

Civil Revision No. 8400 of 2015
Date of Decision: 17.3.2016

M/s Saini Special Roll Burger & Pizza

---Petitioner

versus

Sanjay Saini

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Ajay Jain, Advocate
for the petitioner

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

Rekha Mittal, J.

The present petition has been directed against order dated 13.08.2015 (Annexure- P.5) passed by the Additional District Judge, Rewari, whereby the execution petition has been held to be not maintainable.

Counsel for the petitioner contends that though the application was filed in the format meant for filing an application for execution but in sum and substance, the petitioner sought to initiate action against the respondent for violating the interim injunction granted by the Court. It is further submitted that as the application, in essence, is a petition for committing contempt of the Court, the Court should have proceeded with the application by treating it as an application under Order 39 Rule 2A of the Code of Civil Procedure (for

short “CPC”).

I have heard counsel for the petitioner, perused the records particularly the order impugned.

Perusal of application preferred by the petitioner dated 23.12.2011 (Annexure P-3) would make it evident that the petitioner filed an application for execution of order dated 15.11.2011 passed by the Court granting ad interim injunction in favour of the petitioner. Against Serial No. 7 of the application dealing with mode in which the assistance of the Court is required, it is mentioned to be by way of attachment, auction, sale of properties and other goods of the respondent. The mere fact that in the concluding para of the application, it is mentioned that the respondent be also sent behind the bars for contempt of the Court's order dated 15.11.2011, is not sufficient to say that the petitioner filed an application under Order 39 Rule 2A CPC. The learned Court below while disposing of the application has rightly held in the following terms:-

“Order 39 Rule 2A CPC provides for the consequences of disobedience or breach of injunction granted or Order made under Rule 1 or Rule 2 of Order 39 CPC. No Petition under Order 39 Rule 2A CPC has been moved by the applicant. In case the respondent has disobeyed or committed breach of the stay Order passed under Order 39 Rules 1 and 2 CPC, an action would have been maintainable under Order 39 Rule 2A CPC. Reference in this regard may be made to the ruling Patel Rajnikant

Dhulabhai and another Versus Patel Chandrakant
Dhulabhai and others 2008(3)CCC 785 (SC). The present
Execution Petition is thus held to be not maintainable
and is hereby dismissed.”

Keeping in view the manner and tenor of the application for
execution, I find myself unable to accept submission of counsel for the
petitioner that the court below may be directed to treat execution application
as an application under Order 39 Rule 2A CPC.

With these observations, the petition stands disposed of without
prejudice to rights of the petitioner to file an appropriate application Order
39 Rule 2A CPC for alleged violation of interim order of stay.

(Rekha Mittal)
Judge

17.3.2016
PARAMJIT