2026:HHC:30035

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 144 of 2025
Reserved on : 17th June, 2026
Decided on : 21st July, 2026
Uploaded on : 21st July, 2026

Manmohan Chandel & Another …Petitioners

Versus

Prem Kumar & Others …Respondents

Coram
The Hon'ble Mr. Justice Virender Singh, Judge.
Whether approved for reporting?[1] ***Yes.***

For the petitioners : Mr. Sunil Mohan Goel, Senior Advocate with Mr. Raman Jamalta, Advocate.

For the respondents : Mr. Jagdish Thakur, Advocate, for respondents No.1 to 5.

Mr. Mukul Sood, Advocate for respondent No.6.

Virender Singh, Judge

Petitioners Manmohan Chandel and Kali Ram, have filed the present petition, under Article 227 of the Constitution of India, against the judgment dated 07.05.2024, passed by the Court of learned Additional District Judge-I,

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

Solan, District Solan, H.P., (hereinafter referred to as the 'First Appellate Court'), in CMA No.13-AK/14 of 2023, titled as Prem Kumar and Others versus Manmohan Chandel and Others.

2. The said appeal has been preferred by respondents No.1 to 5, before the learned First Appellate Court, against the order dated 02.12.2023, passed by the Court of learned Civil Judge, Arki, District Solan, H.P. (hereinafter referred to as the 'trial Court'), in CMA No.221/6 of 2023, in Civil Suit No.156/1 of 2023, titled as Prem Kumar & Others versus Manmohan Chandel & Others.

3. By way of the judgment dated 07.05.2024, the learned First Appellate court has allowed the appeal preferred by respondent No.1 to 5 and passed the following order:-

> *"25. In view of my findings on Point No. 1 above, the present appeal is hereby accepted and the impugned order dated 02-12-2023 passed by Id. Civil Judge, Arki is hereby set aside. Resultantly, the respondents are hereby restrained from causing any type of interference by doing digging and excavation work with JCB or through labourers, masons or through their agent and from erecting retaining wall and further from setting up/installing the petrol pump over the suit land without the consent of plaintiffs, his family members and other co-sharers and further from*

> *dispossessing the plaintiffs/a"25. In view of my findings on Point No. 1 above, the present appeal is hereby accepted and the impugned order dated 02-12-2023 passed by Id. Civil Judge, Arki is hereby set aside. Resultantly, the respondents are hereby restrained from causing any type of interference by doing digging and excavation work with JCB or through labourers, masons or through their agent and from erecting retaining wall and further from setting up/installing the petrol pump over the suit land without the consent of plaintiffs, his family members and other co-sharers and further from dispossessing the plaintiffs/applicants from the suit land till the legal partition of the suit land. In the peculiar circumstances of the present case, parties are left to bear their own costs. However, it is made clear that pbservations made herein-above are purely for the purpose of disposal of the appeal and shall have no bearing on the merits of the case. Miscellaneous application(s), if any, filed with this appeal stands disposed off being infructuous, and the same be tagged with the main case file after doing needful for record. The record of the Ld. Trial Court along with a copy of this judgment be sent back forthwith. The file of this Court be consigned to the Record Room after doing the needful."*

4. For the sake of convenience, parties to the *lis* are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

5. Brief facts, leading to the filing of the present petition, as borne out from the record, may be summed up, as under:-

5.1. The plaintiffs have filed the suit for permanent prohibitory injunction, against the defendants, on the ground, that they are joint owners-in-possession, qua the land comprised in Kewat No.17 min, Khata No.41, measuring 03-12-00 bighas, situated at village Rehuta, Post Office Piplughat, Tehsil Arki, District Solan, H.P., along with other co-sharers, recorded in the jamabandi (hereinafter referred to as 'suit land').

5.2. It is the further case of the plaintiffs that they have not impleaded the other co-sharers, as party, in the suit, as no relief has been claimed against the other co-sharers and the suit is also stated to be instituted to safeguard their interests.

5.3. It is their further case that defendant No.3, had issued advertisement for setting up Petrol Pumps and in response thereto, defendant No.1 had applied for Petrol Pump. His application was considered and defendant No.3 sanctioned the application vide reference letter No.15453857835974, dated 09.02.2021. Since, the subject matter of the lis was

joint, as such, for setting up the Petrol Pump, in the joint land, NOC of other co-sharers was required.

5.4. As per the plaintiffs, thereafter, defendant No.1 approached plaintiff No.2, his mother Smt. Shanti Devi, his brother Prem Kumar and his sisters Miss Laxmi, Smt. Saroj Bala and Smt. Veena Devi, for issuance of NOC, but the said plaintiff and his family members had denied the NOC, on the ground, that the suit land has not been partitioned, between the parties and the suit land is very valuable piece of land, situated on the main road, as such, all the co-sharers have equal rights, as per their share, in the suit land. In this regard, the plaintiffs have relied upon the agreement upon which, defendant No.1 intended to obtain the signatures of plaintiff No.1 and his family members.

5.5. The locus of defendant No.3, has also been challenged, on the ground, that defendant No.3 is totally stranger qua the suit land and without signatures of the plaintiffs and other co-sharers, they cannot enter into any agreement, with defendant No.1.

5.6. It is the further case of the plaintiffs that when plaintiff No.2 came to know about the application of defendant No.1, for installation of Petrol Pump over the suit land, without consent of other co-sharers, then, plaintiff No.2, made a complaint to defendant No.3 through e-mail on 24.02.2021 and thereafter, on 28.03.2022, upon which, defendant No.3 had assured that Petrol Pump will not be installed over the suit land. Despite assurance, defendants No.1 and 2, in collusion with defendant No.3, had started the excavation and digging work over the suit land.

5.7. According to the plaintiffs, when the defendants did not stop the work, plaintiff No.2, filed a civil suit, titled as Lalit Kumar versus Manmohan & Others, under the Specific Relief Act, along with application, under Order 39 Rules 1 and 2 of the CPC. Thereafter, the defendants filed written statement to the suit and reply to application under Order 39 Rules 1 and 2 of the CPC.

5.8. It is the further case of the plaintiffs that the application, under Order 39 Rules 1 and 2 CPC, was allowed by the Court. Thereafter, defendants No.1 and 2, assured the

plaintiffs that they will not do any type of interference over the suit land, in any manner, without consent of the plaintiffs and till the legal partition of the suit land is not effected.

5.9. As per the plaintiffs, acting upon the assurance of defendants, plaintiff No.2 has withdrawn the above suit, however, defendants No.1 and 2, on 16.07.2023, threatened the plaintiffs that they will install the Petrol Pump over the suit land, upon which, plaintiff No.2, again requested defendant No.3, through e-mail, by apprising them that the NOC was not issued by them.

5.10. Reasserting the fact that the subject matter of the *lis* has not yet been partitioned, it is the plea of the plaintiffs that defendants No.1 and 2, in collusion with defendant No.3, started digging and excavation work over the suit land on 17.07.2023.

5.11. Cause of action is stated to have been accrued in favour of the plaintiffs, when the defendants threatened the plaintiffs to interfere in the suit land and further threatened to install the Petrol Pump over the suit land.

6. On the basis of the above facts, a prayer has been made to decree the suit.

7. Along with the suit, the plaintiffs have filed application, under Order 39 Rules 1 and 2 CPC, reasserting the above factual position and prayed that during the pendency of the suit, the respondents be restrained from causing interference, in any manner, as well as, from installing the Petrol Pump over the suit land, without consent of the plaintiffs, as well as, their family members, who are the co-sharers and also restrained them from dispossessing the plaintiffs from the suit land.

8. When put to notice, the suit, as well as, the application, has been contested by the defendants.

9. In the written statement, the defendants have taken the preliminary objections that the suit is not maintainable, as defendant No.1, before submitting the documents with regard to installation of Petrol Pump got the written NOC from plaintiff No.1-Prem Kumar. Defendant No.1 also obtained the oral NOC, with regard to installation of Petrol Pump, from plaintiffs No.2 to 5 and from the other co-

sharers. Photocopy of the NOC has been placed on record, along with the written statement.

9.1. It is the further case of defendant No.1 that defendant No.1, after getting the written, as well as, oral NOC from the plaintiffs and other co-sharers, started developing the plot, for installation of the Petrol Pump, in the month of July 2019 and at that time, the plaintiffs had not raised any objections.

9.2. According to the defendants, defendant No.1 spent a huge amount for levelling and developing the plot for installation of Petrol Pump and when the work of installation of Petrol Pump is at the verge of completion, the plaintiffs have filed the present suit.

9.3. In addition to this, preliminary objections regarding locus standi, cause of action, the suit is bad for non-joinder of necessary parties, plaintiffs have not approached the Court with clean hands and the suit is not properly valued for the purpose of Court fee and jurisdiction, have been taken.

10. On merits, the factual position, qua the fact that the suit land is in joint ownership and possession of the

plaintiffs, along with other defendants, has not been disputed. The suit has further been contested by submitting the factual position, as to how, in response to the advertisement issued by defendant No.3, defendant No.1 has applied for installation of the Petrol Pump and his application was sanctioned by letter No.1545387835974, dated 09.02.2021. However, it has been denied that defendant No.1 approached plaintiff No.2, his mother, brother and sisters, for issuance of NOC. The stand of the plaintiffs qua denial of the NOC has also been contested.

10.1. According to the defendants, defendant No.1, before submitting the documents with regard to installation of Petrol Pump, has obtained written NOC from plaintiff No.1 and oral NOC from plaintiffs No.2 to 5, as well as, from other defendants. It is their further case that defendant No.1 spent huge amount for developing the suit land.

10.2. As such, a prayer has been made to dismiss the suit.

11. On the similar lines, the application, under Order 39 Rules 1 and 2 CPC, has been contested.

12. The plaintiffs filed replication, denying the contents of the written statement and reply, on the basis of which, the suit, as well as, the application, have been contested and reasserting that of the plaint.

13. The application, under Order 39 Rules 1 and 2 CPC, has been dismissed, by the learned trial Court; mainly on the ground that respondent No.1 has placed on record the NOC issued by the applicant No.1, for installation of the Petrol Pump. The relief of injunction has also been declined on the ground that the applicants have not approached the Court with clean hands and they have concealed the material facts.

14. The findings, so recorded, by the learned trial Court have been assailed before the learned First Appellate Court by the plaintiffs and the learned First Appellate Court vide judgment dated 7.5.2024, allowed the appeal, by granting the relief, reproduced above.

15. The said judgment has been assailed by the defendants, before this Court, on the ground, that the learned First Appellate Court has given undue weightage to the fact that plaintiff Prem Kumar has lodged FIR, under Sections

420, 468 and 471 of the IPC, against the appellants for producing forged NOC.

15.1. The findings have further been assailed, on the ground, that the learned First Appellate Court has failed to appreciate that the work for construction of Petrol Pump started in the month of July 2019 and the plaintiffs never objected to, for construction of the Petrol Pump, except plaintiff-Lalit, who has filed a suit, which was also withdrawn.

15.2. It is their further case that out of 22 co-sharers, 18 have consented for construction of Petrol Pump in favour of the defendants and share of the plaintiffs is 1/3rd, in the subject matter of the *lis*, which is very small and in case, the plaintiffs succeed, in the suit or in partition proceedings, then, they can be compensated in terms of money, for such a small share.

15.3. The findings have further been assailed, on the ground, that the petitioners-defendants have spent a huge amount, from the year 2019 and the construction work has never been objected to, by the plaintiffs. It is their further case that the learned First Appellate Court has wrongly

concluded that the suit land is joint between the parties, whereas, petitioner/defendant No.2 has filed the application, under Section 123 of the HP Land Revenue Act, 1954, for partition of the land, however, the plaintiffs have intentionally not joined the proceedings.

15.4. Reasserting the fact that despite the jointness of the land, all the co-sharers, during lifetime of their grandfathers/fathers have settled in their respective shares and the suit has been filed, by taking undue advantage of the joint entries, in the revenue record. Reasserting their claim, that on the basis of the family arrangements, all co-sharers are in possession of their respective shares, a prayer has been made to allow the petition.

15.5. Plaintiffs are also stated to be guilty of concealment of material facts, as, they have not mentioned that one of the co-sharers; namely Desh Raj rented his share, in favour of the defendant No.1, for yearly rent of Rs.50,000/-, for 20 years. In this regard, petitioners-defendants have relied upon the rent Agreement Annexure P-10.

16. On the basis of the above grounds, Shri Sunil Mohan Goel, Senior Advocate assisted by Mr. Raman Jamalta, Advocate, appearing for the petitioners, has prayed that the appeal may kindly be allowed, by setting aside the judgment passed by the learned First Appellate Court.

17. In this case, application, under Order 39 Rules 1 and 2 CPC, has been dismissed by the learned trial Court, whereas, in appeal, the said findings have been reversed, by the learned First Appellate Court and the application has been allowed, by restraining the defendants, from causing any type of interference, by doing digging and excavation work and from installing Petrol Pump over the suit land, without consent of the plaintiffs, till the legal partition of the suit land is takes place.

18. Plaintiffs have filed the suit for permanent prohibitory injunction, with a prayer to restrain the defendants from causing any interference, in any manner, i.e. by doing digging and excavation work, as well as, from erecting retaining wall and from installation of Petrol Pump, over the suit land, without consent of the plaintiffs and their

family members. In addition to this, a prayer has also been made to restrain the defendants from dispossessing the plaintiffs from the suit land.

19. The said suit has been filed by pleading that defendant No.3, had invited the applications, for RO dealership and in response to the advertisement, defendant No.1 had applied for such dealership. The dealership has been allotted in favour of defendant No.1, vide letter dated 09.02.2021. It is their further case that thereafter, defendant No.1 approached plaintiff No.2, his mother Smt. Shanti Devi, his brother Prem Kumar and his sisters Miss Laxmi, Smt. Saroj Bala and Smt. Veena Devi, for issuance of NOC, but, plaintiff No.2, and his family members had not given the NOC, as the legal partition has not been taken place between the co-sharers. According to them, the suit land is prime and valuable piece of land and all the co-sharers are having equal rights, as per their shares, in the suit land.

20. It is not in dispute, in this case, that earlier plaintiff No.2, had also filed suit for permanent prohibitory injunction against the present defendants, which was

dismissed, as withdrawn on 07.07.2023 and the present suit has been filed on 19.07.2023, immediately, after withdrawal of the earlier suit.

21. Admittedly, the factum of filing and withdrawal of the suit, by plaintiff No.2, has duly been mentioned, in the plaint. Earlier suit was dismissed as withdrawn by plaintiff No.2, without obtaining any permission to file afresh on the same cause of action. The withdrawal of the earlier suit has been justified, by pleading that the same has been withdrawn by plaintiff No.2, in view of the assurance given by defendants No.1 and 2, however, the order is totally silent about this material fact, as suit has simply been withdrawn.

22. As per the stand taken by defendant No.3, the Petrol Pump was allotted in favour of defendant No.1, on 24.11.2018. Defendant No.3 has also taken the plea that the said allotment was made on the basis of the no objection allegedly issued by all co-sharers in favour of defendant No.1. Defendant No.1 has relied upon the no objection certificate allegedly issued in his favour, by the co-sharers, which, he has submitted to defendant No.3. Although, the plaintiffs have

disputed the said fact, by pleading that the NOC was also demanded from plaintiffs, their mother, brother and sisters, but, the same has not been issued on the ground that the partition of the subject matter of the *lis* has not been effected between the co-sharers.

23. It is the further case of defendant No.1 that he had started the work of development of the plot for installation of the Petrol Pump, in the month of July, 2019 and no objection has been raised, by the plaintiffs and he has spent a huge amount for development of the land, for installation of Petrol Pump. He has taken a specific stand that he has obtained written NOC from plaintiff No.1 and also obtained oral NOC, with regard to installation of Petrol Pump, from plaintiffs No.2 to 5 and from the other co-sharers.

24. The factual position, with regard to, the start of development work over the suit land for installation of the Petrol Pump, which, according to defendants No.1 and 2, stated in the month of July, 2019, has also been disputed by the plaintiffs, by pleading that "in the month of …….. 2022, the defendants had threatened the plaintiffs to change the

nature of the suit land". As per the record, the place meant for month has been left blank. Meaning thereby, the plaintiffs themselves are not sure, as to when, the alleged construction has been started by the defendants.

25. Whenever, a person is coming to the Court, he must plead each and every ingredient for seeking the relief. It seems that the plaintiffs are playing hide and seek with the defendants as firstly, one of the plaintiffs had filed a suit, which was withdrawn, allegedly, on the basis of the assurance given by the defendants, but, as stated above, the order, by virtue of which, the suit has been withdrawn, is totally silent about the said material fact.

26. Plaintiff No.2 had moved an application dated 30.10.2023, before the Police of Police Station Arki, alleging therein, that he had obtained a stay order against the installation of the Petrol Pump, but, on the basis of the alleged assurance given by defendant No.1 and other defendants, he had withdrawn that suit and thereafter, the defendants have again started the construction work, on the spot and compelled

by the circumstances, the present suit has been filed on 19.07.2023.

27. Admittedly, the construction work was not started by the defendants, as alleged, in para 5 of the plaint, on 16.07.2023. Admittedly, the earlier suit, in which, plaintiff No.2 made a prayer for permanent prohibitory injunction, was filed, much earlier to 16.07.2023, whereas, the construction work, as per the documents, was started after issuance of the letter dated 09.02.2021, by defendant No.3, in favour of defendant No.1.

28. In such situation, the plea of defendant No.1 that after obtaining the letter dated 09.02.2021, from defendant No.3, he has started the construction work, is a fact, which goes to the very root of the case, as admittedly, the plaintiffs, who are asserting the jointness of the subject matter of the *lis,* have not made any effort to get the land partitioned, by initiating proceedings before the competent authority.

29. If the plaintiffs have not initiated any proceedings to get the land partitioned, then, the plea of the defendants,

qua issuance of NOC, in their favour, cannot be ignored, at this stage.

30. When the plaintiffs have not initiated any proceedings to get the land partitioned, then, the final relief cannot be granted to plaintiffs, and the prayer of the plaintiffs, cannot be accepted.

31. It has rightly been argued by the learned Senior counsel appearing for the petitioners/defendants that the sole motive of the plaintiffs is to harass the defendants and to prevent defendant No.1, from installating/operating the Petrol Pump.

32. Considering the rival contentions, as taken by both the parties, this Court is of the view that the learned First Appellate Court has exceeded its jurisdiction, by allowing the application, under Order 39 Rules 1 and 2 CPC, by setting aside the order dated 02.12.2023, without recording the findings that the order passed by the learned trial Court is suffering from perversity. The appeal before the learned First Appellate Court has been filed, under the provisions of Order 43 of the CPC.

33. Appellate jurisdiction, under Order 43 of the CPC, has elaborately been discussed, by the Hon'ble Supreme Court, in ***Civil Appeal No.13001 of 2024, Special Leave Petition (Civil) No. 252 of 2023,*** titled as ***Ramakant Ambalal Choksi Vs Harish Ambalal Choksi & Others, 2024 INSC 913***. Relevant paragraphs 20 to 32 of the judgment, are reproduced, as under:-

> *20. Order 43 of the CPC specifies the orders against which an appeal lies. Sub Rule (r) of Rule 1 of the said order provides that an appeal would lie against an order made under Rules 1, 2, 2A, 4 and 10 of Order 39 of the CPC respectively.*
>
> *21. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in* ***Wander Ltd. v. Antox India P. Ltd****. reported in* ***1990 Supp SCC 727****. Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:*
>
> *a. First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and*
>
> *b. Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the*

trademark on which the passing off action is founded.

22. With regards to (a), this Court held thus:

> *"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions … the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below … If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."*

23. This Court, while arriving at the above findings, relied on its earlier judgment in Printers (Mysore) v Pothan Joseph reported in (1960) SCC Online SC 62 where it was held thus:

> *"[...] as has been observed by Viscount Simon LC in Charles Osenton & Co v Johnston – the law as to reversal by a court of appeal of an order made by a judge below in the exercise of his/her discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case."*

24. It is pertinent to note that in Printers (supra) this Court had held that ignoring relevant facts is also a ground for interfering with the discretion exercised by the trial court.

Furthermore, Viscount Simon LC in Charles Osenton & Co v Johnston reported in 1942 A.C. 130, after stating the above, went on to quote Lord Wright's decision in Evans v. Bartlam reported in 1937 A.C. 473:

> *"It is clear that the court of appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the court of appeal cannot review his order unless he is shown to have applied a wrong principle. The court must, if necessary, examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order."*

25. In Evans (supra) case, Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.

26. What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

> *a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and*
>
> *b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.*

*27. The principles of law explained by this Court in **Wander's** (supra) have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.*

28. In Neon Laboratories Ltd. v. Medical Technologies Ltd. reported in (2016) 2 SCC 672 this Court held that the Appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

29. In Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan reported in (2013) 9 SCC 221 this Court emphasised on the principles laid down in Wander (supra) and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39 of the CPC. The basis for substituting the view of the trial court should be malafides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below:

> *"20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim*

mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the trial court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd."

(Emphasis supplied)

30. This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd. reported in (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

> *31. This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. reported in (2019) 3 SCC 381, observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.*
>
> *32. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander (supra) case.*

34. As stated above, the learned First Appellate Court has allowed the appeal, without recording the findings that the learned trial Court has wrongly dismissed the application and the findings of the learned trial Court are suffering from perversity. The Hon'ble Supreme Court in ***Ramakant Ambalal Choksi'***s case supra, has also discussed the meaning of the expression 'perverse'. Relevant paragraphs 35 to 37 of the judgment, are reproduced, as under:-

> *35. Any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough reported in (1878) 1 LR 1r 331, the Court*

observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey reported in 106 NW 814, the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

36. The expression "perverse" has been defined by various dictionaries in the following manner:

a. Oxford Advanced Learner's Dictionary of Current English, 6th Ed. Perverse - Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

b. Longman Dictionary of Contemporary English - International Edition Perverse - Deliberately departing from what is normal and reasonable.

c. The New Oxford Dictionary of English - 1998 Edition Perverse - Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

d. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition) Perverse - Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

e. Stroud's Judicial Dictionary of Words & Phrases, 4th Ed. Perverse - A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

37. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest

> *approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See: Damodar Lal v. Sohan Devi and others reported in (2016) 3 SCC 78)*

35. The learned Appellate Court should not interfere, in the order, passed by the learned trial Court, while deciding application, under Order 39 Rules 1 and 2 CPC, until or unless, the learned Appellate Court does not come to the conclusion that the order passed by the learned trial Court suffers from perversity.

36. In the absence of such findings, the learned First Appellate Court, cannot assume the powers of the trial Court.

37. At the cost of repetition, the factum of withdrawal of earlier suit by plaintiff No.2, without reserving the right to file afresh, on the same cause of action, is fatal to the case of the plaintiffs, as the relief of injunction is equitable relief.

38. The impact of withdrawal of earlier suit and issuance of NOC in favour of defendants, has not been considered properly, by the learned First Appellate Court. It

seems that the learned First Appellate Court has swayed away with the stand taken by the plaintiffs that they had not issued any NOCs in favour of the defendants, whereas, those NOCs were allegedly submitted to the office of Deputy Commissioner, from where, the plaintiffs have obtained the copies under the Right to Information Act.

39. Considering all these facts, the order, passed by the learned First Appellate Court, does not stand in the judicial scrutiny, by this Court. Consequently, the present petition is allowed and the order dated 7.5.2024, passed by the learned First Appellate Court, is set aside, by restoring the order dated 02.12.2023, passed by the learned trial Court.

40. Pending miscellaneous application(s), if any, shall also stand disposed of.

41. Any of the observations made herein above shall not be taken as an expression of opinion on the merits of the case, as these observations are confined only to the disposal of the present petition.

Record be sent back.

(Virender Singh)
Judge

July 21, 2026*(ps)*