

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

**COCN No. 288 of 2015(O&M)
Date of decision:11.05.2015**

Ujjwal Sahrawat

.....Petitioner(s)

versus

Brijender Singh and another

.....Respondent(s)

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Dr. Tammanna R.Sahrawat, GPA
for the petitioner(s).

Mr. Sarwan Singh, Sr. Advocate with
Mr. R.S.Rapri, Advocate
for the respondent(s).

Rakesh Kumar Jain, J.(Oral)

This petition has been filed while invoking the provisions of Sections 10 and 12 of the Contempt of Courts Act, 1971 (for short, 'the Act') for the willful disobedience of the order dated 4.04.2012 passed by the lower Appellate court/Additional District Judge Rohtak by which the appeal filed by the petitioner was partly allowed and the dependents/respondents were restrained from alienating the shop nos. 11 to 15 till the decision of the suit.

At the threshold, learned counsel for the respondents has raised a preliminary objection about the maintainability of the present petition under the Act. It is submitted that the petitioner would have the remedy to invoke the provisions of Order 39 Rule 2-A of the Code of Civil Procedure 1908 (for short, 'CPC') and the present petition is not maintainable. In this regard, he has relied upon the judgment of this Court in case of *Surinder Singh vs. Raj Rani and another 2002(4) R.C.R.(Civil)386*.

On the other hand, counsel for the petitioner has submitted that

if two remedies are available under the Act and the CPC, the petitioner can invoke the jurisdiction of this Court under the Act. She has relied upon the decision of the single Bench judgment of the Allahabad High Court in the case of ***Cantonment Executive Officer, Cantonment Board, Meerut and Another vs. Smt. Pushpa Devi and others; 2014(3) ALJ 582*** and of the Apex Court in the case of ***Maharwal Khewaji Trust(Regd.), Faridkot vs. Baldev Dass; AIR 2005 SC 104.***

I have heard both the parties and after considering the available record, am of the considered opinion that the petitioner has the remedy under Order 39 Rule 2-A of the CPC, as order passed by the lower Appellate court is couched in the language of injunction because the dependents/respondents were restrained from alienating the shops during the pendency of the suit. The judgment relied upon by the respondent in the case of ***Surinder Singh (Supra)*** is fully applicable whereas judgment relied upon by the petitioner are not applicable.

In view thereof, the present petition is hereby dismissed on the ground of maintainability as the remedy would lie before the lower Appellate court, who had passed the order of injunction, by invoking Order 39 Rule 2-A of the CPC.

11th May, 2015

Shivani Kaushik

**[Rakesh Kumar Jain]
Judge**