

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

CMPMO No.4094/2013

Reserved on :29.10.2013

Decided on: 31.10. 2013

Arun Kumar.

...Petitioner.

Versus

Shameer Puri & others.

...Respondent/proforma respondents.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting? ¹ No

For the Petitioner : Mr. Ramakant Sharma, Advocate.

**For the Respondents: Mr. Subhash Puri, Advocate for
respondent No.1.**

None for other respondents.

Justice Rajiv Sharma, Judge.

This petition is directed against the order dated 6.6.2013 passed by the Civil Judge (Senior Division), Nurpur, District Kangra in CMA No. 66/2013.

2. "Key facts" necessary for the adjudication of this petition are that respondent-plaintiff (hereinafter referred to as "plaintiff" for convenience sake) has filed a suit for permanent injunction/possession against the petitioner-defendant and proforma defendants. Plaintiff

¹ Whether reporters of the local papers may be allowed to see the judgment? no

filed an application under order 39 rules 1 and 2 read with section 151 of the Code of Civil Procedure for issuance of injunction order restraining the defendants, their masons, labourers and servants supervisors from raising any further construction over the land comprised in Khata No.9 min, Khatauni No.12, Khasra Nos.99, 102, 105, 107, 108 and 109 katas 6 measuring 0-46-72 HM situated in Mohal and Mauza Jassur, Tehsil Nurpur. Defendants were duly served. They were aware of the pendency of the suit. Petitioner with other defendants was present alongwith Assistant Public Prosecutor in the Court on 24.7.2004. They made a statement in the Court that they are raising a wall over the suit land and sought time for filing written statement. Order was passed by the trial court in the presence of the parties and their counsel. Defendants were directed not to raise construction of wall. However, order was not obeyed by the defendants. In other words, defendants have refused to stay the construction of the wall despite several requests made by the plaintiff. Since order passed by the trial court was not obeyed, plaintiff moved an application under order 39 rule 2-A read with section 151 of the Code of Civil Procedure. Defendants have filed reply to the application.

3. Defendant Arun Kumar moved an application under order 1 rule 10 (2) read with section 151 of the Code of Civil Procedure for striking out his name from the array of respondents. Plaintiff filed reply to the same. Civil Judge (Senior Division) dismissed the application on 6.6.2013. Hence, the present petition.

4. It is evident that the Civil Suit was filed in the year 2004 and the application under order 1 rule 10 (2) of the Code of Civil Procedure has been filed only on 2.5.2011. Plaintiff has already led his evidence. Petitioner has not assigned any cogent reason for deleting his name from the array of respondents. Order dated 24.7.2004 was passed in presence of petitioner. Defendants have undertaken not to raise construction and despite that construction of wall was continued by them. Petitioner is a necessary party for adjudication of the case. Civil Judge (Senior Division) has rightly relied upon ratio of judgment rendered by the Hon'ble Supreme Court in AIR 1961 221 ***State of Bihar vs. Rani Sanabati Kumari***. The proceedings were rightly initiated against officers/officials, who have disobeyed the order. It has also come on record that FIR was also registered against the petitioner bearing FIR No. 11 of 2011. It is expected from the officers/officials of the State to obey the order of the Court

in letter and spirit. There is neither any infirmity nor perversity in the order passed by the court below.

5. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in the petition and the same is dismissed. Order dated 23.8.2013 is vacated. Parties through their counsel are directed to appear before the Civil Judge (Senior Division), Nurgpur on **18.11.2013**. Pending application(s), if any, also stands disposed of. It is made clear that the observations made hereinabove shall have no bearing on the merits of the main case. No costs.

**(Justice Rajiv Sharma),
Judge.**

31.10. 2013

awasthi