



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

115

CR-4635-2025 (O&M)

Date of decision: 08.08.2025

MALIBU TWIN TOWERS RESIDENTS WELFARE ASSOCIATION

...Petitioner

Versus

MALIBU CONDOMINIUM RESIDENT WELFARE ASSOCIATION

...Respondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Nikhil Sabharwal, Advocate
for the petitioner.

HARPREET KAUR JEEWAN, J.

CM-15214-CII-2025

1. Application for preponement of the main case is disposed of as having been rendered infructuous.

Main case

1. The present revision petition is filed by the petitioner-plaintiff assailing the legality and maintainability of the impugned order dated 20.02.2025 (Annexure P-15) passed by the Additional District Judge, Gurugram, whereby it was held that Civil Miscellaneous Appeal filed by the respondent-defendant challenging the order dated 30.09.2023 passed by the trial court is maintainable.

2. Notice of motion.

3. Mr. Abhinav Sood, Advocate accepts notice on behalf of the



respondent and filed his power of attorney, which is taken on record.

4. The petitioner-plaintiff filed a civil suit against the respondent seeking declaration and permanent injunction and during the pendency of the said civil suit, an application under Order XXXIX Rule 1 and 2 read with Section 151 CPC (Annexure P-4) was filed.

4.1. The said application was decided by the Additional Civil Judge (Senior Division), Gurugram vide order dated 04.08.2023 (Annexure P-7).

4.2. The review application filed by the respondent (Annexure P-12) against the above-said order was dismissed by the trial court vide order dated 20.08.2024 (Annexure P-13). Thereafter, the respondent filed Civil Miscellaneous Appeal (Annexure P-14) to challenge the legality of the order dated 30.09.2023.

4.3. During the pendency of the said Civil Miscellaneous Appeal, arguments were heard on the limited point of maintainability of the said appeal and the First Appellate Court held that impugned order dated 30.09.2023 is *prima facie* an order under Order XXXIX Rule 4 CPC, as the initial order dated 04.08.2023 passed under Order XXXIX Rule 1 and 2 CPC was varied. As such, it was held that the appeal is maintainable.

4.4. The petitioner-plaintiff is aggrieved with the said findings recorded by the First Appellate Court during the pendency of the Civil Miscellaneous Appeal, as such, filed the present revision petition.

5. Learned counsel for the petitioner contends that before passing of the said order, the respondent-defendant raised a demand for electricity charges and water charges by way of demand notice dated 02.08.2023 (Annexure P-8). However, after passing of the interim order by the Civil Judge (Annexure P-7), the



respondent issued a revised invoice dated 14.08.2023 (Annexure P-9) and raised an additional demand upon the application filed on behalf of the petitioner. The trial Court vide order dated 30.09.2023 held that the applicant is liable to make payment of current charges of essential services for common area but not @ Rs.1.65/- per sq. ft. rather @ Rs.0.77 per sq. ft. subject to the outcome of the suit.

6. Learned counsel for the petitioner further submits that no application under Order XXXIX Rule 4 CPC was filed, as such, the order passed by the trial Court dated 04.08.2023 (Annexure P-7) was *suo moto* in aid of the execution.

7. Learned counsel for the petitioner further contends that the petitioner never sought variation of the injunction which was already granted, in fact the order was violated by the respondent, as such, the application was filed. The First Appellate Court has wrongly categorized the order dated 04.08.2023 as an order under Order XXXIX Rule 4 CPC and held that the appeal is maintainable. The said observations are liable to be set aside.

8. I have heard the aforesaid submissions and perused the paper-book.

9. Initially, the trial Judge has passed the order dated 04.08.2023 (Annexure P-7). The relevant part of the order reads as under:

“12. It has been alleged that maximum resident of Tower-1 individually paying CAM Charges to MCRWA from 01.2.2021 to 30.04.2022 against the invoices raised by MCRWA but few residents were paying CAM charges to MTTRWA and in turn MTTRWA was paying to MCRWA. Therefore, it is hereby made clear that residents of Tower-1 shall make payment of current charges of essential services i.e. water & electricity supply etc. to the respondent/defendant association through applicant/plaintiff association against proper receipt. In case of any default of payment of current charges, the present order shall be deemed to be automatically vacated.

13. Further, it is hereby made clear that cheque of Rs.



5 Lacs placed on file by the applicant/plaintiff, which was accepted by the defendant under protest, to restrain its association from disconnecting the water and electricity supply of residents of plaintiff association, shall also be handed over to the respondent's association which can be encashed by this association but this payment shall be subject to the final outcome of this case on merits."

10. Thereafter, the trial Judge has passed the order dated 30.09.2023 (Annexure P-11). The relevant part of the order reads as under:

"11. This court thinks it quite pertinent to mention here that the applicant is liable to make the payment of of current charges of essential services for the common area also, but not @ Rs. 1.65/- per sq. ft., rather @ Rs. 0.77 per sq. ft. (i.e. Rs. 0.50/- as Repair & maintenance cost + Rs. 0.27/- as Common area electricity charges) at the moment, as the costs of essential services of common area to the respondent subject to the outcome of this case because exact cost can't be calculated, at this stage, since it is a matter of evidence which is yet to be led by both the parties.
12. Therefore, the present application is accordingly disposed of with the direction to S.H.O. concerned police station to ensure the enforcement of the order of this Court in letter and spirit. I order accordingly."

11. As per the order dated 30.09.2023 (Annexure P-11), the Additional Civil Judge (Senior Division), Gurugram has granted two reliefs i.e.

- (i) the petitioner-plaintiff-applicant is liable to make payment of current charges of essential services at a specific rate;
- (ii) direction was issued to the concerned SHO to ensure the enforcement of the said order in letter and spirit.

12. The second part of the order dated 30.09.2023 is for execution of the interim order through the police help whereas the first part of the order is regarding variation of some charges fixed earlier by the trial Court while granting stay in terms of the order dated 04.08.2023 (Annexure P-7). So far as the second



part of the order is concerned, it cannot be termed as the direction under Order XXXIX Rule 4 CPC, which has been wrongly observed by the First Appellate Court.

13. Considering the aforesaid facts and circumstances, I am of the considered opinion that this aspect has not been considered by the First Appellate Court as to whether the direction issued by the trial Judge to the concerned SHO to ensure enforcement of the interim order would also amount to variation of the initial order passed under Order XXXIX Rule 1 and 2 read with Section 151 CPC (Annexure P-4). Since the appeal is still pending before the First Appellate Court, as such, this Court withholds hands to give any opinion on merits of the said contentions and leaves it open to the First Appellate Court to finally decide the main Civil Miscellaneous Appeal.

14. Learned counsel for the respondent has also not disputed that this aspect has not been considered by the First Appellate Court while passing the impugned order. However, the learned counsel for the respondent prays that the disposal of the said appeal be made time bound.

15. In view of the aforesaid facts and circumstances, the present revision petition is disposed of with the following observations:

(i) The objections raised by the petitioner that the order passed by the Civil Judge granting police help for implementation of its own order is not be an order under Order XXXIX Rule 4 CPC shall be considered by the First Appellate Court at the time of final decision of the appeal.

(ii) That the observation in the impugned order dated 20.02.2025 (Annexure P-15) passed by the First Appellate Court would not be an



impediment for final adjudication of the Civil Miscellaneous Appeal bearing No.*CNR No.HRGR01-012763-2024, CIS No.CMA-206-2024* titled *Malibu Condominiums Residents Welfare vs. Malibu Twin Towers.*

16. However, observations made by this Court in the present order shall not influence the Additional District Judge, Gurugram while deciding the said Civil Miscellaneous Appeal, which would be decided as per its own merit.

17. Keeping in view the nature of the litigation, since rights of many people are involved with regard to their water and electricity charges, which are essential commodities, as such, the Appellate Court shall make an endeavour to decide the appeal in a time-bound manner, preferably, within 06 months after receiving copy of this order.

(HARPREET KAUR JEEWAN)
JUDGE

08.08.2025

P.Bhatt

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No