

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

CR No.1046 of 2017.

Date of Decision: 14.02.2017.

Muna Lal and others

....Petitioners.

VERSUS

Surjit Kaur and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Rakesh Gupta, Advocate for the petitioners.

SNEH PRASHAR, J.

Assailing the order dated 07.01.2017 passed by learned Additional Civil Judge (Senior Division)/ Executing Court, Patiala by virtue of which the objection petition filed by the petitioners-J.Ds. No.2,4 and 5 was dismissed, the instant petition has been filed.

The submissions made Mr. Rakesh Gupta, learned counsel representing the petitioners have been considered.

The facts, as incorporated in the impugned order, are not disputed by learned counsel for the petitioners. Admittedly, respondent No.1-decree holder filed a suit for mandatory injunction against the petitioners-objectors and others for removal of all obstructions and structures including kiosks (Khokhas) placed in front of western wall of her house, which was contested by the petitioners-defendants and was

dismissed by learned trial Court vide judgment and decree dated

21.03.2003. Aggrieved by the decision, respondents-plaintiffs filed an appeal, which was allowed. The judgment and decree of the trial Court was set aside and the suit filed by them was decreed by first appellate Court by way of judgment and decree dated 18.05.2005. The petitioners-defendants feeling unsatisfied preferred a regular second appeal to this Court which was dismissed on 15.09.2011. The operative portion of the order reads as under:-

“Be that as it may, as it emerges from the record that the defendants are earning their livelihood from their kiosks, therefore, to me, it would be appropriate to grant some time to them to remove their kiosks and to place the same to some other alternative site. Such right has been duly recognized by the Hon'ble Apex Court in cases Prem Chand Trilok Chand and others v. State of Haryana and others (1998) 5 S.C.C. 213 and Labha Ram and sons and others v. State of Punjab and others (1998) 5 S.C.C. 207, wherein it was ruled that the Government has an inherent obligation to provide alternative site for carrying on their trade.

In this view of the matter, to my mind, the defendants are entitled for a reasonable time to vacate their kiosks and deserve sympathetic consideration by the MC, in view of their virtual displacement from the place, where they were working over the years. To me, a period of six months is reasonable and is granted to the defendants to remove their kiosks to some alternative place. The MC is expected to sympathetically consider the claim of the defendants to provide an alternative

site to run their livelihood, on reasonable terms and conditions in this relevant behalf.”

Learned counsel for the petitioners contends that the Executing Court has legally erred in dismissing the objection petition filed by the petitioners. While deciding the regular second appeal, this Court had taken note of the fact that the petitioners are earning their livelihood from the kiosks and therefore, had asked the Municipal Corporation to provide them some alternative site where they can place their kiosks so that they can vacate the site in question. Relying on the order dated 26.08.2014 passed by Division Bench of this Court wherein the directions given by Hon'ble Supreme Court on 09.09.2013 in Maharashtra Ekta Hawkers Union and another vs. Municipal Corporation, Greater Mumbai and others and the connected matters were noticed and one of the direction was that all the existing street vendors/ hawkers operating across the country shall be allowed to operate till the exercise of registration and creation of vending/ hawking zones is completed in terms of the 2009 Policy, learned counsel submits that the petitioners should not be asked to remove their kiosks from the site in dispute.

As already noticed above, there is a judgment and decree passed in favour of respondent No.1-decree holder in a suit for mandatory and permanent injunction filed by her. The decree has become final between the parties. Indeed, this Court while dismissing the appeal of the petitioners had asked the Municipal Committee to sympathetically consider the claim of the petitioners-defendants to provide an alternative site to them for placing their kiosks on reasonable terms and conditions so that they can earn their livelihood, but had categorically given a period of six months to

the petitioners-defendants to remove their kiosks (Khokhas) to some alternative place. Probably because of the said observation made by this Court considering interest of the petitioners while disposing of the regular second appeal that the decree holder-plaintiff is being deprived of the fruits of the decree passed in her favour even after contesting a long protracted litigation. Taking benefit of the observations, the petitioners have managed to avoid execution of the decree for more than five years. Since the time given to the petitioners to remove their kiosks and place the same at some alternative site expired long back, the impugned order passed by learned Executing Court dismissing the objection petition filed by the petitioners and giving them show cause notice as to why they should not be arrested and detained in civil imprisonment for not complying with the decree and directions of this Court, suffers from no illegality or perversity and the instant petition is dismissed.

However, as already observed by this Court in the order dated 15.09.2011, the Municipal Committee is expected to sympathetically consider the prayer of the petitioners-defendants to provide them an alternative site to run their livelihood, on reasonable terms and conditions.

(SNEH PRASHAR)
JUDGE

14.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**