

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.1428 of 2018 (O&M)

Date of Decision.20.03.2018

Azad and another

.....Petitioners

Vs

Ashok and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Surinder Singh Duhan, Advocate
for the petitioners.

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AMIT RAWAL J.(ORAL)

The petitioners-defendants are aggrieved of the impugned order dated 25.01.2018 whereby the application moved under Order 39 Rule 1 and 2-A CPC has been allowed by the Additional District Judge, Sonapat.

The respondent-plaintiff instituted the suit for permanent injunction restraining the defendants from dispossessing and not to encroach upon the disputed site along with an application under Order 39 Rule 1 & 2 CPC, which was dismissed by the trial Court vide order dated 26.05.2016 and the appeal was preferred before the lower Appellate Court as status quo regarding the property in dispute was ordered on 30.05.2016.

The application under the aforementioned provisions of the Act was moved on 14.07.2018 that the status quo order was violated, for, the defendant had raised the wall and therefore, there was a willful, intentional and deliberate violation of the status quo order. The aforementioned application was contested by the petitioners-defendants saying that the summons did not contain the endorsement about the nature of injunction granted by the Court and as such, there was no communication of the order.

On the basis of the aforementioned pleadings, the lower

Appellate Court had granted one month's time to remove the wall constructed during the pendency of suit, failing which the petitioners-defendants shall be liable to be punished for disobedience of the order of the Court.

Mr. S.S. Duhan, learned counsel appearing on behalf of the petitioners submitted that the lower Appellate Court has not assigned any reason while rejecting the submission and the documentary evidence brought on record, for, the summons effected upon the defendants did not contain the endorsement of the injunction. The aforementioned fact has been proved through the testimony of RW-2 Krishan Kumar, Process Server, who deposed that he received the summons from the Nazir and approached respondents at village Baroda Mor. The respondent-Dilbag was found at his residence and Azad was reported to be out of station, therefore, he served summons upon Dilbag son of Bhim Singh and the summons qua Azad was also given to Dilbag as they were relatives. Wall in dispute was constructed before passing of the status quo order on 27.05.2016, thus, urges this Court for setting aside the order under challenge.

I have heard learned counsel for the petitioners-defendants, appraised the paper book and of the view that the finding arrived at by the lower Appellate Court in ordering the removal of the wall is perfectly legal and justified as no person can be permitted to show disregard and disrespect to the injunction order. It is matter of record that the injunction application was dismissed by the trial Court on 26.05.2016. Wall could not have been raised within one day as the injunction was granted on 30.05.2016. It is yet to be ascertained whether the wall was raised during the interregnum period i.e. after the dismissal of the application and before granting the status quo

order. The first summon sent to the petitioners was on 14.07.2016 and second on 28.07.2016. The petitioners intentionally avoided the service of first summon and second summon and was served on 28.07.2016. In the meantime, they managed to raise the construction. There is categoric assertion of the respondent-plaintiff, Ashok that the petitioners-defendants had knowledge of the status quo order dated 30.05.2016 and he deliberately violated the order by raising construction of wall on the dispute site on 28.06.2016. All these facts weighed in the mind of court in passing the order of removal of the wall.

In view of the aforementioned, the order under challenge is perfectly legal and justified, much less, cannot be said to be passed without jurisdiction. The revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 20, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No