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

CR-7218-2013 (O & M)

Date of Decision: 27.01.2016

Babu Lal

... Petitioner(s)

Versus

Deep Chand and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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. Amit Jain, Advocate,
for the petitioner.

Mr. K.K.Saini, Advocate,
for respondent No.1.

Mr. Rakesh Gupta, Advocate,
for respondent No.4 and 5.

Mr. Sudhir Rana, Advocate for
Mr. Keshav Pratap Singh, Advocate,
for respondent Nos.8 and 9.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 09.10.2013 (Annexure P-6) passed by learned Civil Judge (Jr. Divn.), Gurgaon whereby application dated 14.05.2003 (Annexure P-4) moved by the petitioner for dismissal of proceedings under Order 39 Rules 2-A CPC,

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has been dismissed.

The facts necessary for disposal of the present revision are to the effect that respondent No.1 filed suit for permanent injunction praying that the petitioner and proforma respondents herein be restrained from collecting building material for raising any sort of construction until and unless suit land is partitioned by metes and bounds. During the pendency of suit, interim order dated 04.10.2015 was passed by the trial Court restraining the parties from raising any sort of construction. Thereafter, respondent No.1 filed application under Order 39 Rules 2-A CPC on 26.05.2005 for violation of order dated 04.10.2015. The prayer in the suit became redundant after partition of suit land by the revenue authorities. Thereafter, the respondent made statement before the trial Court that he does not want to pursue the present suit and withdraws the same and accordingly, the suit was ordered to be dismissed as withdrawn vide order dated 25.11.2011. The petitioner moved application for dismissal of proceedings under Order 39 Rule 2-A CPC which has been dismissed vide impugned order dated 09.10.2013 (Annexure P-6) passed by learned Civil Judge (Jr. Divn.), Gurgaon. Hence, this revision.

I have heard learned counsel for the parties and perused the record.

Admittedly, the civil suit was dismissed as withdrawn on 25.11.2011. It is settled law that once a suit is dismissed or decreed, interim order, if any, merges into the final order and the interim order

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stands nullified automatically. The provisions of Rule 2-A CPC are meant for enforcing an *ad interim* injunction and not for punishing the person alleged to be guilty of disobedience of such order and, therefore, initiation or continuation of the proceedings under the said Rule would not be justified after the *ad interim* injunction stands nullified consequent upon dismissal of the suit.

In ***Rachhpal Singh vs. Gurdarshan Singh*** 1985 (1) PLR 2014, a Division Bench of this Court held as under:

3. *The legality of the impugned order has been challenged by the learned counsel for the petitioners primarily on the ground that no order under the said Rule 2-A Could be passed when the ad interim injunction stated to have been violated was no more in existence. Reliance for this submission was placed on a decision of the Supreme Court in The State of Bihar v. Rani Sonabati Kumari (supra). A contrary view had been taken by Harbans Lal, J. in M/s. Bharaj Manufacturing Co. (Regd) v. Jai Pal (supra) without noticing the aforesaid decision of the Supreme Court. The matter otherwise also being of public importance, I referred the same to a Division Bench for authoritative pronouncement. This is how these cases have been laid before us.*

4. *Sub-rule (1) of rule 2-A provides that in the case of disobedience of any injunction granted under rule 1 or rule 2 or breach of any of its terms on which the injunction was granted or order made, the Court may order the property of the person guilty of such indiscipline or breach to be attached and may also order such person to be detained in the civil prison for a term*

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not exceeding three months, unless in the meantime the court directs his release. Sub-rule (2) lays down that no attachment made under the said rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto. From the combined reading of the provisions of these two sub-rules, it appears, that their purpose is the enforcement of the injunction and not the punishment for its disobedience. From the phraseology used in the said rule, it is further evident that detention in the civil prison and attachment of the property are to continue for a specified period and that too only during the continuance of the disobedience or the breach. In the case of detention in the civil prison, the Court is empowered to release the person guilty of disobedience or breach even prior to the expiry of the maximum period of three months and obviously it can be ordered only if the disobedience or breach discontinues. Similarly, attachment of the property cannot remain in force for more than one year and has to be withdrawn if any time prior thereto the disobedience discontinues. It would not be possible for the court to order the sale of the property if the disobedience or breach comes to an end prior to the period of one year. Similar are the provisions contained in rule 32 of Order 21 which relates to the enforcement of a decree for permanent injunction. It cannot be disputed that the measures contained in rule 32 are intended only to enforce the decree and not for awarding any punishment to the

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judgment debtor for its disobedience. The conclusion, therefore, appears to be irresistible that the provisions of rule 2-A are meant for enforcing an ad interim injunction and not for punishing the person guilty of such disobedience. We are fortified in our view from the following observations of the Supreme Court in Rani Sonabati Kumari's case (supra).

"Though undoubtedly proceedings under Order 39, Rule 2(3) Civil Procedure Code, have a punitive aspect - as is evident from the contemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by the Civil Procedure Code for the execution of a decree for a permanent injunction. Order 21, Rule 32 sets out the method by which such decrees could be executed - and CI (1) enacts - 'where the party against whom a decree for an injunction has been passed, has had an opportunity for obeying the decree and has wilfully failed to obey it, the decree may be enforced, in the case of a decree....for an injunction by his detention in the civil prison, or by, the attachment of his property or by both Clauses 2 and 3 of this rule practically reproduce the terms of clauses 4 and 3 respectively of Order 39, Rule 2, and the provisions leave no room for doubt that the Order 39, Rule 2(3) is in essence only the mode for the enforcement or effectuation of an order of injunction."

Once it is held that the provisions of rule 2-A are not

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meant to punish the person guilty of disobedience and instead their purpose in substance is only to enforce an injunction, the answer to the question involved has to be that no initiation or continuation of the proceedings under the aforementioned rule would be competent after the ad interim injunction has been vacated.

5. *The learned counsel for the respondent to advocate the contrary view relied on **Thakorlal Parshottamdas v. Chandulal Chunilal**, AIR 1967 Gujarat 124, **Gobinda Parida and others v. Chakradhara Routary and others**, AIR 1971 Orissa 10 and **Calcutta Medical Stores v. Stadmed Private Ltd. and Others**, 81 Cal. Weekly Notes 209. In **Thakorlal Parshottamdas** and **Gobinda Parida**'s cases (supra), the injunction was still in force when the action against its disobedience was taken. In the case of **Calcutta Medical Stores**, the only question before the Court was whether the High Court would entertain a petition for contempt in the presence of adequate provisions contained in Order 39 for the enforcement of the injunction. The question at hand was neither raised nor debated there. In the three decisions of this Court in **Hari Parshad v. Khilla Ram and others**, 1974 P.L.J. (Cr.) 71, **Janak Ram and others v. Sh. Ganesh Das Puri and others**, 1975 P.L.J. (Cr.) 39, and **M/s. Bharaj Manufacturing Co's case** (supra), the view similar to the one taken in the case of **Calcutta Medical Stores** was expressed and the Court declined to entertain a petition under Contempt of Courts Act on the ground that equally efficacious remedy was available under Order 39, Civil Procedure Code. In none of the decisions of this Court or the ones noticed above, the observations made by the*

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Supreme Court in Rani Sonabati Kumari's case (supra) were taken notice of. The matter came up for direct consideration before S.C. Mathur, J. of Allahabad High Court in Sheo Kumar Saxena v. Zila Sahkari Vikas Singh Gonda and others, who relying on the said Supreme Court decision held that after a temporary injunction has been vacated, it cannot be enforced or executed and, therefore, punitive action also cannot be taken after its vacation. We fully endorse this view and hold that no proceedings can be initiated or action taken under rule 2-A against a person guilty of disobedience or breach of ad interim injunction after it has been vacated. Nothing said herein before, however, would debar the taking of proceedings under the Contempt of Courts Act inspite of the vacation of the ad interim injunction against the person guilty of its breach during the period it remains in force.

6. For the reasons recorded above, the impugned order is set aside and the petition under rule 2 A dismissed.

Order accordingly.”

In view of law laid down by the Division Bench of this Court in ***Rachhpal Singh's case (supra)***, instant revision is allowed and application (Annexure P-4) is allowed and application under Order 39 Rule 2-A CPC pending before the trial Court is dismissed.

27.01.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge