

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

C.R.No.160 of 2014 (O&M)

Date of Decision: December 8, 2015

Mehak Pal & others

...Petitioners

Versus

Randhir Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Akshay Jindal, Advocate,
for the petitioners.

Mr.Parminder Singh, Advocate,
for respondent Nos.1 to 3.

Mr.R.S.Budhwar, Advocate,
for respondent No.4.

AMIT RAWAL, J. (Oral)

The petitioner-defendants are aggrieved of the order dated 6.12.2013 (Annexure P-5), whereby the application filed on their behalf for dropping of the proceedings initiated under Order 39 Rule 2(A) read with Section 151 of the Civil Procedure Code as the suit had been decided, has been rejected.

Mr.Akshay Jindal, learned counsel appearing on behalf of the petitioner-defendants submits that once the interim order had been merged into final decree, the proceedings under Order 39 Rule 2(A) CPC can be dropped. In support of his contention, relies upon **Kanwar Singh Saini**

Versus High Court of Delhi, 2011(4) R.C.R. (Civil) 402.

Mr.R.S.Budhwar, learned counsel appearing on behalf of respondent No.4 submits that the trial Court had dismissed the application and framed the issues. No harm would be caused in case the application under Order 39 Rule 2(A) CPC is decided on merits.

I have heard the learned counsel for the parties and appraised the paper book.

Mr.Parminder Singh, learned counsel appearing on behalf of respondent Nos.1 to 3 has cited the judgment of the Hon'ble Supreme Court rendered in **Tayabbhai M.Bagasarwalla and another Versus Hind Rubber Industries Pvt.Ltd.etc., AIR 1997 Supreme Court 1240** to contend that where there is disobedience of the interim order of injunction passed in a suit and had been flouted and disobeyed and ultimately the Civil Court found that it did not have jurisdiction, even then the defendants can be punished. I have gone through the contents of the said judgment. In my view, the aforementioned judgment also formed an opinion that once the suit is decided, the interim order is also merged in the main case. However, the trial Court ought to have taken into consideration the interim order, neither such exercise has been made on behalf of the applicants to modify the order with regard to the violation of the interim order, therefore, the ratio of the aforementioned judgment does not apply in the present case.

I am in agreement with the contention of the learned counsel for the petitioners and as well as the ratio decidendi culled out by the Hon'ble Supreme Court in **Kanwar Singh Saini's case (supra)**, which clearly prescribes that once the suit is decided and the interim order merged into the final decree, the application is not maintainable. However, for the sake of brevity, para 10 of the judgment in **Kanwar Singh** reads thus:-

“10. In case there is a grievance of non-compliance of the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order XXI Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. Application under Order XXXIX Rule 2A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order XXI Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the Act 1971 when an effective and alternative remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings. There is a complete fallacy in the argument that the provisions of Order XXXIX Rule 2A CPC would also include the case of violation or breach of permanent injunction granted at the time of passing of the decree.”

Keeping in view of the aforementioned facts and circumstances, the impugned order dated 6.12.2013 is not sustainable. The same is hereby set-aside. The application for dismissal/dropping of proceedings initiated under Order 39 Rule 2(A) CPC is allowed.

Accordingly, revision petition stands allowed.

December 8, 2015
ramesh

(AMIT RAWAL)
JUDGE