor Archana Sinha had no business to pass the order dated 23rd April,2011 and it is hereby quashed as totally void. xxx

21. In the present case, the learned Trial Court was not aware of the previous litigation and, therefore, to that extent the learned Trial Court cannot be faulted. However, the manner in which the learned Trial Court granted the stay order is

not at all proper. It would not be out of place to reiterate the well settled principles laid down in earlier judgments of this Court for grant of interim injunctions.

22. As far back as in the year 1972 a learned Single Judge of this Court in *M/s Mahadev Bajri Company and Ors. v. Kesho Dass and Ors.* ILR (1972) 218 held that the Trial Court while considering an application under Order 39 Rules 1 & 2 CPC must record its findings as to prima facie case, irreparable injury and balance of convenience before granting or refusing to grant injunction. The relevant portion of the judgment is as under:

The order of the learned District Judge suffers from a serious defect, inasmuch as no finding has been recorded by him on the question of irreparable injury that might be caused to the Plaintiffs, or the balance of convenience which might have existed in their favour so as to grant or refuse the interim relief of temporary injunction. Unless those findings were given, the order of the learned District Judge could not be sustained. The learned District Judge can, in fact, be stated to have acted in the exercise of his jurisdiction illegally and also with material irregularity.

23. Again in the year 1976 the then Hon'ble Chief Justice in *Hiraman and Anr. v. The State of Himachal Pradesh* ILR (1976) 5 Him. 527 held that when the Trial Court merely expressed its view on the existence of prima facie case, but did not record or give any findings as to the irreparable loss and balance of convenience, the order was manifestly wrong and liable to be set aside.

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2. From a perusal of the order granting the ex parte temporary injunction it appears that the trial Court expressed the view that a prima facie case had been made out for issuing an ex parte temporary injunction. Nothing more has been said. The trial Court should have examined the material on the record and should have found whether (a) the Plaintiff had succeeded in showing that a serious question fell to be tried in the suit, (b) that the Plaintiff would suffer irreparable loss in case the temporary injunction was not granted and (c) how the balance of convenience stood between the parties. An order granting temporary injunction under Order 39, Rules 1 and 2 is open to appeal under the Code of Civil Procedure, and it is desirable that the trial Court should give clear findings when granting or refusing a temporary injunction. In the circumstances, there was justification for setting aside the orders of the trial Court. xxx

24. In *Mast Ram v. Bhikam* ILR (1980) 9 Him. 157 Justice T.R. Handa held that grant or non grant of interim injunctions fall solely in the discretion of the learned Trial Court, but this discretion must be exercised by following well recognized principles of law. He held as follows:

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11. The principles governing the exercise of such discretion by the courts and

which are of universal application are by now well recognized. There are four conditions which a Petitioner must satisfy before the Court can consider the advisability or desirability of granting a temporary injunction in his favour. Where the Petitioner fails in satisfying the Court with respect to any of these conditions, the Court would be well advised in refusing to issue the injunction prayed for. These four conditions on which the Petitioner must satisfy the Court are:

(a) That the Petitioner has a prima facie case, that is to say, that he has raised a serious question which needs determination in the suit and on weighing the material before the Court the balance of probabilities would suggest that he is entitled to the relief prayed for by him,

(b) That the refusal of the injunction prayed for would expose the Petitioner to the risk of suffering some irreparable or substantial injury which cannot be compensated for in damages,

(c) That the balance of convenience is in favour of the Petitioner in the sense that the comparative mischief or inconvenience likely to be caused in the event of the injunction being refused would be greater than that which is likely to arise in case the same is granted, and

(d) That there is no other sufficient remedy open to the Petitioner by which to protect himself.

It is only after all these four conditions are satisfied that the Court can exercise its discretion in the matter after taking into account any other factor peculiar to the facts and circumstances of the individual case, like delay, suppression of material facts, mala fides and so on. xxx

25. No doubt, in the present case the learned Trial Court had not finally decided the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, but even while passing an ad interim injunction these principles must be adhered to. I have already quoted in detail the orders passed by the learned Trial Court and am constrained to observe that the learned Trial Court did not consider any of the four factors and passed the stay order in a very casual manner. There is not even a single observation in the order that there is a prima facie case in favour of the Plaintiff; there is no observation as to in whose favour balance of convenience lies and there is no preliminary finding as to whether irreparable harm and injury shall be caused to any person. Stay orders cannot be passed in such a casual manner. Therefore, the ex parte order of stay is quashed and set aside.

26. Sh. Tarlok Chauhan, learned Counsel for the Petitioner submitted that this is a case of gross abuse of the power of the Court. According to him, the present suit is an example of totally vexatious litigation. He submits that the suit is based on false averments and suppression of material facts. He also submits that the Plaintiff is guilty of suggestio falsi and suppressio veri. Sh. Tarlok Chauhan relies upon the observations of the Apex Court in Atma Ram's case (Supra) and

submits that this Court should come to the rescue of the Petitioner and strike off the plaint. In T. Arivandandam case (Supra) the Apex Court had directed the Courts to reject the plaint which did not disclose a clear right to sue or where the suit was vexatious. The Apex Court also advised the Trial Courts that they could nip the evil in the bud by examining the party at the first instance. In my view, it is the Trial Court which must perform these duties and not this Court. Therefore, this Court is only quashing the stay order dated 11.5.2011 granted by the learned Trial Court. The Petitioner-Defendant No. 5 is at liberty to move an application under Order 7 Rule 11 CPC for striking off the suit and/or for rejection of the suit on the ground that it discloses no cause of action. The learned Trial Court shall thereafter decide this application, in light of what has been stated and the various judgments quoted hereinabove. The Trial Court may also, if it finds it necessary, recommend that action under the Contempt of Courts Act be initiated against the Plaintiff.

27. The petition is accordingly disposed of. The Respondent No. 1 is burdened with exemplary costs of Rs. 1,00,000/- (rupees one lac), since she has filed the suit after concealing material facts. The costs be paid to the H.P. State Legal Services Authority, Shimla within six weeks from today, failing which the suit filed by her shall be deemed to be dismissed.