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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2513-2014

Date of Decision : February 5th, 2016

Kamal Mohan Chauhan and another

.... Petitioners

Versus

Vinod Bhatia

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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. R.S.Bajaj, Advocate,
for the petitioners.

Mr. Dinesh Arora, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 10.3.2014 [Annexure P/4] whereby, application under Order 21 Rule 32 CPC filed by the respondent was allowed and the property of the petitioners was ordered to be attached.

2. Relevant facts of the case for the purpose of decision of this petition; that the respondent filed an application under Order 21 Rule 32 CPC taking the plea that he had filed a suit for permanent injunction to restrain the present petitioners from damaging in any manner the eastern wall and the staircase of the shop No. WD-173/5-II situated at Ali Mohalla, Jalandhar shown in red colour in the site plan . Earlier, Civil Suit No. 233

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of 2005 was decreed on 22.12.2006 thereby restraining the respondents from damaging in any manner the eastern wall and the staircase of the shop in question. However, the respondents willfully disobeyed the judgment and decree. They placed two beams of the ground floor lintel of their own shop and affixed two *Parnalas* from the roof of the shop in question. They also installed water connection pipe by boring through the said wall and installed a tap.

3. The application was contested thereby taking the plea that the same was filed with *mala fide* intentions just to harass the respondents. In fact the respondents never disobeyed the decree passed by the Court and had not caused any damage to the eastern wall and staircase by doing any act.

4. On the pleadings of the parties, following issues were settled for disposal of the aforesaid application by the Court below:-

- “1. Whether the respondents willfully and intentionally disobeyed the decree dated 22.12.2006? OPA
2. Whether the present application is not maintainable? OPR
3. Relief.”

5. Parties led their respective evidence. However, the Court below after considering the material and evidence available on the file, returned the finding that the respondents willfully disobeyed the judgment and decree dated 22.12.2006 passed against them and the application was allowed. The Court below also passed the order for issuance of warrants of attachment of the property of the respondent/JD. The petitioners have challenged the said order dated 10.3.2014 [Annexure P/4] taking the plea

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that the same is not based on actual facts.

6. Learned counsel for the petitioners submitted that in the earlier suit, which was decreed on 22.12.2006, findings were recorded that the wall is common. Construction was going and only renovation was being done. However, the respondent herein, failed to take any plea as to when construction was actually raised and alleged violation was done by the present petitioners. In the sale deed, the shop was double-storey shop and in view of the findings of the Court that the wall was common, the present petitioners have not disobeyed any court decree or judgment and the order dated 10.3.2014 is liable to be set-aside.

7. Learned counsel for the respondent submitted that it had come in the statement of PW-1 and the photograph Ex. P11 that present petitioners started raising new construction in place of the old one in the shop owned by him. It is not the case of the present petitioners that they are claiming exclusive right of ownership on the disputed wall at this stage. The petitioners were given opportunity to file reply to the application under Order 21 Rule 32 CPC, but they simply gave vague and evasive reply to the questions which establishes the version of the applicant-respondent.

8. Having considered the submissions made by learned counsel for the parties and on appraisal of record, this Court is of the view that the Court below has rightly appreciated the controversy on the basis of the evidence available on the file. Needless to mention that the judgment and decree dated 22.12.2006 had attained finality as no appeal was preferred against the same. The order was passed by the Court of competent jurisdiction thereby restraining the defendants-petitioners from doing any such act thereby causing damage to the common eastern wall and

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staircase. The Court below has rightly placed reliance upon the admission made by the respondents relating to the shop in question which establishes that the present petitioners were causing damage to the said wall.

9. The Court below has appreciated the report of Expert and has rightly discarded the same. It has rightly placed reliance upon the statement of the present petitioners thereby admitting the version of the present respondent, which is complete violation of the Court decree and judgment. The said order has been passed on the basis of material and evidence available on the file and the same does not call for any interference.

10. In view of the above, there are no grounds for setting aside the impugned order and the present petition stands dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

February 5th, 2016
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