

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

**FAO No.9524 of 2014 (O&M)
Decided on : 06.02.2017**

Bhagwan Dass

... Appellant

Versus

Jai Kishan and others

... Respondents

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

Present : Mr. Rajender Chhokar, Advocate
for the appellant.

G.S. Sandhawal, J. (Oral)

The present appeal is directed against the judgment dated 02.09.2014, whereby the Additional District Judge, Gurgaon has dismissed the application filed under Order 39 Rule 2-A of Code of Civil Procedure, 1908 read with Sections 10 and 12 of Contempt Court Act, 1971 for initiating and punishing the contemnors.

The reasoning which prevailed with the Court was that the application had been filed in respect of the order passed 10 years ago and that the status-quo order dated 01.05.2001, which was stated to have been violated was regarding parties to maintain status-quo from raising construction as such. The mother had sold her share to her son Jai Kishan who was the brother of the present appellant and in the absence of any evidence that he had raised any such construction the self serving statement of the appellants and his two witnesses was not reliable. The application was also dismissed on the ground that since the civil appeal itself stood withdrawn on 13.10.2005 and therefore, the proceedings under Order 39 Rule 2-A CPC could not be continued.

A perusal of the record would go on to show that suit was filed by respondent No.1 on 02.12.2000 for permanent injunction with relief of mandatory injunction that the defendant should not raise any Pacca wall around Killa No.19, wherein tubewell (joint) and Kothri had existed. The application for temporary injunction had been dismissed on 26.03.2001 and the respondent No.1 herein went in appeal wherein the order dated 01.05.2001 was passed ex parte directing the parties to maintain status-quo. The said order reads as under:-

“Present: Sh K.S. Bhatotia, counsel for the appellant.

This appeal has been received by assignment. It be checked and registered. Notice of the appeal as well as stay application be issued to the respondents for 21.7.2001 on filing of PF, RC etc.

Heard on the ex parte stay application. Ld. Counsel for the appellant/plaintiff has submitted that plaintiff alongwith respondent No.1 and other proforma respondents are joint owners in possession of the suit land and respondents want to raise construction more than of their share without partition and if they would succeed in doing so, in that event, appellant/plaintiff would suffer irreparable loss. In view of the submissions so made by Ld. Counsel for appellant, I feel that there are some arguable points in this appeal and accordingly, both the parties are directed to maintain status quo till further orders.”

During the pendency of the appeal, the mother of the parties as such sold/alienated the suit property to the respondent herein and thereafter the appeal was dismissed as withdrawn on 13.10.2005. Resultantly, after a period of more than six years on 13.12.2011, the application under Order 39 Rule 2-A was filed which has thus been

dismissed.

The reasoning which has been given by the Court below is well justified. The dispute was *inter se* as such between the family and dispute was only qua raising the construction and because of the mother alienating her share during the pendency of appeal which was filed one of her son, it would not amount as such to violating any orders passed by the Court, which were prayed only to the effect for not raising construction.

In such circumstances, the dispute was *inter se* the families and the application was filed after the inordinate delay. The purpose of the provisions is to enforce the orders of the Court and not punish the violators.

The said view was taken by the Apex Court in '**State of Bihar Vs. Rani Sonabati Kumari'** AIR 1961 SC 221 that the proceedings under Order 39 Rule 2A cannot be continued after the order of interim injunction has been vacated by virtue of dismissal of the suit. The said view was followed by the Division Bench of this Court in '**Rachhpal Singh Vs. Gurdarshan Singh** AIR' 1985 P&H 299 and thereafter followed in by holding that once the injunction has been vacated by virtue '**Darshan Singh Vs. Sadha Singh and others'** 2002 (3) Civil Court Cases 228 (P&H) of the dismissal of the suit, the proceedings are not liable to be continued. Resultantly, the judgment of the District Judge, whereby he had allowed the appeal and set aside the sentence of civil imprisonment was upheld on the same account. The relevant observations read as under:-

*“In support of this proposition, the observations made by the Supreme Court in **Rani Sonabati Kumari's** case (supra) call be relied, which read as under :*

"Though undoubtedly proceedings under Order 39, Rule 2(3) Civil Procedure Code have a Punitive aspect as is evident from the contemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by the Civil Procedure Code for execution of a decree for a permanent injunction. Order 21, Rule 32 sets out the method by which such decrees could be executed and Clause (1) enacts where the party against whom a decree...for an injunction has been passed has had an opportunity, for obeying the decree and has willfully failed to obey it, the decree may be enforced, in the case of a decree....for an injunction by this detention in the civil prison, or by the attachment of his property or by both Cis. 2 and 3 of this rule practically reproduce the terms of clauses 4 and 3 respectively or Order 39, Rule 2 , and the provisions leave no room for doubt that the 0.39, Rule 2(3) is in essence only the mode for the enforcement of effectuation of all order of injunction."

*6. The aforementioned observations of the Supreme Court were applied and followed by a Division Bench or this court in the case of **Rashpal Singh (supra)** and it was held that neither initiation or continuation of the proceedings under Order 39 Rule 2(3) would be competent after the injunction has been vacated by virtue of dismissal of the suit. Similar view has been taken in the case of **Bhall and others v. Ram Singh and others 1993(1) Recent Criminal Reports 674.***

7. Applying the principles laid down in the judgments referred above the answer to the question posed in the para above has to be in the negative and it has to be held that no proceedings under Order 39 Rule 2(3) of the code are competent to be continued after the order of interim injunction has been vacated

by virtue of dismissal of the suit. So in the present case, the Suit was dismissed on 5.9.1980 by the Sub Judge, 2nd Class and appeal dismissing the suit was also dismissed on 26.7.1983. In view of the afore-mentioned legal position, this revision petition fails and the order passed by the learned Distt. Judge, Patiala dated 24.2.1981 is upheld. No order as to costs.”

In such circumstances, the Court was well justified in dismissing the application on the ground of limitation apart from the fact that the main proceedings itself stood withdrawn. Accordingly, there is no merit in the present appeal and the same is dismissed.

FEBRUARY 06, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No