

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

**CR No.7666 of 2012
Date of Decision: 12.12.2017**

Sher Singh and another

.....Petitioners

Vs

Raghbir Singh

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Jai Vir Yadav, Advocate
for the petitioners.

Mr. Sanjay Vij, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the order dated 30.11.2010 passed by Civil Judge (Junior Division), Gurgaon and order dated 01.09.2012 passed by Additional District Judge, Gurgaon being illegal.

[2]. Two civil suits were filed. One was filed by Sher Singh under Order 1 Rule 8 CPC titled Sher Singh etc. Vs. General Public etc. for declaration with consequential relief of permanent injunction and possession. The other suit was filed by Raghbir Singh titled Raghbir Singh Vs. Sher Singh etc. for declaration

with consequential relief of permanent injunction. Both the suits were consolidated and were decided by the trial Court vide judgment and decree dated 22.12.2001. Two appeals were preferred before the Lower Appellate Court which were decided vide judgment and decree dated 21.12.2004. Two regular second appeals i.e. RSA Nos.2102 and 2103 of 2005 at the instance of the petitioner Sher Singh are pending.

[3]. An application under Order 39 Rule 2A CPC was filed by the defendant in respect of alleged disobedience of *status quo* order dated 19.07.1990. The alleged disobedience was done on 02.08.1990. The allegations were made that the petitioners along with three other persons demolished the construction of room and dumped the same in the tubewell with the help of police.

[4]. Defendant alleged that at the time of passing of *ex parte* order of *status quo*, there was a well, boring and pucca room in existence and the defendant and his family members used to live there with cattles etc. The construction was made in the year 1988 with the consent of the plaintiffs and the existence of pucca room and boring was admitted. At the time of passing of order of *status quo*, the defendant was digging further boring because of low water level in order to meet out the requirement of water, but immediately on receipt of order, defendant obeyed

the same and stopped the process. Defendant further alleged that the plaintiffs by taking advantage of his absence in collusion with the police immediately got attachment of the property under Section 145 Cr.P.C and thereafter, despite currency of order of *status quo*, dispossessed and thrown out the wife of the defendant from pucca room and boring along with cattles.

[5]. In order to prove the allegations, the applicant/defendant got examined Randhir Yadav, Reader to Tehsildar as AW 1, Joginder Singh as AW 2, Lal Singh as AW 3, Ved Parkash as AW 4 and Attar Singh as AW 5, besides tendering documentary evidence Exs.P1 to P23. On the other hand, respondents/plaintiffs examined Bhagwan Singh as RW 1, Gyasi Ram as RW 2 and Siri Chand as RW 3, besides tendering documentary evidence Exs.R1 to R3.

[6]. Trial Court passed the order dated 30.11.2010 holding the plaintiffs to be liable for intentional disobedience of order dated 19.07.1990 and ordered the plaintiffs to be detained in civil imprisonment for a period of three months. Plaintiffs filed appeal before the Lower Appellate Court and the order dated 30.11.2010 passed by the trial Court was maintained by the Lower Appellate Court vide order dated 01.09.2012.

[7]. Statements of AW 1 and AW 2 were only formal in

nature as the aforesaid witnesses only brought the summoned record in respect of the goods which were dumped in the well. AW 3 Lal Singh stated that he was GPA of his father Raghubir Singh who was an old man. The witness further stated that at the time of passing of *ex parte status quo* order, well, boring and pucca room were in existence and his family was living there along with cattles etc. The construction was made in the year 1988 with the consent of the plaintiffs. The existence of pucca room and boring was admitted by the plaintiffs. At the time of passing of order of status quo, defendant was further doing boring as the water level had gone very low. Immediately, on receipt of the order, the defendant stopped the ongoing construction and boring. Plaintiffs with the help of police attacked the house of the defendants. Defendants were taken in police custody on 23.07.1991. Only an old lady was left at the boring along with cattles. Plaintiffs No.1 to 5 taking undue advantage of the absence of the defendants in collusion with the police firstly got attachment of the property under Section 145 Cr.P.C against the order of *status quo* and dispossessed and thrown out the wife of the defendant from pucca room and boring along with cattles and committed gross disobedience of the order of the *status quo* in collusion with SHO. Defendant after being released on bail, made representations to the police

for damages and for registration of the case against plaintiffs No.1 to 5, but of no avail. In the cross examination, the witness had denied the suggestion that there was no well, boring and pucca room and the defendant along with his family members were not living therein. The witness admitted that for the construction raised in the year 1988 and for digging of well, there was no proof available. The witness further stated that proceedings under Section 145 Cr.P.C were brought into effect and in respect of damages, they also filed claim against State of Haryana. The witness further admitted that there were 8 to 10 cases pending *inter se* between the parties. He further admitted that he was convicted in an incident of firing which took place on 22.07.1990. He also admitted that in respect of damages of tubewell and room, he filed the claim, but the same was dismissed and against the said order of dismissal, an appeal was pending. AW 4 and AW 5 have also deposed in the context of stay granted in favour of the plaintiffs by the Civil Court and demolition took place at the spot.

[8]. RW 1 Bhagwan Singh denied the allegations of the defendant. Similarly, RW 2 Gyasi Ram also denied the existence of borewell and pucca room on the spot and no demolition was done by the plaintiffs. RW 3 Siri Chand also denied the allegations of the defendant in the context of

demolition of borewell and room on the spot.

[9]. Lower Appellate Court while dismissing the appeal has recorded the finding that the complaint filed by the defendant in respect of the incident was dismissed. Even revision filed against the said order was also dismissed. The suit for damages filed by the defendant against plaintiffs No.1 to 5 was decreed, but no evidence was brought on record in respect of subsequent events to show that RSA against the same was pending. Lower Appellate Court has also observed that the defendant could not lead any evidence to show that the room was constructed in the year 1988 except the testimony of Siri Chand (AW3). As per testimony of other witnesses, there was no conclusive evidence to prove that the construction was raised in the year 1988. No witness was examined in respect of incident of demolition. Defendants have failed to prove that there was any well or tubewell except the argument that the well was dug up in the presence of both the parties in view of statements of the plaintiffs before the Court and the same amounted to admission about existence of well.

[10]. Report of Local Commissioner was relied in the context of recovery of articles from the well after digging up the well upto 36/37 feet. Report of Local Commissioner (Ex.P23) was to the effect that Sh. R.S. Saini, Advocate was appointed as Local

Commissioner by the Court vide order dated 11.12.1993 and he was directed to visit the spot and to prepare the list of articles found in the disputed well. Local Commissioner visited the spot on 26.12.1993. On reaching the spot, Local Commissioner called both the parties and both the parties came present along with their Advocates. The labour was already present at the spot for digging the well and the work of digging started on 26.12.1993 at 12 noon and the same continued upto 5 PM. Both the parties agreed that the digging of well will continue and after completion of digging, Local Commissioner was to be called on the spot to make inventory of articles and two persons from either side will remain on the spot. On 29.12.1993, Lal Singh informed the Local Commissioner that the digging work has been completed and the articles have been taken out from the well and the same are lying on the spot. Local Commissioner accordingly went to the spot on 29.12.1993 and thereafter, he was allowed to go from the spot with an understanding that he will be called as and when the digging process was completed.

[11]. Evidently, Local Commissioner was not present at the time of digging and taking out of articles from the well. No other witness was examined by the defendant who had seen the recovery of articles from the well. The digging work was done prior to reaching of the Local Commissioner on 29.12.1993.

[12]. Learned counsel for the petitioners submitted that since the Local Commissioner was not the witness of any process of digging and recovery of articles thereof, therefore, alleged violation of the *status quo* order cannot be tested on the basis of any preponderance of evidence or probability. The proceedings in terms of Order 39 Rule 2A CPC are criminal in nature and the same requires proof beyond reasonable doubts. Petitioners cannot be held guilty under Rule 2A of Order 39 CPC on mere unsubstantiated allegations. Learned counsel placed reliance upon **Lakhbir Singh Vs. Harpinder Singh, 2003(4) RCR (Civil) 162, Kashmir Singh Vs. Kali Charan and others, 2010(7) RCR (Civil) 1397, Surjit Kaur and another Vs. Pritam Singh and others, 2004(1) RCR (Civil) 416, Prem Singh Vs. Darbara Singh and others, 2010(7) RCR (Civil) 669** and contended that the contempt by way of violation of injunction cannot be tested on the basis of preponderance of probability as the same is criminal/quasi criminal in nature. A person who has intentionally violated the interim injunction/*status quo* can be detained in prison and therefore, the principles of criminal law requiring *mens rea* and that the wrongdoer has voluntarily and intentionally committed the breach, must be proved beyond all shadow of doubts. Every act of disobedience may not be contentious. The instinct of *mens rea* or intention is *sine qua*

non for bringing the act within the four corners of contempt.

[13]. On the other hand, learned counsel for the respondent relied upon **Patel Rajnikant Dhulabhai and others Vs. Patel Chandrakant Dhulabhai and others, AIR 2008 SC 3016(1)** and contended that the act of the plaintiff who himself obtained order of *status quo* was contentious. Wilful and deliberate disobedience of interim orders cannot be said to be *bona fide*, honest or in good faith. Even the unconditional apology not coming out from the heart of the contemner cannot be accepted. Learned counsel also relied upon **Surya Vadanam Vs. State of Tamil Nadu and others, (2015) 5 SCC 450** and submitted that violation of an interim order has to be viewed strictly when rule of law is to be maintained. No litigant can be permitted to defy adherence to an interim order of a Court merely because in his opinion the order is incorrect. Though interim order is always subject to modification or vacation by the Court passing the same and no finality is attached to it, but till such modification or vacation of the order, the parties are bound to obey it.

[14]. Having considered the controversy, I find that the Lower Appellate Court itself has recorded a finding in para No.22 of the judgment that there was no witness to demolition of the well. The construction of well raised in the year 1988 was not conclusively proved with reference to witnesses, but the Court

took statements of the plaintiffs to arrive at the conclusion that there was a well in existence and the report of Local Commissioner was also relied to establish existence of well. As already discussed, report of Local Commissioner (Ex.P23) did not show presence of the Local Commissioner at the time of digging. Digging work started w.e.f 26.12.1993 and the Local Commissioner was made to understand that after completion of digging work, he would be called to prepare the inventory of articles so recovered from the well. Local Commissioner went to the spot on 29.12.1993 and prepared the list of articles recovered from the well. Since the proceedings under contempt of Court Act i.e under Order 39 Rule 2A Cr.P.C are semi criminal in nature, therefore, the disobedience on the part of the petitioners has to be proved beyond all reasonable doubts. There is no scope for relying upon preponderance of evidence and probability by visiting the spot on 29.12.1993 when the well had already been dug up and the Local Commissioner was asked to prepare the inventory thereof.

[15]. In view of aforesaid facts and circumstances of the case, I find that the complicity of the petitioners viz-a-viz the alleged dumping of articles in the well which were recovered on 29.12.1993 was on doubtful note. By giving benefit of doubt to the petitioners, I hereby discharge them from the liability. Even

though the petitioners at one point of time were willing to compensate the respondent to avoid the sentence imposed upon them. The intention to settle the controversy at one point of time would not necessarily amount to admission of guilt as the complicity of the petitioners has to be proved beyond all reasonable doubts.

[16]. For the reasons recorded hereinabove, I accept this revision petition and set aside the impugned orders passed by the Courts below.

12.12.2017

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No