

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

-.-

Civil Revision 4028 of 2016
Date of decision: 04.09.2017

Satpal Singh

..... *Petitioner*

Versus

Gurmukh Singh and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Gaurav Rana, Advocate
for the petitioner

-.-

Rekha Mittal, J.

The present petition directs challenge against orders dated 07.11.2012 (Annexure P4) passed by the Civil Judge (Senior Division) Khanna and dated 04.05.2015 (Annexure P5) by the Additional District Judge, Ludhiana whereby application under Order 39 Rule 2-A of the Code of Civil Procedure (in short, CPC) filed by the petitioner was dismissed and the appeal preferred against order dated 07.11.2012 did not find favour with the Court in appeal.

Counsel for the petitioner has submitted that the petitioner filed a suit for separate possession by way of partition of the property, detailed in head note of the plaint (Anenxure P1). In the said suit, interim injunction dated 12.08.2004 was allowed restraining the defendants from changing existing nature of the suit property till 20.08.2004. It is argued that as respondents No. 1 to 6 (in application No. 151 of 27.08.2004) violated the stay granted by the Court, the petitioner initiated the proceedings under

Order 39 Rule 2-A CPC but the petition was wrongly dismissed by the trial Court. It is argued with vehemence that the Court in appeal failed to rectify the error committed by the trial Court and erroneously dismissed the appeal.

In order to substantiate his contention, he has pointed out report of the local commissioner dated 20.08.2004 (Annexure P3) and zimini orders recorded by the trial Court, referred to in para (e) of para 14 as well as highlighted portion of sub para (f) of para 14 of grounds of revision, sufficient to prove that Gurmukh Singh, respondent No. 1 raised construction at the spot knowing fully well of order of injunction granted by the Court and respondent Nos. 2 to 6 joined hands with respondent No. 1 to violate the stay order passed by the Court.

I have heard counsel for the petitioner, perused the paper book particularly grounds of revision and various annexures appended with petition.

The petitioner has complained of violation of the stay order by one of the defendants namely Gurmukh Singh whereas respondents No. 2 to 6 (in the contempt application) are not a party in the suit filed by the petitioner. The petitioner filed an affidavit (Annexure P2) stating therein that he had sent the documents detailed in para 3 of affidavit vide postal receipts No. 227 to 236 dated 13.08.2004 and the documents are copy of plaint, copy of the application under Section 39 Rules 1 and 2 read with Section 151 CPC and copy of affidavit and other documents attached with plaint. Meaning thereby that a copy of the order granting interim stay by the Court was not sent to the defendants by postal means vide receipts (Annexure P3). The report of the local commissioner with regard to its visit on 14.08.2004 does not make a reference that the local commissioner

informed the defendants namely Bhagwant Singh and Gurmukh Singh, stated to be present at the spot about stay order granted by the Court.

The trial Court has rightly held that the petitioner has failed to establish that Gurmukh Singh was aware of interim injunction granted by the Court that remained in force with effect from 12.08.2004 to 20.08.2004. If Gurmukh Singh respondent No. 1 (in the application) was not aware of the interim injunction granted by the Court, there was no occasion for him to violate stay order much less intentionally inviting wrath of disobedience of order of stay. This apart, order of interim injunction dated 12.08.2004 that remained in force till 20.08.2004 was neither further extended nor application for grant of interim injunction was decided in favour of the petitioner. On the contrary, the application for interim injunction was decided against the petitioner vide order dated 03.03.2005. The reasoning adopted by the trial Court to dismiss plea of the petitioner accusing respondents No. 1 to 6 of intentionally disobeying order dated 12.08.2004 is neither erroneous nor perverse, warranting intervention. The Court in appeal has rightly affirmed the order passed by the trial Court.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

04.09.2017
mohan bimbura

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