

application for injunction and there after issued a notice to the defendant/respondents. The defendant made appearance before lower court and sought time for engaging counsel and submission of written statement. The case was adjourned to a date after summer vacations. On 05-08-2019, the petitioners again filed an application for grant of ad-interim relief; however, the court again issued a notice of the same to the defendants, for the date already fixed in the case.

3. The petitioners have challenged the impugned order dated 05-08-2019, on the ground that the same is the result of misreading and non-reading; that the learned lower court has committed material illegality; and that the case of petitioners was prime facie strong; that balance of convenience was in their favour and that in case of non-issuance of order of injunction, they were liable to irreparable loss.
4. I have considered the arguments. The learned lower court has not given its findings on the merits of the application for temporary injunction. Therefore, it would be inappropriate for this court to give its opinion on the merits on the same.
5. Section 115 of CPC provides for the powers of revision of higher forums and the instances where the same can be used. These instances are that; the subordinate court appears to have exercise a jurisdiction not vested in it by law; or to have failed to exercise a jurisdiction so vested; or to have acted in the exercise of its jurisdiction illegally or with material irregularity.
6. In the present case, the learned lower court has considered the case of the petitioners by hearing preliminary arguments, however, the court deemed it appropriate to issue a notice to the opposite party before passing any order in respect of the application for injunction. The lower court is not bound to pass order of injunction at first instance without satisfying itself regarding the stance of the other party and satisfying itself about the presence of three ingredients required for grant of injunction. In the present case there is no instance of exercise of jurisdiction not vested, or of failure of exercise of jurisdiction or exercise of jurisdiction illegally or with material irregularity by the learned lower court. As such it is not a case falling under the ambit of powers of revision.
7. The learned counsel has stressed mainly on the point that in case injunction was not granted there will be cause of

10/09/19


Additional District & Sessions Judge
Orakzai

breach of peace; however, this argument is not tenable for the purpose of grant of injunction. In case cause of breach of peace is apprehended, a party may approach the relevant forum.

8. Having found no substance in the instant petition, the same is **dismissed**, in-limine. However, the petitioners may approach the lower court for fixing of an early date for hearing of application for grant of temporary injunction, if so desired. No order is to costs. Let the file be consigned to record room after necessary completion and compilation.

Announced:

10-08-2019



**Jamal Shah Mahsood,
ADJ-I /Acting DSJ,
Orakzai**