

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.111

Civil Revision No. 1977 of 2017 (O&M)
DECIDED ON: May 03, 2017

AALA SINGH (DECEASED) THROUGH LR'S

..PETITIONER

VERSUS

PARDEEP KUMAR & ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sumeet Puri, Advocate,
for the petitioner.

JASPAL SINGH, J.

CM No.6114-CII of 2017

Application is allowed as prayed for.

CR No. 1977 of 2017

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated February 03, 2017 passed by the learned Additional District Judge, Sangrur as well as order dated July 17, 2015 passed by the learned Civil Judge (Jr. Divn.) Sangrur vide which an application filed by the petitioner under Order XXXIX Rule 2(a) read with Section 151 CPC has been dismissed.

While assailing the impugned orders, it has been argued with

vehemence by learned counsel for the petitioners that the same are absolutely against the evidence available on file and settled canons of law. Misappreciation of evidence as well as legal proposition have resulted into miscarriage of justice. Both the courts below have failed to prove that petitioners have fully proved their case by way of pleadings and documents regarding prejudice caused to them. Though, vide order dated December 07, 2011 parties were directed to maintain status quo and vide order dated May 04, 2012 whereby the stay order was confirmed restraining the respondents from interfering into the peaceful possession of the petitioner by lying waste water pipe/drainage pipe through the house of petitioner till the final decision of the case. Since, the violation of impugned orders referred to above is fully established on record, therefore, the orders passed by both the courts below are not sustainable in the eyes of law being against the evidence available on file and are liable to be set aside. Consequently, an application under Order XXXIX Rule 2(a) of the Code deserves to be allowed and the respondents are liable to be punished accordingly.

After bestowing due consideration to the rival submissions made by learned counsel for the petitioners and scrutinizing the impugned orders as well as other documents available on record, this Court does not find any legal or factual substance therein.

Undisputably, passing of orders dated December 07, 2011 whereby, parties were directed to maintain status quo as well as order dated May 04, 2012 vide which an application moved under Order XXXIX Rules 1 and 2 of the Code was allowed restraining the respondents from interfering into peaceful possession of the petitioner by lying waste water

pipe/drainage pipe through the house of petitioner till the final disposal of the case and further that the suit of the petitioner was finally decreed on August 29, 2015. However, it has not proved on record that any of the respondents intentionally disobeyed or violated the above said orders. There is nothing on record to suggest that any sewerage/drainage pipe was ever laid by any of the respondents in the courtyard of the house of petitioner. Kulwinder Singh one of the petitioners has appeared in the witness box as PW-1 who has reproduced the contents of an application moved by him under Order XXXIX Rules 2(a) of the Code but while subjecting to cross-examination, it has been categorically admitted by him that neither the committee nor an Executive Officer has laid any pipe through the property in dispute. Thus, when there is a specific admission of one of the petitioners to the effect that no pipe was laid in the disputed property after passing of afore-said orders of status quo as well as injunction then question of violation of disobedience thereof, does not arise at all.

Here, it would also be pertinent to mention that a complaint bearing No. 11893/18/12 was moved by the petitioner-Aala Singh to the Punjab State Human Rights Commission, Chandigarh, which was sent for investigation/inquiry to the Senior Superintendent of Police, Sangrur, which was got investigated and after thorough investigation it was concluded that present petitioners has constructed a passage near their house towards the pond side which vests in the Municipal Council, Sangrur. The said path has been constructed by filling the earth by illegally occupying the land of pond. The inhabitants of the colony and Municipal Council, Sangrur tried to stop the petitioner Aala Singh from encroaching

upon the area of pond but he did not agree. On September 11, 2012, police of Police Station City, Sangrur received a telephonic call from Surjit Singh, Executive Officer, Municipal Council, Sangrur, they along-with Superintendent of Municipal Council, Sangrur reached at the spot alongwith JCB machine and the Municipal Council, Sangrur with the assistance of police got vacated the land from Aala Singh, which was in his illegal possession and the entire proceedings with regard to taking of possession were carried out peacefully. There was no apprehension of any sort of danger at the time of getting the possession by the Municipal Council, Sangrur. In fact, the complaint appears to have been lodged with an intention to grab the area of pond adjoining to the house of petitioners.

Thus, there is neither any trustworthy evidence adduced by the petitioners to establish the violation of the above-referred orders passed by civil court nor such violation was found by the police, as per report dated November 19, 2012 made by Senior Superintendent of Police, Sangrur. Thus, this Court is of the considered view that impugned orders do not suffer from any infirmity or illegality or perversity. Rather, the same are absolutely in consonance with the evidence available on file.

In the light of what has been discussed above, this court does not find any merit in the instant petition and same is dismissed, whereby the impugned orders passed by both the courts below are upheld.

No order as to costs.

MAY 03, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No