

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.2646 of 2017 (O&M)
Date of decision: 16.05.2017

Bir Singh

... Petitioner

Vs.

Bhagwant

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. J.S. Hooda, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

CM-8583-CII-2017

Applicant seeks permission to place on record the copy of cross-examination of the respondent as Annexure P-4.

Application is allowed, as prayed for.

CM stands disposed of.

CR No.2646 of 2017

Present revision petition, at the hands of plaintiff, filed under Article 227 of the Constitution of India, is directed against the order dated 16.02.2017 (Annexure P-2), whereby appeal of the respondent against the judgment dated 02.12.2015 passed by the learned trial Court, awarding him sentence of civil imprisonment for two months, was allowed.

Heard learned counsel for the petitioner.

It is a matter of record that petitioner was the plaintiff in Civil Suit No.21 of 2014. It was a suit for permanent injunction. During pendency of the suit, plaintiff-petitioner filed an application under Order 39 Rule 2A of the Code of Civil Procedure, alleging that the respondent-defendant has willfully violated the restraint order passed by the learned trial Court, vide order dated 08.01.2013. After hearing the learned counsel for the parties and going through the record, learned trial Court, vide its order dated 02.12.2015, sentenced the defendant-respondent to undergo civil imprisonment for two months. Feeling aggrieved, defendant-respondent filed his appeal against the abovesaid judgment dated 02.12.2015 and the learned Additional District Judge, vide impugned order dated 16.02.2017, allowed the appeal of the respondent. Hence this revision petition at the hands of complainant-plaintiff.

It is pertinent to note here that finally, suit filed by the petitioner-plaintiff for permanent injunction came to be dismissed by the learned trial Court and even his first appeal was also dismissed by the learned first appellate Court. Recording these facts in para 16 of the impugned order, learned Additional District Judge came to the conclusion that the order dated 02.12.2015 passed by the learned trial Court was erroneous on facts as well as in law. Accordingly, appeal of the respondent was allowed and his imprisonment ordered by the learned trial Court vide abovesaid judgment dated 02.12.2015 was set aside. Once the regular suit as well as first appeal of the petitioner have been dismissed on merits by the learned trial Court as well as the learned first appellate Court, this Court is of the considered view that learned Additional District Judge committed no error of law, while passing the impugned order dated 16.02.2017 and the same deserves to be upheld.

Learned Additional District Judge has rightly placed reliance on the photographs Ex.A1 to Ex.A4. It was depicted from these photographs that some shrubs were put in the suit property. That is what violation was alleged by the plaintiff-petitioner against the defendant-respondent. However, plaintiff failed to connect these shrubs shown in the photographs Ex.A1 to Ex.A4 with the suit land.

At this stage, learned counsel for the petitioner has referred to the statement of respondent as PW1. However, even the said cross-examination of the respondent cannot be said to be a conclusive proof, which may establish that he willfully violated the orders of the Court. Admittedly, the dispute between the parties was regarding a passage. Pleading case of the plaintiff-petitioner was that the respondent-defendant was trying to block the passage. Now admittedly, there is no blockage in the passage in question.

It is also a matter of record that Civil Suit No.17 of 2014 filed by the respondent for permanent injunction regarding this very passage in question has also been dismissed by the learned trial Court, vide its judgment and decree dated 18.11.2015. Be that as it may, so far as the willful disobedience of the restraint order passed by the learned trial Court, during pendency of the suit filed by the petitioner, is concerned, there is no conclusive proof of its alleged violation. Having said that, this Court feels no hesitation to conclude that learned Additional District Judge was well within his jurisdiction to pass the impugned order dated 16.02.2017 (Annexure P-2) and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order

passed by the learned trial Court, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order passed by the learned trial Court has been found duly supported by sound reasons and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in the impugned order passed by the learned trial Court, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

16.05.2017
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No