12. The same view was taken in New India Assurance Co. Ltd. v. Sheela Rani (smt.) & Ors. (JT 1998 (6) SC 388).

13. The heading of Chapter VIII of the old Act reads as "Insurance of Motor Vehicles against Third Party Risks". A perusal of the provisions under Chapter VIII makes it clear that the Legislature made insurance of motor vehicles compulsory against third party (victims) risks. This Court in New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani & Ors. (AIR 1964 SC 1736 after noticing the compulsory nature of insurance against third-party observed that once the company had undertaken liability to third parties incurred by the persons specified in the policy. The Third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy.

14. In our opinion that both under the old Act and under the new Act the Legislature was anxious to protect the third party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts."

(7) From the above observations of the Apex Court it is evident that the law laid down by this Court in case of Ram Chander (Supra) does not hold good any longer. The present case being a claim of the third party is squarely covered by the law laid down by the Apex Court in M/s *Complete Insulations (P) Ltd. (Supra) and G. Govindan (Supra). We, therefore, hold that the appellant Insurance Company cannot be allowed to deny its liability against the claim of a third party on the ground that intimation envisaged under sub-section (2) of Section 157 of the Act had not been sent to it by Yogesh Kumar Sharma.

(8) In view of the above discussion, we find no merit in this appeal which is hereby dismissed.

R.N.R.

Before M.L. Singhal, J

BALBIR SINGH WASU,—*Petitioner/Plaintiff*

versus

PARBANDHAK COMMITTEE GURDWARA SAHIB & ANOTHER,—*Respondents/Defendants*

C.R. No.1465 of 2000

26th July, 2000

Code of Civil Procedure, 1908—0.39 Rls. 1 & 2—Capital of Punjab (Development & Regulation) Building Rules, 1952—Rls. 19, 20 & 26 and Sec. 4—Defendant raising construction on the common wall according to building plan sanctioned by the Chandigarh Administration—Plaintiff alleging construction in violation of Rls. 20 & 26 of the 1952 Rules—Trial Court as well as Appellate Court allowing the defendant to raise construction—Defendant giving an undertaking to pay compensation in case of any loss to the plaintiff—Mere existence of a prima facie *case in favour of the plaintiff does not entitle him to the grant of injunction—Balance of convenience & irreparable injury principle in favour of the defendant—Orders of the Trial Court as well as the Appellate Court in refusing the injunction to the plaintiff upheld.*

Held that mere existence of a *prima facie* case in favour of the plaintiff does not entitle him to the grant of injunction. He has to satisfy the court that there will be irreparable injury to him if injuction is not granted and further the principle of balance of convenience is also in his favour that he will be put to greater loss if no injunction is granted, then the loss to which the defendant will be put if injunction is granted.

(Para 21)

Further held, that in revision, the discretion exercised while granting or refusing temporary injunction by the courts below shall be interfered with by this Court in the exercise of its revisional power only when the exercise of discretion by the courts below is found to be perverse and in flagrant abuse of the principles governing the grant of temportary injunctions. High Court in the exercise of its revisional jurisdiction will not interfere with the exercise of discretion by the courts below even if it feels that the discretion should have been exercised differently if the discretion could have been exercised by the courts below in the manner in which they have exercised their discretion.

(Para 24)

Further held that it was justifiably found by the courts below that no temporary injunction could be allowed to the plaintiff and the defendant should be allowed to raise construction according to building plan sanctioned by the Chandigarh Administration. Plaintiff may have *prima facie* case, while sanctioning the plan, the Chandigarh Administration may not have taken into account rules 20, 26 or any other rule of the 1952 Rules. Chandigarh Administration sanctioned the building plan submitted to it by the defendant for raising construction on plot No. 1120 but it cannot be assumed readily that the

Chandigarh Administration was not aware of the implication of rules 20 & 26 and other rules while sanctioning the plan that the raising of construction by the defendant on their plot will bring about diminution of light and air to residential house No. 1119, Sector 8-C, Chandigarh and also damage its drive way etc. Balance of convenience and irreparable injury principle appear to be leaning in favour of the defendant.

(Para 26)

J.S. Wasu, Advocate *for the petitoner*

M.S. Ratta, Advocate *for the respondent No. I*

Alok Jain, Advocate *for the U.T. Chandigarh*

JUDGMENT

M.L. Singhal, J

(1) Balbir Singh Wasu, Advocate is the owner of plot No. 1119, Sector 8-C, Chandigarh. He constructed house on this plot some 30 years ago. Adjoining plot No. 1120 was purchased by defendant Parbandhak Committee, Gurdwara Sahib, Patshahi Dasween, Sector 8-C, Chandigarh at public auction held by the Estate Officer, Chandigarh on 19th November, 1997. Defendant was allotted plot No. 1137 and 1138 in Sector 8-C, Chandigarh. Defendant constructed residential house on Plots No. 1137 and 1138 in violation of the building plan of Sector 8-C. Plaintiff filed CWP No. 17884 of 1997 that the service quarters cannot be built on residential plot measuring 1 kanal. He prayed for the setting aside of the auction of residential plot No. 1120 in favour of the defendant. On 5th May, 1998, this court passed order that the defendant shall make further construction on plot No. 1120 in accordance with the plan which the Chandigarh Administration may sanction as per the prevailing rules. It was aleged that the defendant was threatening to demolish the common wall between Plots No. 1119 and 1120 without his consent and was coercing him to consent for demolishing the portion of the common wall. Defendant was also threatening to construct servant quarters, Dharamshala, Sarai, Langar and Janj Ghar in violation of the site plan by demolishing the common wall. Through civil suit No. 190 of 1998 for permanent injunction, he prayed for restraint on the defendant restraining it from using the common wall without his consent and without first getting a comprehensive building plan for the entire residential building to be built on plot No. 1120 sanctioned by the competent authority and from demolishing the portion of the common wall between residential plot

No. 1119 (built by him) and residential plot No. 1120 which was purchased by the defendant in open auction from U.T. Chandigarh without his consent. Along with the plaint, he moved an application under Order 39 Rules 1 and 2 CPC for the grant of ad-interim injunction. Vide order dated 29th May, 1998, exparte injunction was granted whereby the defendant was restrained from demolishing the common wall, using the side wall without the consent of the plaintiff. Defendant was further restrained from raising any further construction on plot No. 1120 until the site plan was approved by the Estate Officer, Chandigarh. Vide order dated 29th May , 1998. Civil Judge (Junior Division), Chandigarh gave exparte injuntion to the plaintiff restraining the defendant from demolishing the common wall and using the side wall without his consent. Defendant was further restrained from raising any construction on plot No. 1120 till the site plan was approved by the Estate Officer, Chandigarh.

(2) Vide order dated 15th June, 1998, the trial court confirmed the ad-interim temporary injunction granted by the court and the defendant was restrained from raising any construction on plot No. 1120 except according to the plan sancitoned by the Estate Officer, Chandigarh. After the passing of the order by the High Court on 5th May, 1998 in CWP No. 17784 of 1997, the High Court passed the following interim order :—

> "In view of this the only appropriate direction which deserves to be issued by the Court is that Gurdwara Sahib shall submit a revised plan for construction of the building on the plot in question i.e. Plot No. 1120 and construction shall be raised by Gurdwara Sahib and its representatives only after sanction of the revised building plan as per the prevailing rules."

(3) As per the order passed by the High Court on 25th November, 1998 defendant was required to submit a fresh building plan for approval of the Estate Officer, Chandigarh. Defendant submitted the fresh revised building plan to the Estate Officer, Chandigarh for approval. On 10th June, 1999, Chandigarh Administration sanctioned the building plan. Accroding to Gurdwara Sahib, Gurdwara Sahib became eligible to raise construction in accordance with the building plan submitted by them and got sanctioned by them on 10th June, 1999 from the Estate Officer, Chandigarh. In view of this, defendant made an application to the court for passing an appropriate order regarding the use of common wall between the house of the plaintiff and the residential plot of the defendant. Another application was moved by the defendant for implementation of the order dated 15th June, 1998 through police help. Plaintiff opposed this application moved by the defendant seeking the modification of the order dated 15th June,

1998 passed by the court saying that the order dated 15th June, 1998 had become final and there is no change in the circumstances entitling the defendant to file this application. It was reiterated that the defendant could not raise construction on the common wall without the consent of the plaintiff. Defendant had no right to demolish the common wall. Defendant should have challenged the order dated 15th June, 1998 through appeal or revision. Approval of the sanctioned plan by the Chandigarh Administration was of no consequence. Building plan sanctioned by the Estate Officer, Chandigarh is not binding on the defendant as if construction is raised in accordance with it, there will be damage to the property of the plaintiff. Further, if this application is allowed and the order dated 15th June, 1998 is modified and the defendant raises construction, this suit will become infructuous. There will be damage to his common wall/drive way / projection/balcony of the annexe. Defendant is only co-owner and cannot construct on the common wall without the consent of the plaintiff. In case, defendant is permitted to proceed with the construction, there would be irreparable injury and damage to his property rights. Vide order dated 3rd January, 2000, Civil Judge (Junior Divison), Chandigarh modifed the order passed by him on 15th June, 1998 and passed the following order :—

> "Defendant is at liberty to proceed with the construction strictly in accordance with the revised building plan as approved by the Chandigarh Administration, *vide* its order No. 4893/RP/19964 dated 10th June, 1999. Plaintiff shall disclose the reasonable costs of construction of the common wall to the defendant within one month and the defendant shall pay half of the costs of the common wall to the plaintiff failing which the defendant shall be at liberty to move application for appointment of local commission for assessing the costs of the common wall."

(4) Plaintiff's application for the provision of police help for the implementation of the order dated 15th June, 1998 was declined. Plaintiff went in appeal against the order dated 3rd January, 2000 of Civil Judge (Junior Division), Chandigarh wherethrough order dated 15th June, 1998 was modified. Appeal was dismissed by Additional District Judge, Chandigarh, *vide* order dated 11th January, 2000. Plaintiff filed revision against the order date 11th January, 2000 of Additional District Judge, Chandigarh affirming that of Civil Judge (Junior Division), Chandigarh dated 3rd January, 2000 namely Civil Revision No. 115 of 2000. After the order dated 11th January, 2000 was passed by Additional District Judge, Chandigarh plaintiff filed suit No. 20 on 12th January, 2000 against Parbandhak Committee,

Gurdwara Sahib Patshahi Dasween, Sector 8-C, Chandigarh for declaration declaring the site plan of residential plot No. 1120 being in violation of rule 20 of the Punjab Capital (Development & Regulation) Building Rules, 1952 and for mandatory injunction restraining defendant (Gurdwara Sahib) from proceeding with construction on the plot No. 1120 on the basis of sanctioned plan dated 10th June, 1999. It was alleged in the plaint that if the defendant was allowed to raise construction in accordance with the sanctioned plan dated 10th June, 1999 which is in violation of rule 20 of the building rules, there will be irreparable injury to him as it would result into the demolition of his boundary wall/drive way/projection/balcony of the annexe portion of his house. It was also alleged that he would be deprived of his easmentry rights of free air, sunlight and ventilation which he has been enjoying for the last 30 years. It was also alleged that the balance of convenience is in his favour as there is legal right vesting in him to ensure that the Gurdwara Sahib raises construction on the adjoining plot in accordance with the rules and that no damage accrues to his property. Along with the plaint, he made an application for the grant of temporary injunction. Defendant Gurdwara Sahib opposed this application saying that in the previous suit, Gurdwara Sahib had been directed to get building plan sanctioned and then to start construction. Gurdwara Sahib got the building plan sanctioned on 10th June, 1999. Gurdwara Sahib moved an application for the modification of that order dated 15th June, 1998 which was modified on 3rd January, 2000. Plaintiff's appeal against the order dated 3rd January, 2000 was dismissed on 11th January, 2000. After plaintiff's appeal was dismissed on 11th January, 2000, he filed this suit which is abuse of the process of the court. Plaintiff is pursuing two separate remedies simultaneously. Plaintiff raised objection based on Rule 20 of the building Rules before the appellate court. How could he raise this objection over again through another suit. It was further urged that the plaintiff is stalling construction on residential plot No. 1120 of Gurdwara Sahib by means fair or foul. Defendant shall be intending to use and strengthen the common wall. Plaintiff has misutilized the common wall for building garage. He has no right to challenge the use of the remaining wall by the neighbour. There shall be no irreparable loss to the plaintiff if construction is raised. If no construction is allowed to be raised, there will be irreparable loss to the defendant. Vide order dated 5th April, 2000, Civil Judge (Junior Division), Chandigarh declined this application.

(5) Plaintiff went in appeal against this order dated 5th April, 2000 which was dismissed by additional District Judge, Chandigarh vide order dated 17th April, 2000. Aggrieved from this order dated

17th April, 2000 of Additional District Judge, Chandigarh, Plaintiff has come up in revision to this court (Civil Revision No. 1465 of 2000).

(6) At the outset, learned counsel for the respondent submitted that it was a suit for mere declaration and in a suit for mere declaration, no relief of interim injunction could be granted. In support of this submission, he drew my attention to *Subedar Shingara and another appellant-plaintiff* vs. *Brigadier CHDO Callaghan and others defendants-respondents (1)* where it was held that a simple suit for declaration than an ordinance promulgated by the Governor General is ultra-vires cannot be maintained within the meaning of Section 42 of the Specific Relief Act as it does not ask for a declaration either in regard to any property or in regard to any legal character of any individual but the case is different if such a point arises collaterally between two parties. At page 256, it was observed that as suit was not properly instituted, no injunction could have been granted in the suit and must be held to have been rightly discharged by the Subordinate Judge. He drew my attention to *Gram Panchayat of village Bhaddi* vs. *Om Parkash (2)* where it was held that where in a suit for declaration, plaintiff is entitled to further relief of mandatory injunction but he does not claim that relief, suit is not maintainable as a mere declaratory decree is not executable. Plaintiff purchased certain trees at open auction held by the gram panchayat of village Bhaddi. Gram Panchayat cancelled the auction sale in favour of plaintiff directing fresh auction of the trees. Plaintiff filed suit for declaration that he is a *bonafide* auction purchaser of the trees standing in shamilati area on the basis of an open auction and the cancellation of the auction is null and void and without jurisdiction. It was held that mere suit for declaration was not maintainable as he was entitled to seek further relief of mandatory injunction." It was submitted that this objection could be raised at any point even in revision. In support of this submission, he drew my attention to *Kishan Lal* vs. *Beg Raj (3)* where it was held that where the suit itself is not competent under Section 42 of the Specific Relief Act and the suit is not otherwise competent, then the objection to its competence can be raised at any stage even for the first time in second appeal. It was further submitted that if on a perusal of the plaint the court considers that it is one in which further relief should have been asked for, then it will refuse to grant declaration. In support of this submission, he drew my attention to *Bishan Sarup* vs. *Musa Mal and others (4)* where it was held that a court has ample power to decide for

(1) A.I.R. 1946 Lahor 247
(2) 1987 P.L.J. 632
(3) A.I.R. 1952 Pb. 387
(4) A.I.R. 1935 Allahabad 817

the purpose of determining the court fee to be paid whether in substance a plaint is one in which mere declaratory relief is claimed or declaratory relief combined with consequential relief is claimed or declaratory relief plus substantive relief is claimed. At page 529 of the report, it was observed that if on a perusal of the plaint, the court considers that it is one in which further relief should have been asked for, then it will refuse to grant declaration.

(7) Learned counsel for the petitioner plaintiff, on the other hand, submitted that in a suit for declaration also, temporary injunction can be allowed to enure till the disposal of the suit so that property could be preserved in its present state although the main suit is one for declaration in which temportary injunction had not been asked for. In support of this submission, he drew my attention to *Smt. Giano* vs. *Bhim Singh and another (5)* where it was held that it is not possible to lay down as a matter of law either that an injunction can always be granted in a suit for declaration or that no injunction can ever be granted in such a suit. On the facts of each case, it will have to be decided whether the permission for injunction does not fall within the four corners of either Rule 1 or Rule 2 of Order 39 CPC. He drew my attention to *Smt. Chanderkanta* vs. *Sunita Jain and others (6)* where it was held that temporary injunction can be granted in a suit for declaration. In this case, temporary injunction to enure till the disposal of the suit for declaration could have been asked for because the object of this temporary injunction could only have been to preserve the property in its present state. Even otherwise if the court is to entertain this feeling during the trial of the suit that mere suit for declaration without asking for consequential relief was meaningless, the court would not be able to dismiss the suit forthwith. Court will have to allow him time for amending the plaint into one for consequential relief.

(8) Keeping in view the facts and circumstances of the case, I think there is no defect in the form of the suit which is a mere suit for declaration where no consequential relief in the shape of injunction had been claimed. Learned counsel for the petitioner submitted that the court should have granted him temporary injunction when the building plan sanctioned by the Estate Officer, Chandigarh was sanctioned in violation of Rules 20 and 26 of the Punjab Capital (Development & Regulation) Building Rules, 1952.

(9) It was submitted that the respondent is required to leave 3 metres open place on all sides and construction can be raised on the

(5) 1977 P.L.R. 601
(6) 1993 (2) P.L.R. 327

other space. Rule 20 reads as follows :—

20. Minimum Area of Courtyard—For interior open space for light and ventilation, the whole or part of one side or one more intended for human habitation and not abutting on either the front, rear or side open space, shall abut on an interior open space whose minimum widths in all directions shall be 3 metres in case of buildings not more than 10 metres in height and subject to the provisions of the increasing the same with increasing height as per table below :—

Sr. No.	Height of Building upto	Interior open space to be left out on all sides (front rear and sides in each plot)
1.	10M	3M
2.	15M	5M
3.	18M	6M
4.	21M	7M
5.	24M	8M
6.	27M	9M
7.	30M	10M

Note (i) No projection shall be allowed within the minimum width of the courtyard in any direction as mentioned in the table above.

(ii) The table shall also be applicable in case of exterior open spaces permitted within the zoning regulations.

(10) Rule 26 of these rules lays down that the height of boundary wall or fence shall be in accordance with the provisions of zoning plan and shall conform to the pattern on boundary wall laid down for such a plot on the zoning plan both of design and specifications. Rule 19 lays down that the erection or re-erection of every building shall comply with the restrictions of the zoning plan and the schedule of Clauses appended thereto and the architectural control sheets if applicable. In Rule 2 (xvii). "courtyard" has been defined as meaning an area open to the sky but within the boundary of a plot which is enclosed or partially enclosed by buildings, boundary walls or railing which may be at ground floor level or any other level within or adjacent to a building. "Party wall" as defined in Rule 2(xxxiv) means a wall partly constructed on one plot of land and partly on an adjoining plot and serving both structurally. "Structual wall" shall mean a load bearing wall or a wall

that carries load in addition to its own load. It was submitted that a person who erects or re-erects or occupies any building shall comply with these rules and in addition shall comply with the restrictions shown on the zoning plans. It was submitted that Chandigarh was designed to be a planner city, there being no haphazard or unplanned growth and with this object in view, therefore, Capital of Punjab (Development and Regulation), Act 1952 was enacted, Section 4 of this Act lays down that (1) for the purpose of proper planning or development of Chandigarh, the Central Government or the Chief Administrator may issue such directions, as may be considered necessary, in respect of any site or building, either generally for the whole of Chandigarh or for any particular locality thereof regarding any one or more of the following matters namely :—

(a) architectural features of the elevation or frontage of any building :

(b) erection of detached or semi-detached buildings or both and the area of the land appurtenant to such building :

(c) xxxx xxxxx xxxx xxxx

(d) prohibition regarding erection of shops, workshop, ware-houses, factories or buildings of a specified architectural character or buildings designed for particular purposes in any locality :

(e) xxxx xxxxxxx xxxxxxx xxxxxxx

(f) restrictions regarding the use of site for purposes other than erection of buildings.

(2) Every transferee shall comply with the directions issued under sub-section (1) and shall as expeditiously as possible, erect any building or take such other steps as may be necessary, to comply with such directions.

(11) It was submitted that so that the object of the enactment of the Capital of Punjab (Development and Regulation) Act. 1952 was not defeated. One is required to comply strictly with the provisions of this Act and the Rules framed thereunder. There can be no let up or laxity in favour of any one so far as compliance of the said Act and the Rules framed thereunder is concerned. Prior to 22nd January, 1993. when Rule 20 was amended, Rule 20 was reading as under :—

20. **Minimum area of the courtyard**— The minimum superficial area of every closed courtyard of a residential building upon

which inhabited rooms abut shall be one-fourth of the aggregate floor area of the rooms and verandahs on the ground floor abutting on the courtyard. provided that such courtyard shall not be less than 100 square feet in area and the minimum width of every such courtyard in any direction shall not be less than 8 feet. Notwithstanding the above the width of the courtyard shall not be less than half the mean height of the abutting building or enclosed walls.

In determining the said aggregate floor area of the rooms and verandahs abutting on the courtyard —

(a) only one-half of the floor area of such rooms and verandahs as abut on another courtyard on an open space or road not less than 15 feet in width shall be taken into account :

(b) any room which is separated only by an open verandha from courtyard shall for the purpose of this Rule, be deemed to abut on such courtyard.

(c) any portion of a courtyard covered by a cantilever, jali, verandah or other obstruction shall be omitted in calculating the area of the courtyard for the purpose of this Rule.

(12) It was submitted that as the plan submitted by the defendant got sanctioned from the Estate Officer, Chandigarh does not conduce to the provisions of Rule 20 and 26 of the said Rules, the defendant cannot be Permitted to raise any construction and if he is permitted to raise any construction that will be in violation of those rules and the violation of those rules will be visiting the plaintiff with irreparable loss and injury. It was submitted that the plaintiff has a *prima facie* case in his favour inasmuch as the proposed construction is in violation of the said rules and the proposed construction, if permitted will cause him irreparable loss and injury. Every owner has same rights in a "party wall" and he is entitled to its user in a reasonable way. He can even raise its height provided he admits the newly erected portion of the wall a joint propety of all the co-owners. He can also support his building on the common wall if that does not cause damage to the other co-owners. If a co-owner wants to raise construction on the common wall with the purpose of ousting the other co-owner the ousted co-owner is entitled to raise objection regarding the construction. It was submitted that the raising of the party wall and using it by the defendant without the consent of the plaintiff would be permissible if the plaintiff does not suffer any damage. It was submitted that if the party wall is for the support of the building of both the plaintiff and the defendant,

plaintiff cannot be said to suffer any damage if the defendant support his building on the party wall. It was submitted that the co-owner cannot use the party wall without the consent of the other co-owner if the use of the party wall by him causes damage to him say, if there will be any diminution of light and air to him by the use of such party wall. He sought to draw support from *Sardari Lal Gupta* vs. *Siri Krishan Aggarwal* (7) "If a co-owner raises the common wall and such an act is likely to cause damage to the adjoining property or the common wall, the use thereof is not reasonable and any co-owner who is aggrieved may have remedy at law. When without injuring the common wall or the adjoining property a co-owner makes a reasonable or profitable use of it cannot be said that he makes an unreasonable use of the property." In para 14. the Hon'ble Division Bench made these observations. "The houses which the common wall divides were made many years ago : they would require repair or need modern re-construction to suit the requirements of the occupiers." In para 15, the observations are that raising of the party wall and using it by the appellant without the consent of the respondent is permissible if the respondent does not suffer any damage. In para 19, it was observed that co-owners of the wall do not have a right to open ventilators or windows or other openings in it except by an agreement with the other co-owner or under a statutory provisions. If any, windows etc. has been kept in such a wall, the other co-owner has a right to close and make use of that portion on his side. The co-owner having window etc. can not acquire right to easement of light and air through a party wall. The party wall must ordinarily be construed to mean a solid wall without windows or openings and in the absence of statutory regulation or express agreement between the parties the right exists either to close such openings or windows as may have been placed in the said wall at a time when one of the plots was vacant. Plaintiff-respondent can not claim right of easement regarding air and light to his building through the common wall. In this situation, it cannot be held that the respondents shall suffer any damage if the appellant supports his building on the party wall and closes the ventilator.

(13) Ratio of AIR 1984 Punjab and Haryana 439 (supra) is that each co-owner is entitled to use the party wall provided by doing so he does not cause any damage to the other co-owner.

(14) In this case, thus, we have to find out whether raising of construction by the defendant on plot no. 1120 by use of the common wall (party wall), common to plot no. 1119 where residential house is lying built by the plaintiff will cause damage to the plaintiff and that

(7) A.I.R. 1984 P & H 439

damage would be irreparable not assessable in terms of money. In *Bishan Dass & another* vs. *Roshan Lal Mehta & another (8)* also it was held that use of party will as support for a proposed building without the consent of the other party is permissible if it does not cause any damage to the other party. In 1990 CCC 406 (supra), plaintiff sought permanent injunction to restrain defendants from making any construction in their house by placing rafters on the wall situated between their houses. Defendants took the plea that it was a common wall of the parties and they were, therefore, well within their right to make construction and to use the common wall for this purpose. Plaintiff's suit was dismissed by the trial court on the finding that the wall in question was the common wall of the parties and it was specifically found in this behalf that the roof of the house of the defendants was supported by this wall and the staircase also rested upon it. On appeal, the suit was decreed by the appellate court holding that the wall was the exclusive property of the plaintiff. It was further observed that even if the existing wall was held to be joint, it does not necessarily follow that any further construction on it would also be joint. In Regular Second Appeal, the lower appellate court's judgment was set aside and that of the trial court was restored. It was held that the raising of a party wall for use as a support for a proposed building without the consent of the other party is permissible if it does not lead to any damage to the other party. It was submitted that the defendant Gurdwara Sahib could not be allowed to make use of common wall (party wall) while raising construction on this plot No. 1120 without his consent because the raising of construction would result in the demolition of a substantial portion of the common wall and its conversion into a load bearing wall. It was submitted that in case the defendant is allowed to construct on the common wall by demolishing it until 41 feet, the drive way, projection, balcony of the annexe portion of the plaintiff's house would have to be demolished thereby causing severe damage to his property. It was submitted that if the defendant Gurdwara Sahib is permitted to raise construction according to the revised plan submitted by it, got sanctioned from the Chandigarh Administration, that construction will be violative of Rules 20 and 26 of the aforesaid Rules. Section 4 of the said Act has barred the erection of buildng in contravention of building Rules framed by the Central Government for regulating the erection of buildings.

(15) It was submitted that at this stage, the court is not required to examine meticulously whether the building plan sanctioned by the Chandigarh Administration in favour of the defendant is in accord with the building rules known as the Capital of Punjab (Development

(8) 1990 C.C.C. 406

& Regulation) Building Rules, 1952. It was submitted that the construction proposed to be raised by the defendant on the common boundary wall per the certificate of their architect M/s Kuljit & Associates will result in the demolition of the common wall. That certificate says that the common existing boundary i.e. 41.9" minus 17.6"-24.3" is required to be raised from a height of 3'-8.5" to a height of 18.9" from road level for constructing single storey portion of Plot No. 1120 and the same is required to be constructed load bearing by demolition of 24.3" length of boundary wall to be built by the owner of plot No. 1120. According to the sanctioned building plan, plot No. 1120 approved by Chandigarh Administration, the common existing boundary wall i.e. 41.9" minus 17.6" =24.3" is required to be raised to the height of 18.9" from road level for constructing a single storey portion of plot No. 1120. The same is required to be constructed load bearing by demolishing 24. 3" length of boundary wall to be built by owner of plot No. 1120. It was submitted that the costruction proposed to be raised by the defendant on the common boundary wall is violative of Rule 26 of the building rules read with para 8(iv) (c) of the zoning plan of Sector 8 Chadigarh which specifically provides that the maximum height of a boundary wall cannot be more than 5-11.5" which is to ensure proper ventilation and sunlight to the adjoining plot holders. It was submitted that the plaintiff has *prima facie* case inasmuch as the sanctioned plan violates Rules 20 and 26 of the said rules and the construction proposed to be raised by the defendant on the common boundary wall is violative of Rule 26 of the building rules read with para 8(iv) (c) of the zoning plan of Sector 8 Chandigarh which provides that the maximum height of a boundary wall cannot be more than 5"-11.5" which is to ensure proper ventilation and sunlight to the adjoining plot holders. It was submitted that the existence of a *prima facie* case does not mean that the plaintiff should have cent per cent case. All that it means is that the plaintiff should have a case which is not liable to be thrown at the threshold but is required to be probed. In *Sunehri and another* vs. *Chatru and others*(9) was held that a *prima facie* case means where facts alleged add upto a cause of action or cause in which plaintiff is entitled to the relief claimed by him. Concept of *prima facie* case for purposes of temporary injunction means is that what is averred is assumed to be correct where case succeeds on cause of action on which relief can be given by the court. It was further submitted by the learned counsel for the petitioner (plaintiff) that the balance of convenience is in his favour inasmuch as if injunction is granted to him, the effect would be that the defendant will postpone the raising of construction till the disposal of the suit whereas if no injunction is granted, the suit will be rendered

(9) 1990 PLJ 204

infructuous and the defendant will raise construction forthwith thereby causing damage to his property namely balcony, projection, drive way, common wall and also affect his easementary rights of fresh air, light and ventilation. It was further submitted that the learned trial court without giving any finding on the aspect of damage to his property which was the very soul of the case, vacated the injunction already allowed to him and allowed the defendant Gurdwara Sahib to go ahead with the construction. It was submitted that by doing so, the learned trial court has allowed the defendant to demolish the common wall/ projection/balcony/drive way of his house without his consent which is in violation of the law laid down by the Hon'ble Division Bench of this Court in paras 12, 14 and 15 of AIR 1984 P&H 439 (supra).

(16) It was further submitted that the balance of irreparable injury principle is also in favour of the plaintiff as if injunction is not granted to him, he will suffer irreparable injury and the injury to which he is put to by the non-grant of injunction will not be assessable in terms of money inasmuch as he would be deprived of the use of his house consequent upon the demolition of the balcony/projection/drive way/ common wall and the free flow of fresh air, light and ventilation.

(17) Learned counsel for the defendant Gurdwara Sahib, on the other hand, submitted that the heading of Rule 20 says that it relates to the area of courtyard and not the plots where courtyard is to be left. As per zoning plan, in case of one kanal plot other than corner plot, a courtyard open space is required to be left or in front and in rear and in corner plot it is required to be left on 3 sides i.e. front, rear and side. It was submitted that as per rule 20, for light and ventilation purposes, one side wall of each living room or part of one side wall and part of the other side wall of that room is required to abut open space. This abutting of the wall can be on the open space (courtyard) which are to be left as per zoning plan or it can be on the open space which the plot holder leaves of his own. It was submitted that in this case, western wall of the rooms 1 and 2 abuts the rear open space, rear courtyard as shown in Annexure R1/3. This rear courtyard (open space) is shown as EFGH and H1. Its EF and GHI sides are 33.9" and FG and EF sides are 25.6". It was submitted that each of them is thus much beyond 3 metres. Kitchen on common wall DM as shown in Annexure R1/H abuts open space left by defendant of its own. Two sides of it are 15.9" each and the other sides are 38.3" each. It was submitted that as such there is no violation of rule 20 and in case the interpretation sought to be put by the plaintiff is accepted that on all the four sides of the plot 3 metres lenght, breadth will have to be left, the defendant will be deprived of its own covered area which the defendant has been permitted as per

the zoning plan. The construction of rooms 1, 2 and kitchen will stand over-ruled and Gurdwara Sahib will remain short of the substantial covered area. Shri Fateh Singh Chug, Working President of the Gurdwara Parbandhak Committee has stated in his affidavit that total area of plot No. 1120 is 549.33 sq. yards = 4945 square feet. Permissible covered area on the ground floor is 1978 sq. feet = 219.77 sq. yards. Within this permissible area, an area measuring 1977.56 square feet = 249.73 square yards has been permitted to be covered on the ground floor as per approved building plan along side the boundary/party wall of plot No. 1119-1120. An area in width of 15-9" and length 80-6" is single storey zone. As per sanctioned plan out of this area, an area in width of 15-9" and length/depth of 41.9" has been permitted to be constructed as single storey zone in plot No. 1120. As per sanctioned plan, height of plinth level to road level is 1—6". Clear height of roof is 10—6" and thickness of roof is 9". As per zoning plan of plot No. 1120, Sector 8-C, Chandigarh along side the party wall of plot No. 1119 and 1120, an area of 15-9" in width and 80-6" in lenth measuring 1267.775 feet is in single storey zone. On its western side, an area measuring 1320 square feet length 55 feet and width 24 feet is double storey zone. On the western side of it, the blance area of the plot is an open zone. As per this zoning plan, in the front and rear, open spaces are required to be left. On the ground floor of plot No. 1120, as per the approved plan, actual covered area in double storey zone is 1320 square feet and in single storey zone, it is 657.56 square feet. No part of the permissible double storey zone has been left whereas out of single storey zone area, an area measuring 610.315 square feet has been left out. In case, Gurdwara Sahib is not allowed to construct along side the party wall, then, it will be short of that much permissible covered area. In plot No. 1119, along side the party wall of plots No. 1119 and 1120, an area in width 15-9" and length of 80-6" is single storey zone. Out of this area, the petitioner himself has built his garage with mazzanine in a length of 17.6". Height of mazzanine above the plinth level is 18". To determine its actual height, the height of plinth level from road level will have to be added to it. It has been further stated in this affidavit by Shri Fateh Singh Chug that the plaintiff has constructed his garage with mazzanine on the party wall of plots No. 1119 and 1120 on the other side of his plot i.e. party wall of plots No. 1118 and 1119, he has constructed his whole main house. It has been sworn that when Gurdwara Sahib wants to construct on party wall of plots No. 1119 and 1120, the petitioner feels aggrieved. Gurdwara Sahib is going to construct its house as per sanctioned plan. He has brought sketch plan Ex. R3/5 on the record of this case showing the covered area of the respondent on ground floor, area statement, zoned area as per zoning plan of respondent's plot, garage with mazzanine and schematic/

approximate building lay out (built up area of petitioner in plot No. 1119) prepared by the architects of the respondents.

(18) Shri Vipan Gupta, sub Divisional Officer, (Buildings), Estate Office, U.T. Chandigarh has put in his own affidavit wherethrough he has stated that the concept of construction as per zoning plan is that each kanal type plot is divided into two zones i.e. single storey zone and double storey zone. Maximum height permitted in the single storey zone is 15.9". The zoned area in respect of plot refers to the space or area where construction is permitted. He has annexed Annexure A1 which is copy of the zoning plan of Sector 8-C. Single storey zone is depicted with single line marking and double storey zone is marked with crossed lines. Permissible area of construction within the zoned area is further subjected to the restrictions detailed in clause 2 of Annexure A2. Construction of the building on these plots can be under taken within the zoned area i.e. area marked either in single line or crossed lines while rest of the area in front, rear and sides has to be kept open as per the zoning plan. He has stated that the owner has, however, the privilege to have his planning within this hetched area with further limit of maximum permissible covered area in respect of house No. 1120, it is 1978 sq. feet and in respect of house No. 1119 it is 1867.5 sq. feet calculated as per the zoning norms mentioned at serial number 2 of Annexure A/2. He has further stated that double line area of plot No. 1120 shown in blue in the sketch Annexure A1 provides the coverage of 55x24 feet which works out to 1320 square feet meaning thereby that remaining permissible coverage i.e. 658 sq. feet is to be obtained from the single line area. He has stated that the building plan of the respondent was rightly sanctioned permitting him actual permissible coverage of 657.56 sq. feet in the single line hetched area. He has further stated that the common wall within the hetched area which is supposed to fall within permissible coverage is to be considered as load bearing structural wall while rest of the portion of the common wall is considered as common boundary wall. He has further stated that the portion of common wall falling within the permissible construction area cannot be termed as a common boundary wall for which maximum height of 38½" is to maintained. He has further stated that each allottee has to draw light and ventilation from within his own plot area and not from that of the adjoining plot.

(19) Learned counsel for the respondent submitted that Gurdwara Sahib is within its right to raise construction according to the plan sanctioned by the Chandigarh Administration. It was submitted that that plan was sanctioned by the Chandigarh Administration keeping in view the relevant building rules. It was further submitted that rule 20 of these rules cannot be read in isolation of the zoning plan. It has

to be read in conjunction with the rules and zoning plan. As per rule 19 of the rules, the erection or re-erection of every building is required to comply with the restriciton of the zoning plan and the schedule of clauses appended thereto and the architectural control sheets, if applicable. Zoning plan is required to be got prepared in view of Section 4 of the Act.

(20) It was submitted what rule 20 enjoins is not that interior open space is required to be left on all sides. It was submitted that as per rule 20, for light and ventilation purposes, one side wall of each living room or that room is required to abut open space. This abutting of the wall can be of the open space courtyard which are to be left as per zoning plan or it can be on the open space which the plot holder leaves of his own. In this case western wall of rooms 1 and 2 abuts the rear open space, rear courtyard. In Annexure R1/3. This rear courtyard open space is shown as EFGH and H1. Its EF and GH sides are 33.9" and EF and EH sides are 25.6". Each of this is thus much beyond 3 metres. Kitchen on the common wall DM shown in Annexure R1/H abuts open space left by the Gurdwara Sahib of its own. Two sides of it are 15.9" each and the other sides are 38.3" each. It was submitted that if rule 20 is interpreted like this, there is no violation of rule 20. It was submitted that the interpretation put by the plaintiff that open space has to be left on all sides might hold good so far as the bungalow type house is concerned. Bungalow type house as defined in rule 2(xii) shall mean a detached house standing within the bounderies of its own plot. It was submitted that if the interpretation put by the petitioner on rule 20 is accepted, every 10 marla and 5 marla house built, after 22nd November, 1993 i.e. when rule 20 was amended, will have to be demolished as the reading of rule 1 sub rule (a) (c) and rule 3(a) suggests that these rules are applicable to all the houses in Chandigarh and not only to one kanal and above and more than 1 kanal houses. In case 3 metres on both sides of a 10 marla house is required to be left, then out of 10 marla plot whose dimensions are 30x75, only 10 feet space will be left back for construction and it will be impossible to construct a house thereon. In a 5 marla plot dimensions of which are 15x75 or 20x56, no space will be left to be constructed. It was further submitted that the petitioner had himself built his garage more than 30 years ago on this very wall. He should not be permitted to say now that upto the length of 80.6" which as per the zoning plan, is a single storey zone, any part of it remains boundary wall under the same formula whereunder 17.6" in length has been converted from boundary wall into party wall/ structural wall by the petitioner. Gurdwara Sahib is entitled to construct the portion JK Annexure R1/3 upto the height of 15.3". This portion will be party wall and not boundary wall. It was submitted that on

their sides i.e. common wall of house No. 1118 and 1119, the peitioner has built his whole house. It was submitted that if the interpretation put by the petitioner is accepted, he should not be permitted to build on the boundary wall. It was submitted that it is not the stage where rules are required to be interpreted so meticulously as rules shall be required to be interpreted meticulously when the suit comes up for final disposal. Here the question for consideration is whether temporary injunction should have been allowed to the petitioner or not and the respondent restrained from raising any construction on the common wall built by the plaintiff, without his consent.

(21) As has been observed earlier, the question is whether temporary injunction should have been granted to the plaintiff even if he is assumed to have *prima facie* case in his favour. Mere existence of a *prima facie* case in his favour does not entitle him to the grant of injunction. He has to satisfy the Court that there will be irreparable injury to him if injunciton is not granted and further the principle of balance of convenience is also in his favour that he will be put to greater loss if no injunction is granted, then the loss to which the defendant will be put if injunction is granted. It was submitted by the learned counsel for the respondent that there will be no irreparable loss to the plaintiff. There will be no damage to the common wall as the common wall in length of 24'-3" is being made structural wall. Wall will get strengthened and not weakened. There will be no damage to the petitioner. There will be no damage to the drive way of the plaintiff. Drive way of the plaintiff was constructed more than 30 years ago and the width of the wall is being kept intact. As per sanctioned plan, the petitioner can construct only a garage with mazzanine used as a store. No living room with separate roof was permissible. For a garage with mazzanine no projection/balcony is required. If the petitioner has built any projection/balcony, there will be no loss to him with the construction of plot No. 1120 as the Gurdwara Sahib will only be raising the height of the common wall and not touching the construction made on the side of the plaintiff. It was submitted that even Gurdwara Sahib has given an undertaking that if there is any loss/damage to the drive way etc., it will be re-laid. In case of any loss to the plaintiff, compensation will be paid. It was further submitted that if at all there is damage to the plaintiff, that will be assessable in terms of money. In AIR 1984 P&H 439 (supra), para 10, it has been held that it is settled proposition of law that if a person can be compensated by damages, courts do not generally grant him the relief of injunction. While granting injunction in favour of a tenant in common regarding the joint properties, the settled principle is kept in view. It was also submitted that the plaintiff has himself raised construction of annexe on the common wall, he should

also do equity to the defendant. He should not stand in the way of the defendant raising construction on the common wall.

(22) It was submitted by the learned counsel for the respondent that the balance of convenience principle is in favour of the defendant Gurdwara Sahib. It is not in favour of the plaintiff. Gurdwara Sahib has spent Rs. 80,11,000 on the purchase of the plot. Besides, it has to pay lease money and interest on the amount of Rs. 80,11,000 i.e. Rs. 3950 daily. Loss of lease money is Rs. 500 per day.Gurdwara Sahib is daily losing Rs. 4500. It was submitted that if Gurdwara Sahib is not able to raise construction within 3 years of the date when this plot was purchased by it as enjoined by clause 19 of the allotment letter, there is every apprehension of the plot being resumed as per the provisions of rule 20 of the Capital of Punjab (Development and Regulation) Rules 1973. Further Gurdwara Sahib will be deprived of the right to have lease hold rights converted in free hold rights if they do not raise construction in time. They can apply till 31st December, 2000.

(23) It was submitted that there is no right of easement to the plaintiff on the plot of Gurdwara Sahib. In AIR 1984 P&H 439 para 19, it was held that the plaintiff respondent cannot claim right of easement of air and light to his building through the common wall. Respondent shall not suffer any damage if the appellant supports his building on the "party wall" and closes the ventilator. It was submitted that the plaintiff is required to make his own arrangement for getting adequate light and air for his own residential house. It was not the duty of the defendant to provide light and air to the plaintiff's residential house by building in a matter that adequate light and air reaches him. It was submitted that all that defendant Gurdwara Sahib is required is to raise construction in accordance with the zoning plan and the building rules *(ibid).* In the zoning plan and the building rules *(ibid),* car has been taken to see that no right of the adjoining plot holder is infringed by the construction on his own plot by the neighbouring owner.

(24) It was submitted that in this case, temporary injunction was refused by the trial court. Temporary injunction was refused by the first appellate court. Plaintiff is in revision before this court against the non grant of temporary injunction to him. In revision, the High Court will not intefere with the exercise of discretion by the courts below if that discretion has been properly exercised by them and on well defined principles governing the grant of temporary injunction. It was submitted that if the revisional court feels that different view should have been taken, that would be no ground for the revisional court to vary the exercise of discretion by the courts below. In support of this

submission, he drew my attention to *Maman Chand* vs. *Smt. Kamla (10)*. It was also submitted that the court should grant injunction where the plaintiff's right is clear and not where the plaintiff's right is doubtful or where he can be compensated in money,it is no ground to grant injunction to him merely on the theory that no material injury would result to the party concerned. He made this submission in view of the observations made in *Union of India* vs. *Bakshi Amrik Singh (11)*. In this case, temporary injunction allowed to the plaintiff earlier was vacated by the trial court. His appeal was dismissed by the Additional District Judge. In revision, the descretion exercised while granting or refusing temporary injunction by the courts below shall be interfered with by this Court in the exercise of its revisional power only when the exercise of discretion by the courts below is found to be perverse and in flagrant abuse of the principles governing the grant of temportary injunctions. High Court in the exercise of its revisional jurisdiction will not interfere with the exercise of discretion by the courts below even if it feels that the discretion should have been exercised differently if the discretion could have been exercised by the courts below in the manner in which they have exercised their discretion.

(25) It was submitted that the plaintiff used sharp practices. Gurdwara Sahib had served and moved a caveat in this court prior to the filing of this revision by the plaintiff. Plaintiff neither informed abuot the filing of revision nor gave copy of paper book to the caveator. On first hearing i.e. 17th January, 2000. Gurdwara Sahib came present after noting the case form the list and made submissions to the court that though it had already filed caveat, yet copy of the complete paper book had not been supplied to it by the petitioner. It was also submitted that the argument with regard to the legality of the sanctioned plan was raised before the trial court and the appellate court. In revision, the plaintiff took a somersault and moved an application that the question relating to the illegality of sanctioned plan was not the subject matter of this suit. This revision is to be decided on merit. Court should not feel prejudiced by the use of sharp practices, if any, by the plaintiff. It was further submitted that the plaintiff's counsel committed contempt of the trial court as well as that of the appellate court and he committed contempt of this court also by relying on AIR 1954 Pb.. 125 which was over-ruled in AIR 1984 P&H 439. I do not think any contempt was committed by the plaintiff if he cited AIR 1954 Pb. 125. After going through both the judgments, the court could come to know that AIR 1954 Pb. 125 had been over-ruled in AIR 1984 P&H 439. Even otherwise no contempt is made out if the plaintiff did not intend duping the court.

(10) 1996(2) PLR 147
(11) AIR 1963 Pb. 104

He had relied upon 1990 Civil Court Cases 406 in which AIR 1984 P&H 439 had been relied upon. By going through AIR 1984 P&H 439, the court would have none that AIR 1954 Pb. 125 had been over-ruled. No contempt was thus committed by the plaintiff/counsel.

(26) In view of what I have said above, it was justifiably found by the courts below that no temporary injunction could be allowed to the plaintiff and the defendant should be allowed to raise construction according to building plan sanctioned by the Chandigarh Administration,—*vide* letter dated 10th June, 1999. Plaintiff may have *prima facie* case, while sanctioning the plan, the Chandigarh Administration may not have taken into account rules 20, 26 or any other rule of the Punjab Capital (Development & Regulation) Rules, 1952. Chandigarh Administration sanctioned the building plan submitted to it by the defendant for raising construction on plot No. 1120 but it cannot be assumed readily that the Chandigarh Administration was not aware of the implication of rules 20 & 26 and other rules while sanctioning the plan that the raising of construction by the defendant on their plot will bring about diminution of light and air to residential house No. 1119, Sector 8-C, Chandigarh and also damage its drive way etc. Balance of convenience and irreparable injury principle appear to be leaning in favour of the defendant. This revision fails and is dismissed.

R.N.R.

Before N.K. Sodhi & N.K. Sud, JJ.

PARMVEER SINGH,—*Petitioner*

versus

PUNJAB UNIVERSITY, CHANDIGARH & OTHERS,—*Respondents*

C.W.P. No. 9414 of 2000

17th August, 2000

Constitution of India, 1950—Art. 226—Admission to Engineering Courses—Petitioner& respondent No. 4 applying for admission for a seat reserved for sports persons—Respondent No. 4 failed to submit copy of Sports Gradation Certificate with the application form as required by Clause 2.2.5.3 of the Prospectus although she possessed one and had applied for upgradation with the Sports Department—College granting admission to respondent after considering her gradation certificate produced at the time of Counselling—Respondent not entitled to admission as her incomplete application could not be entertained in terms of the clause of the Prospectus—Admission granted