

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5472 of 2005(O&M)
Date of decision: 27.01.2017

Gurbax KaurAppellant
Versus
Jagga Singh (deceased) th. his LRs & another ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Vijay Lath, Advocate, for the appellant.

G.S. SANDHAWALIA, J. (Oral)

The present appeal is directed against the order dated 01.09.2005, whereby the Lower Appellate Court sentenced the appeal to civil imprisonment for a period of one month, for breaching the order dated 16.05.1996.

Counsel for the appellant submits that on account of the fact that the appeal of the respondents had been dismissed on 09.11.1999 (Annexure A1), subsequently, after the violation of the *status quo* order, the sentencing was not appropriate and has, accordingly, placed reliance upon a Division Bench judgment of this Court in **Rachhpal Singh Vs. Gurdarshan Singh AIR 1985 P&H 299** and judgment passed in **Darshan Singh Vs. Sadha Singh & others 2002 (3) Civil Court Cases 228 (P&H)**. It is, accordingly, submitted that once factually the litigation has been decided against the applicant-respondents, sentencing was not appropriate and resultantly, challenge has been raised to the judgment in appeal.

In the present case, the Lower Appellate Authority has relied upon the judgment of the Apex Court in **Samee Khan Vs. Bindu Khan 1999 (1) PLR 465** that detention is mode of punishment for being guilty of said disobedience and the Court can adopt both the modes of detention and

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attachment of property. The said view has, thereafter, been followed by this Court in **Smt. Rajinder Kaur Vs. Sukhbir Singh 2001 (4) RCR (Civil) 639** that violation of the stay order pending a decision of the suit would not come to an end with the decision of the suit. Resultantly, directions had been issued that proceedings under Order 39 Rule 2A CPC would continue. For taking the said view and differing from the Division Bench judgment of this Court, reliance was also placed by this Court in **Rajinder Kaur (supra)**, upon observations of the Apex Court in **Tayabhai M.Bagasarwalla Vs. Hind Rubber Industries Pvt. Ltd. etc. AIR 1997 SC 1240**, to hold that there would be no automatic termination of the proceedings even if the civil suit had come to an end with the decision of the suit.

A perusal of the order under challenge would go on to show that an injunction had been issued and in spite of the pendency of the appeal filed by the appellant, she had, thereafter, sold the land by way of registered sale deed in favour of one Kashmir Singh on 20.04.1999 and it is another matter that eventually the appeal was allowed on the ground that the suit was not maintainable since the property was self-acquired.

One aspect, however, has to be kept in mind that the appellant is a lady and it has been pointed out that her age is 63 years. In such circumstances, sending her to civil imprisonment for a period of one month, would be a harsh punishment. In similar circumstances, in **Chand Bai Vs. Maharaja Gaj Singh 1999 AIHC 3724**, the Rajasthan High Court had converted the punishment of imprisonment into payment of fine.

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Accordingly, the present appeal is partly allowed and the said punishment is substituted by imposing a fine of Rs.5000/-, to be deposited within a period of 2 months, before the District Judge, Rupnagar. However, in case of non-deposit of the fine, the appellant shall undergo the imprisonment, as has been directed by the Court below.

January 27th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*