

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

CR No.6744 of 2013 (O&M).
Decided on:-July 10, 2017.

Mahabir and another

.....Petitioners.

Versus

Kamlesh Rani Sharma.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Rohan Sharma, Advocate for
Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Ashok Kumar Nabhewala, Advocate
for the respondent.

HARI PAL VERMA, J. (ORAL)

The petitioners-defendants have filed the present revision petition under Article 227 of the Constitution of India for setting aside the order dated 18.09.2013 (Annexure P-8) passed by learned Additional District Judge, Kurukshetra and the order dated 24.07.2012 (Annexure P-7) passed by learned Civil Judge (Junior Division), Kurukshetra in the proceeding under Order XXXIX Rule 2-A CPC.

Briefly stated, the respondent-plaintiff had filed a civil suit No.13 of 2009 against the petitioners-defendants before the trial Court. At the time of presentation of the suit, an application under Order XXXIX

Rules 1 and 2 CPC was also filed by the respondent-plaintiff along with the suit. In that application, the petitioners-defendants were restrained from demolishing the disputed wall or from affixing any gate, therein, till the next date i.e. 07.12.2006.

The petitioners-defendants filed reply to the application under Order XXXIX Rules 1 and 2 CPC and that application was heard on merit. Accordingly, the order dated 07.03.2008 (Annexure P-4) was passed by the trial Court to the effect that the matter as to whether wall in dispute is exclusively owned by the petitioners or the respondent is yet to be decided and is a question of evidence. Therefore, at this stage, it will be appropriate, if the parties are ordered to maintain *status quo* regarding wall in dispute.

The respondent-plaintiff filed an application under Order XXXIX Rule 2A CPC before the trial Court seeking to punish the petitioners-defendants for transgression of the aforesaid order dated 07.03.2008. Vide impugned order dated 24.07.2012 passed by the trial Court, the petitioners-defendants were ordered to undergo civil imprisonment for a period of one month.

Feeling aggrieved, the petitioners-defendants filed an Civil Misc. Appeal No.107 of 2012 before the Additional District Judge, Kurukshetra, which was dismissed vide order dated 18.09.2013.

It is in these circumstances, the petitioners-defendants have filed the present revision petition.

Pursuant to order dated 03.07.2017 passed by this Court, learned counsel for the petitioners-defendants has filed a joint affidavit of

the petitioners in the Court today. The affidavit is accompanied by the photographs of the spot. The same are taken on record. The contents of said affidavit are as under:

- “1. That the deponents compliance the order dated 10.03.2010 passed by Sh. Amit Kumar Garg, learned Civil Judge (Junior Division), Kurukshetra and also closed the door point “C to E” as shown in the map Ex.P3 attached in the case file.*
- 2. That the deponents also demolished the Balcony (Chajja) on the point “E to F” in the side of Gali as shown in the map Ex.P3 and receipt photographs of the site attached herewith.”*

On the strength of aforesaid affidavit and photographs, learned counsel for the petitioners-defendants has submitted that in terms of decree dated 10.03.2010 passed by learned Civil Judge (Junior Division), Kurukshetra, the petitioners-defendants have closed the door at point “C to E” and accordingly, the said decree has been complied with. A copy of the affidavit and the photographs has been furnished to learned counsel for the respondent-plaintiff.

Learned counsel for the respondent-plaintiff states that the factum of closure of the door is not disputed. However, for the unnecessary litigation, the respondent-plaintiff is required to be compensated in the terms of money.

I have heard learned counsel for the parties.

Considering the fact that now the petitioners-defendants have closed the door and have complied with the decree passed by the trial Court

and as such, the respondent-plaintiff has not been burdened with the execution proceedings, no order for compensation in terms of money is required to be passed and the prayer in this regard is declined.

Since the petitioners-defendants have already complied with the decree dated 10.03.2010 passed by the trial Court, the impugned orders dated 18.09.2013 (Annexure P-8) passed by learned Additional District Judge, Kurukshetra and the order dated 24.07.2012 (Annexure P-7) passed by learned Civil Judge (Junior Division), Kurukshetra in the proceeding under Order XXXIX Rule 2-A CPC are set aside.

Accordingly, the revision petition stands allowed.

July 10, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No