

CR No. 3205 of 2017(O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No. 3205 of 2017(O&M)
Date of decision: 5.5.2017**

Manwar

...Petitioner

Versus

Saharpal

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sagar Aggarwal, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant civil revision petition, at the hands of plaintiff, filed under Article 227 of the Constitution of India, is directed against the order dated 8.4.2015 (Annexure P-2) passed by the learned trial court and also judgment dated 30.1.2017 of the learned District Judge, upholding the order dated 8.4.2015 and dismissing the appeal of the petitioner, holding him guilty of willful disobedience of the order passed by the learned trial court.

Heard learned counsel for the petitioner.

It is a matter of record that petitioner filed civil suit No. 552 of 2009 on 14.12.2009 against one Braham Pal and present respondent, for possession by way of specific performance of the agreement to sell dated 25.3.2008, titled as Manwar Vs. Brahmpal and another. (However, in the orders Annexures P-2 and P-3, number of the civil suit has been recorded as 522 of 2009). Be that as it may, it was this suit of the plaintiff-petitioner

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wherein the learned trial court passed restraint order dated 21.12.2009 (Annexure P-1) and operative part thereof, reads as under:-

“In the meanwhile, status quo qua any kind of further alienation be observed by the parties to the suit till the next date of hearing.”

It is a matter of record that during the pendency of the suit for possession by way of specific performance of the agreement to sell and during operation of abovesaid order dated 21.12.2009 passed by the learned trial court, defendant No.2-respondent herein, filed an application under Order 39 Rule 2-A read with Section 151 of the Code of Civil Procedure ('CPC' for short), alleging that plaintiff-petitioner herein namely Manwar, in collusion with defendant No.1-Brahampal, Smt. Imrana wife of Vakil Khan and one Vikas Kumar, Naib Tehsildar, Sub-Registrar, Ganaur, alienated the suit property by way of registered sale deed dated 31.1.2012 in favour of Smt. Imrana, who was none else but wife of brother of plaintiff, despite the abovesaid restraint order dated 21.12.2009, thereby willfully violating the court order.

It is pertinent to note here that Brahampal, who was defendant No.1 in the civil suit was impleaded as respondent No.1 in the application under Order 39 Rule 2-A CPC, plaintiff-Manwar was impleaded as respondent No.2, Smt. Imrana-wife of Vakil Khan who was brother of plaintiff-Manwar, was impleaded as respondent No.3 whereas Vikas Kumar, Naib Tehsildar, Sub-Registrar, Ganaur, was impleaded as defendant No.4 and all these shall be referred to here as respondents No. 1, 2, 3 and 4. Notice was issued by the learned trial court to all the abovesaid respondents.

Respondent No.1 and 2 appeared but did not file any reply to the application. They adopted the reply filed on behalf of respondent No.3-

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Smt. Imrana. She took a plea that neither the abovesaid interim order dated 21.12.2009 was in her knowledge, nor she appeared before the Sub-Registrar for registration of the sale deed and the sale deed was signed by her brother-in-law namely Manwar-respondent No.2 on her behalf. Similarly, respondent No.4-Vikas Kumar, the then Naib Tehsildar, Ganaur, denied allegations pointing out that neither he was party to the suit, nor the abovesaid order dated 21.12.2009 passed by the learned trial court was ever brought to his knowledge, because of which, he was not aware about the restraint order dated 21.12.2009. Thus, respondent No.3-Smt. Imrana and respondent No.4-Vikas Kumar denied any willful disobedience of the restraint order dated 21.12.2009.

On the basis of abovesaid pleadings of the parties, learned trial court framed the following issues:-

- a. Whether the respondents have violated the interim order dated 21.12.2009 passed by the court in the main case? (OPA)*
- b. Whether the application is not maintainable? (OPR)*
- c. Whether the applicant has no cause of action or locus standi to file the application? (OPR)*
- d. What Relief?*

With a view to prove his pleaded case in his application under Order 39 Rule 2-A CPC, applicant-Saharpal produced documentary as well as oral evidence. Applicant-Saharpal-respondent herein, appeared in the witness box as AW-1 and filed his affidavit as Ex. AW-1/A. He admitted in his cross-examination that respondents No.3 and 4 namely Smt. Imrana and Vikas Kumar were not parties-defendants in the main suit. He also deposed that he had no proof to establish that copy of restraint order dated 21.12.2009 was ever sent by him to respondent No.4-Vikas Kumar, the then

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Naib Tehsildar. Applicant-Saharpal tendered a certified copy of order dated 21.12.2009 as EX. A-1, certified copy of the order dated 7.12.2011 as Ex.A-2, certified copy of the plaint in civil suit as Ex. A-3, certified copy of the sale deed dated 31.1.2012 as Ex.A-4, copy of enquiry report conducted by SDM, Ganaur, on the complaint of the applicant as Ex.A-5, postal receipts as Ex. A-6 to A-10 and copy of complaint given to Deputy Commissioner, Sonapat as Ex.A-11.

On the other hand, no witness was examined by the respondents. Respondent Nos. 1 and 2 also did not file any written statement, with a view to controvert the allegations levelled by the applicant. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that respondents No.1 and 2 were guilty of willful disobedience of the abovesaid restraint order dated 21.12.2009. Accordingly respondents No.1 and 2 namely Brahampal and Manwar were sentenced to undergo civil imprisonment for a period of two months by the learned trial court vide its impugned order dated 8.4.2015 (Annexure P-2). Feeling aggrieved against the order of sentence dated 8.4.2015, petitioner filed first appeal, which also came to be dismissed by the learned District Judge, vide his impugned judgment dated 30.1.2017. Hence this revision petition.

A combined reading of all the three orders contained in Annexures P-1 to P-3 will leave no room for doubt that petitioner was not a bonafide litigant. He has no respect for law and also for the orders passed by the court. He was trying to play smart with the learned trial court. Despite knowing fully well that the learned trial court has passed a restraint order and that too, in his own application for interim injunction, he colluded with

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respondent No.1 in getting the sale deed dated 31.1.2012 registered qua the suit land, in favour of Smt. Imrana.

It is also very pertinent to note here that it was the petitioner himself who represented Smt. Imrana at the time of registration of the sale deed. Reasons were very obvious. Smt. Imrana was none else but sister-in-law of the petitioner, being wife of Vakil Khan who was brother of the petitioner. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned orders and the same deserve to be upheld.

A litigant who does not respect the law is not entitled for any kind of sympathy from the court as well. Facts of the case in hand are very glaring. It was the petitioner himself who came to the court by filing the abovesaid suit. Along with his suit for possession by way of specific performance of the agreement to sell, plaintiff-petitioner filed application under Order 39 Rule 2-A CPC for interim injunction, which was granted by the learned trial court vide its abovesaid order dated 21.12.2009 (Annexure P-1). However, without showing any respect to the abovesaid order passed by the learned trial court, at the instance of the petitioner himself, he willfully violated the abovesaid order. His intentions were not bonafide but malafide. Conduct of the petitioner was such, as if he was above the law. Under the abovesaid peculiar facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned orders and the same deserve to be upheld, for this reason also.

Majesty of law has to be maintained at any cost. No litigant can be permitted to violate court orders and that too willfully. One who prays for

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and expects equity must come to the court with clean hands. Precious time of the court is not for wasting at the hands of unscrupulous litigants, like the present petitioner. It also goes without saying that conduct of the parties to the litigation is one of the relevant considerations. Wherever any willful disobedience of any court order is established on record, wrong-doer is liable to be dealt with a strong hand, awarding him suitable punishment, so as to uphold the majesty of law. Further, technicalities should not be permitted to play any role while coming in the way of passing an effective order by the court, as warranted in a given fact situation.

So far as the abovesaid peculiar fact situation is concerned, it has become crystal clear that respondent has duly established on record that petitioner has willfully disobeyed the restraint order dated 21.12.2009 passed by the learned trial court, therefore, he was rightly sentenced. In this view of the matter, it is unhesitatingly held that the impugned orders have not been found suffering from any patent illegality or perversity and the same deserve to be upheld.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

- 1) Patel Rajnikant Dhulabhai and another Vs. Patel Chandrakant Dhulabhai and others, 2008 AIR (SC) 3016
- 2) Swaran Singh Vs. Karam Singh, 1995 (3) RCR (criminal) 391 (P&H)
- 3) Balwinder Kumar Vs. Rajinder Kumar and others, 2005 (2) PLR 475 (P&H)
- 4) Gurcharan Singh Syal and another Vs. Sonica Malhotra and others, 2016 (3) PLR 17 (P&H)

Relevant observations made by the Hon'ble Supreme Court in para 60 of its judgment in **Patel Rajnikant Dhulabhai's case** (supra), which can be gainfully followed in the present case, read as under:-

“Now, in the instant case, both the orders passed by this Court on April 26, 2004 and January 10, 2005, were explicitly clear. The first order totally prohibited/restrained the respondents/contemners from creating any interest whatsoever in the suit property. As held by us, in spite of the said order, interest had been created by the contemners in the suit property. But even otherwise there is intentional disobedience and wilful breach of the subsequent order dated January 10, 2005 inasmuch as transactions had been entered into without issuing notice to the petitioners. We have already held that they could not have been entered into by the respondents before issuance of notice to the petitioners. The respondents were clearly aware of the order. In fact, the action was sought to be defended and justified on the ground that the Court had not directed ‘prior’ notice, and as such, non-issuance of notice before entering into sale transactions would not amount to disobedience of the order of the Court. We are unable to uphold the contention. In the circumstances it must be held that the disobedience of the order by the contemners was willful, intentional and deliberate.”

During the course of hearing, learned counsel for the petitioner could not could not point out any patent illegality or perversity in either of the impugned orders, 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 orders have been found duly supported by sound reasons and the same deserve to be upheld.

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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 present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

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

5.5.2017

AK Sharma

(RAMESHWAR SINGH MALIK)

JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No