

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:- 01st May, 2017

COCP No.2948 of 2014(O&M)

Kamlesh Kumari & Anr.

.....Petitioners.

Versus

Shakti Sagar Bhatia & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Mandeep Singh Sachdev, Advocate for the Petitioners.

Mr. Ashok Kumar Bajaj, Advocate for the respondents.

JASWANT SINGH, J.

Petitioner has filed instant contempt petition under Sections 12 of Contempt of Courts Act, 1971 seeking initiation of contempt proceedings against the respondents for willfully, deliberately and intentionally disobeying the order of the learned Additional District Judge, Jalandhar dated 11.09.2014 (P-3) whereby the learned Additional District Judge, Jalandhar stayed the demolition order/notice dated 09.09.2014.

Learned Counsel for the petitioner has argued that the order dated 11.09.2014 (P-3) was violated by the respondents as despite the stay order granted by the Court for not demolishing Booth No.234, Opposite Kartar Bus Service Near Damoria Pull, the same has been demolished. It has been further argued that the stay order was conveyed to the respondents

and even shown at the site and in support of this contention reliance has

been placed on photographs Annexure P-4. Thus it is argued that the respondents have willfully disobeyed the order dated 11.09.2014 and, therefore, have committed contempt of Court.

On the other hand learned Counsel for the official respondents have taken a plea that the petitioner had raised unauthorised construction at his booth and, therefore, the unauthorised construction only was demolished by the respondents after giving statutory notice dated 20.08.2014. This notice was challenged by the petitioner before the learned Additional District Judge, Jalandhar in which the order dated 11.09.2014 was passed. However, the stay order was not brought to the notice of the official respondents till 15.09.2014 when the copies of grounds of appeal and application along with notice issued by the learned Additional District Judge was submitted to them. Apart from that it was argued that the petitioner has encroached upon public land and the said encroachment was liable to be removed instantaneously in terms of the directions dated 04.10.2008 passed by this Court in CWP No.4886 of 2003 titled as Court on its own motion Vs. State of Punjab and others. It was further argued that the instant petition itself is not maintainable by relying upon the judgment passed by Hon'ble Supreme Court in **Kanwar Singh Saini Vs. High Court of Delhi** Decided on 23.09.2011 passed in Criminal Appeal No.1798 of 2009. Thus prayer was made for dismissal of the contempt petition.

After hearing learned Counsel for both the sides and perusing the paper book carefully, this Court is of the considered view that the present contempt petition is devoid of merit and deserves to be dismissed for the following reasons.

It is not in dispute that official respondents passed an order of

demolition of the disputed booth vide its order/notice dated 09.09.2014 which was challenged by the petitioner before the learned Additional District Judge, Jalandhar as per law. It is further not in dispute that on 11.09.2014 order Anneuxre P-3 was passed wherein the operation of the impugned order/notice was stayed subject to furnishing of an undertaking in the form of an affidavit by the petitioner before the Court within a week from 11.09.2014. It is also an admitted fact that on 12.09.2014 the illegal construction made upon the said booth was removed by the official respondents by sending in the officials of the concerned MC. The dispute arises as to whether the said stay order was actually produced before the concerned officials, who have been made a party. It is the contention of the petitioners that despite showing of the stay order to the concerned officials, the demolition drive has been undertaken by them. On the other hand it is the contention of the respondents that they were made aware of the passing of the said order on 15.09.2014. Thus a serious dispute has arisen qua the fact as to whether intimation was given to the concerned respondents about passing of the stay order.

Under these circumstances, it is imperative for the Court to come to a definite conclusion before punishing the concerned respondents as to whether they had indeed willfully disobeyed the order passed by the learned Additional District Judge, Jalandhar or not. Thus roving inquiry cannot be undertaken by this Court while exercising powers under Section 12 of the Contempt of Court Act. The petitioner is bound to avail the remedy available under Order 39 Rule 2-A CPC which deals with the consequences of disobedience or breach of injunction. As per the provisions of Order 39 Rule 2-A CPC the Court who has granted injunction

or made an order may order the property of person guilty of such disobedience or breach to be attached and may also order such person to be detained in civil imprisonment for a term not exceeding three months unless the court in the meantime directs its release.

Meaning thereby the Civil Court which has passed the order has been given the power to take necessary legal action against the erring person who has willfully breached any order passed by the said Court. This matter is no longer *res-integra* as the Hon'ble Supreme Court in **Food Corporation of India Vs. Sukha Deo Parsad 2009(3) Recent Apex Judgments 159** has held as under:-

“ *This Court held that power exercised by a Court under Order 39 Rule 2A is punitive in nature, akin to the power to punish for civil contempt under the Act 1971. Therefore, such powers should be exercised with great caution and responsibility. Unless there has been an order Under Order 39 Rule 1 or 2 Civil Procedure Code in a case, the question of entertaining an application under Order 39 Rule 2A does not arise. In case there is an final order, the remedy lies in execution and not in an action for contempt or disobedience or breach under Order 39 Rule 2A. The contempt jurisdiction cannot be used for enforcement of decree passed in a civil suit.* ”

Not only this Co-ordinate Bench of this Court in **COCF No.1152 of 2009** decided on 3.7.2009 titled as **Amarjit Singh Vs. Joga Singh** has held as under:-

“ *Undisputedly, the alleged statement/ undertaking was given by the respondent in an appeal arising out of proceedings under Order 39 Rules 1 & 2 CPC and on the basis of the aforesaid undertaking an order dated 4.9.2002 (Annexure P-5) was passed by the Additional District Judge,*

Amritsar. A remedy is provided under Order 39 Rules 1 & 2 CPC and the person guilty of such disobedience or breach can be detained in civil prison. ”

In this view of the matter, this Court has no hesitation o hold that the present contempt petition was not at all maintainable before this Court in view of the alternative remedy available to the petitioner under Order 39 Rule 2A CPC who has the power to undertake an inquiry and then come to a conclusion not only regarding the factual aspect but also regarding the fact as to whether the order passed by it was indeed violated by the respondents at any point of time. Thus without going into the factual aspect of the matter present contempt petition is dismissed. However, the petitioners are at liberty to move appropriate applications, if permissible under law before the Court concerned.

(JASWANT SINGH)
JUDGE

May 01, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>