

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

Civil Revision No.5137 of 2013

Date of Decision: 11.09.2015

Gurcharan Singh

....Petitioner

Vs

Kaur Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Mr. Palvinder Singh, Advocate
for the respondents.

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?***

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 21.05.2013 passed by Civil Judge (Jr. Divn.), Dhuri vide which application under Order 21 Rule 32 CPC filed by the petitioner has been dismissed.

[2]. Petitioner is a decree-holder in a suit for permanent injunction vide which a decree for permanent injunction has been passed restraining the defendant/respondents No.1 to 4 from getting electric motor connection of Account No.53/0315 of 5 BHP and Account No.AN53/0314 of 2 BHP transferred in their names to the exclusion of the plaintiff/petitioner and also restraining them from causing any sort of obstruction in the peaceful use and enjoyment of

the electric motor and connection according to their shares.

[3]. Trial Court partly decreed the suit of the plaintiff/petitioner in respect of Connection No.A53/0315. In appeal the suit was decreed in *toto* vide judgment and decree dated 31.08.2009 passed by Additional District Judge, Sangrur. The operative part of the judgment is reproduced as under:--

“13. After going through the evidence, adduced by the parties and on consideration of the impugned judgment and decree, apart from the arguments, advanced before this court, I am of the view that the appellant-plaintiff is entitled to use the electric connection bearing No.AN53-0315, as per his share, till the land is not partitioned between the parties, by metes and bounds and the respondents-defendants cannot restrain the appellant-plaintiff from using the said electric connection, as per his share. Consequently, the instant appeal is partly allowed and the respondents-defendants are restrained from stopping the appellant-plaintiff to use the electric connection bearing No.AN53-0315, as per his share, till the land is not partitioned, between the parties. I make no order as to costs. Decree sheet be prepared, accordingly. Trial Court record be returned and appeal file be consigned to the record room.

Announced.

Sd/-

*Kamaljit Lamba
Addl. District Judge
Sangrur*

Dated: 31.8.2009”

[4]. The Regular Second Appeal No.4923 of 2009 passed by the respondents was also dismissed vide order dated 25.01.2011.

Thereafter petitioner/decreed-holder filed an application under Order 21 Rule 32 CPC read with Section 151 CPC for enforcement of decree dated 31.08.2009 by attaching the property of the judgment-debtors and putting them in civil imprisonment on account of violation of the decree.

[5]. The stand of the respondents is that they never restrained the petitioner from using the electric motor/connection No.AN53/0315. The reply of the respondents made in para No.4 of the reply is relevant to be quoted hereasunder:-

“4. That para 4 of the application is wrong and hence denied. It is incorrect that the respondents are willfully or intentionally flouting the Judgement of Ld. Additional Distt. Judge Sangrur. It is also incorrect that the respondents are not allowing the applicant to use the electric Motor connection in dispute. It is also incorrect that the respondents are liable for any punishment. The respondents never restrained the applicant from using the electric Motor connection No.AN-53/315. Inspite of the fact that the applicant did not make any contribution in enhancing the Horse power of connection from 5 BHP to 20 BHP. The expenses for enhancing the load of the above said connection has been borne by Kewal Singh etc. respondents. The respondents have every regard for the order of the Hon'ble court as well as order of Ld. Addl. Distt. Judge Sangrur and the respondents can not even think of violating any order of court. However, it is necessary to mention here that the previous bore had become unfunctional and as such the respondents Kewal Singh etc. have installed a new bore by spending about Rs.1,60,000/-. The previous bore was unfunctional for

about 4 years and have now completely demolished. Neither applicant nor the respondents restored the old bore. The applicant did not contribute any money in installing the new bore installed by Kewal Singh etc. about 4 years back. As such the applicant has no concern whatsoever with the new bore. The applicant was insisting that he may be allowed to use the new bore installed by Kewal Singh etc. The applicant having failed in succeeding in his evil design, has now filed the present false application just to unnecessary harass the respondents as the applicant is not on good terms with the respondents for the last more than 12 years. It is necessary to mention here that previously Gurcharan Singh applicant filed a civil suit No.258 of 4.10.99 which was dismissed by Ld. Addl. Civil Judge (Sr. Divn.) Dhuri. Thereafter the applicant filed a suit for permanent injunction regarding the Motor connection and now has filed the present application to unnecessary harass the respondents. It is incorrect that the respondents are liable to be punished under Law.”

[6]. Civil Judge (Jr. Divn.) Dhuri vide order dated 21.05.2013 dismissed the application primarily on the ground that the application of the decree-holder is vague and ambiguous. No particulars of the alleged incident have been disclosed. It has been further pointed out that as per testimony of AW-1 himself, respondents restrained him from using electric motor/connection about 11 years ago when there was no decree in force, therefore, now in the absence of any particulars mentioned in the application, nor of any particular occurrence the application under consideration is not maintainable, nor the respondents have intentionally and wilfully disobeyed the

decree dated 31.08.2009.

[7]. Court below framed two issues in the following manner:-

- “1. *Whether the respondents intentionally and willfully disobeyed the judgment dated 31.08.2001 passed by the Court? OPA*
2. *Whether application is not maintainable in the present form? OPR*
3. *Relief.”*

[8]. Apparently issue No.1 is in the context of disobedience of judgment dated 31.08.2001 (date has been wrongly shown, it should have been 31.08.2009). Decision of both the issues was collectively done. Lower appellate Court has observed that the decree-holder himself pleaded ignorance about the date when the respondent/judgment-debtors stopped him from using the electric motor/connection, rather he claimed that the incident was about 10/11 years old. The application has been moved on 02.08.2011 in respect of decree dated 31.08.2009. Since there was no decree in existence about 10/11 years ago, therefore, the Court below dismissed the application as not maintainable.

[9]. At the time of preliminary hearing, this Court directed the petitioner to deposit an amount of Rs.40,000/- before the Court below in order to test *bona fide* of the petitioner. Learned counsel for the petitioner states that needful has already been done.

[10]. I have heard learned counsels for both the parties and have gone through the material on record with their assistance.

[11]. Learned counsel for the petitioner while relying upon observations of this Court in **Anand Shukla and another v. Muti Mittal, 2011(3) PLR 146** contended that the Court has full power to give effect to the decree for restoration of share to use the electric motor/connection in question.

[12]. Explanation was added to sub-Rule (v) of Rule 32 by way of an amendment w.e.f. 01.07.2002. It has been declared that the expression “the act required to be done” covers prohibitory as well as mandatory instructions. The Law Commission noted the conflict of views with regard to the expression used in explanation. The Law Commission also noticed conflicting views on the subject terming them as the wider view and narrower view.

[13]. In **Gurcharan Singh and another v. Gurudwara Shri Singh Sabha (Regd.) Sector 19-D Chandigarh, 2004(2) PLR 330**, this Court after considering recommendations of the Law Commission on the point in issue and the explanation added to Order 21 Rule 32 CPC by way of amendment dated 01.07.2002 observed in the following manner:-

“15. It is in view of the afore-mentioned historical perspective that the order dated 23.2.2004 passed by the Civil Judge has to be examined. The expression 'act required to be done' has, been extended to prohibitory as well as mandatory injunctions. The view taken by the Full Bench of Delhi High Court has been treated as a narrower view because that was a case, in which the decree against the licensee was to quit and vacate the premises but the High Court by taking a narrower view expressed its inability

to invoke Order 21 Rule 32(5). Therefore, the question posed by the Law Commission, which led to the recommendation for adopting wider view has been accepted by inserting explanation to Sub-rule (5). The decree-holder is not required to file another suit when he has already acquired a decree in his favour by spending much time and expense. The Court, therefore, would be fully competent to direct that the act required to be done may be done so far as practicable either by the decree-holder himself or by some other person appointed by the Court at the cost of judgment-debtor. In the instant execution of the decree for mandatory injunction, where the possession is sought from a licensee. The aforesaid order is consistent with the spirit of law and the explanation added as per the recommendation made by the Law Commission. The direction to vacate the premises situated in the Gurudwara Sahib where the judgment-debtor petitioners were allowed to stay being the sewadars is another form and method to direct hand over of possession. Tweedledes is Tweedledum. It can mean nothing else except the handing over of possession and, therefore, the wider view as suggested by the Law Commission has to be followed because it serves the ends of justice. The decree cannot be defeated by raising technical objections. It is well settled that technicalities of law should be construed to advance justice and not to defeat justice. With utmost defence to the Id. judges, I am of the view that the ratio of the judgment of the Full Bench of Delhi High Court in Sarup Singh's case (supra) stands considerably watered down by Explanation added to Sub-rule 5 of Rule 32 of Order 21. The wider view preferred by Allahabad High Court in Harihar Pandey's case (supra) has rightly held that the decree holder cannot be compelled to

file another suit for it would multiply litigation which course public policy would discourage. Courts cannot be party to the illegal designs of a Judgment debtor who wishes to carry on with his illegal possession. The ground realities propagated by Realist School of Thoughts led by Jurist like Karl Llewellyn must dawn on the parties to litigation and substantial justice must be done. Therefore, I do not find any ground to interfere with the order passed by Civil Judge. The petition is liable to be dismissed.

For the reasons recorded above, this petition fails and the same is dismissed.”

[14]. The resultant crux arising out of the point in issue, is that the decree-holder cannot be compelled to file another suit for it would multiply litigation which course public policy would discourage. The situation as exists in the present case is that the alleged restraint started about 10/11 years ago when there was no decree in existence. The decree-holder himself has admitted that the incident is about 10/11 years old and the application was filed on 02.08.2011 for the violation of the decree dated 31.08.2009. No particular incident has been reported in the case when the decree-holder was restrained from using the electric motor/connection in question.

[15]. In view of aforesaid attending circumstances as on date there is no violation of the decree in question, but at the same time decree-holder also cannot be compelled to file another suit so as to seek fresh restraint against the judgment-debtors. The revision petition can be disposed of by entitling the decree-holder to file fresh application in respect of any violation of the decree with reference to

any particular date and event. If such an application is filed with all material particulars, lower Court would be obligated to decide the same in accordance with law.

[16]. Accordingly, petition stands disposed of.

September 11, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE