

**IN THE COURT OF MRS.PREETI SUKHIJA, PCS,
ADDL.CIVIL JUDGE (SR.DIVN.), MALERKOTLA.
UIC-PB0276.**

Registration No.CS/570/2017.

Date of order: 29.11.2017.

Pending for : 20.12.2017.

Jarnail Singh Dhaliwal age 46 years son of Charan Singh Dhaliwal
resident of Khurd Road, VPO Manki, Tehsil Malerkotla.

.....Applicant/Plaintiff.

Versus

Harjinder Singh son of Inderjit Singh resident of village Manki,
Tehsil Malerkotla.

.....RespondentsDefendant

(Suit for Permanent Prohibitory Injunction).

Application under Order 39 Rules 1 and 2 CPC.

Present: Sh. Arun Kumar, Advocate, counsel for
applicant/plaintiff.
Sh. S.K.Gupta, Adv. counsel for the respondent/
defendant

ORDER:

This order of mine shall dispose of the application
under Order 39 Rules 1 & 2 C.P.C., filed by the applicant/plaintiff
against the respondent, as detailed in head note of the application.

2. The learned counsel for the applicant/plaintiff
contended that Inderjit Singh father of defendant is owner of suit
land. Inderjit Singh had gone abroad, so defendant is managing the
affairs of suit land. The defendant had given the suit land on lease
on 01.12.2016 to the plaintiff for eleven months i.e. from

01.12.2016 to 31.10.2017 for rent of Rs.10,500/- per month. at that time, the defendant had obtained blank cheque from the plaintiff as security. The plaintiff is in peaceful possession of suit land and is regularly paying lease amount as agreed. But, the defendant had not issued any receipt qua receipt of Rs.10,500/- despite repeated requests. The defendant is threatening the plaintiff to vacate the suit land prior to completion of lease period. The defendant had misused the cheque bearing no.002348 for Rs.82,500/- by concocting false story and has given notice u/s 138 of N.I Act. Now, the respondent is threatening to dispossess, cause interference in the peaceful possession of the applicant forcibly and illegally for which he has got no right. It has been further contended that the respondent be restrained from dispossessing him over the suit property, as detailed in head note of the application as per Jamabandi for the year 2011-12. So, prayed to allow the application. The application is supported with the affidavit of applicant/plaintiff.

3. In reply to the application, it is contended that the applicant has concocted a false story. However, respondent is real son of Inderjit Singh i.e. the real owner, but the respondent has no authority to give land to any other person. The applicant had borrowed a sum of Rs. 82,500/- from defendant for one month and issued a post dated cheque in favour of defendant with the assurance that the cheque would be encashed, but the respondent filed

complaint against the applicant, which is pending in the Court of J.M.I.C Malerkotla. The respondent never leased out any land to the applicant/. So, no prima-facie case is made out in favour of the applicant/plaintiff. Balance of convenience also does not lie in favour of the applicant. Rest of the averments have been denied and prayer for dismissal of the application made.

4. After hearing the contentions of both the learned counsel for the parties and perusing the file, it is alleged by the applicant/plaintiff that the respondent had given the suit property on lease to the applicant on 01.12.2016 as oral lease and possession was handed over to the applicant. A blank cheque was also taken by the respondent from the applicant as security and the applicant is in possession since 01.12.2016 of the suit land. Now, the respondent is threatening to dispossess him forcibly illegally from the suit property. On the other hand, learned counsel for the respondent alleged that the respondent is the real son of Inderjit Singh i.e. the real owner of the suit property and the respondent had got no right to give the land to the applicant on lease. Rather, the plaintiff borrowed a sum of Rs.82,500/- from the respondent for one month and in discharge of that liability, he issued the post dated cheque as alleged by the applicant in favour of the respondent regarding which complaint was filed by the respondent against the applicant, which is pending in the Court of Sh. Bikramdeep Singh, J.M.I.C Malerkotla. No lease deed has been attached on the file. Even there is no other document to support the

averments alleged by the applicant. Rather, the respondent has placed on file copy of notice given to the applicant in the complaint u/s 138 of N.I Act. No receipt is placed on the file regarding giving payment by the respondent to the applicant on account of oral lease. The contentions of the applicant are not supported by any document, so no prima-facie case is made out in favour of the applicant/plaintiff nor any balance of convenience lies in his favour. The application is not maintainable as no relief of injunction can be granted to the applicant/plaintiff when there is equally and efficacious remedy is available to the applicant/plaintiff under Section 41 (H) of the Specific Relief Act. At this stage, no prima-facie case is made out in favour of the applicant/plaintiff. No balance of convenience lies in his favour and no irreparable loss is going to be caused to the applicant/plaintiff, if the present application is not allowed. Even the complaint under Section 138 of N.I Act is pending regarding the alleged cheque. Accordingly, the stay application is hereby dismissed.

5. However any observation made by this Court in this order shall have no effect on the merits of the case.

Pronounced in open Court.
Dt.29.11.2017.

Preeti Sukhija,
Addl. Civil Judge (Sr.Divn.),
Malerkotla.
UIC-PB0276

Veena, J.W.II

