

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 16, 2018

1. CM No.14573-CII of 2017 & CR No.2847 of 2014

Rajiv Kumar & others

...Petitioners

Versus

Ved Bhatia & another

...Respondents

2. CM No.14587-CII of 2017 & CR No.2848 of 2014

Rajiv Kumar & others

...Petitioners

Versus

Ved Bhatia & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Varun Sharma, Advocate,
for the petitioners in both the cases.

Mr.Ajaivir Singh, Advocate,
for the respondents in both the cases.

AMIT RAWAL, J. (Oral)

CM No.14573-CII of 2017 in CR No.2847 of 2014

CM No.14587-CII of 2017 in CR No.2848 of 2014

The prayer in the applications is for recalling of the order dated 4.7.2017 as due to inadvertence, the revision petitions were ordered to be disposed of as infructuous, though the main case was pending adjudication and the order was passed in separate contempt petition. Now the suit filed by the respondent-plaintiffs had been dismissed and two civil appeals are pending before the Lower Appellate Court and one Regular Second Appeal in this Court for adjudication.

Mr.Ajaivir Singh, learned counsel appearing on behalf of the non-applicant/respondents submitted that he has no objection in case the order dated 4.7.2017 is re-called.

Ordered accordingly.

C.R.Nos.2847 & 2848 of 2014

On merits, Mr.Ajaivir Singh submitted that in the notice of motion order by noticing the contention of the learned counsel for the petitioners, this Court relied upon two judgments rendered in **Kanwar Singh Saini Versus High Court of Delhi, 2011 (4) RCR (Civil) 402 and Kirpal Singh & others Versus Satish Kumar Sabharwal & others, 2007 (4) Civil Court Cases 112 (P&H)**. He submitted that proceedings under Order 39 Rule 2A of the CPC can still continue and proceed *de hors* of the fact that the civil suit had been dismissed. Revision petitions have not been filed against the final adjudication of the application under Order 39 Rule 2A of CPC, though it would be appealable, but the order seeking dismissal of the contempt petition had been assailed in the present revision petitions, therefore, the petitioners would have a remedy to raise all the pleas before the Court trying the petition Order 39 Rule 2A of CPC.

On the contrary, Mr.Varun Sharma, learned counsel for the petitioners in both the petitions submitted that third Revision Petition bearing No.2849 of 2014 was also dismissed as withdrawn. However, misc.application No.14588 of 2017 was filed for recalling of the order, but the same was rendered infructuous, for, the application filed Order 39 Rule 2A CPC was dismissed by the concerned Court vide order dated 11.1.2018. In the other two revisions, he submitted that once the suit had been dismissed, the interim order merged into the same and, therefore, the

respondent-plaintiffs cannot be permitted to continue with the contempt petition. The contempt petition was filed owing to the undertaking. In support, he has referred to the judgment rendered by the Hon'ble Supreme Court in **Kanwar Singh Saini's case (supra)**, and therefore, the petition is not maintainable, but this fact has not been noticed by the trial Court and, therefore, there is illegality.

I have heard the learned counsel for the parties and appraised the paper book.

The decision of the suit and pendency of two appeals before the Lower Appellate Court and one Regular Second Appeal in this Court is not in dispute. The first question before this Court is as to whether in such circumstances, a petition Order 39 Rule 2A of CPC alleging breach of the interim order, would be maintainable after decision of the suit or only during the pendency of the suit. The aforementioned point came to be debated upon before the Hon'ble Supreme Court in **Kanwar Singh Saini's case (supra)**. The second question is whether an application filed Order 39 Rule 2A of CPC after the decision of the suit would be maintainable or not. In **Smt.Rajinder Kaur Versus Sukhbir Singh, 2001 (4) R.C.R. (Civil) 639**, it has been held by this Court that the order passed in the proceedings under Order 39 Rule 2A of CPC would be only appealable, but the contempt proceedings would not come to an end with the decision of the suit. However, in the other two judgments, i.e., **Bhagwan Dass Versus Jai Kishan and others, 2017 (2) Law Herald 1286** and **Kirpal Singh and others Versus Satish Kumar Sabharwal and others, 2007 (3) R.C.R. (Civil) 787**, it has been held that it would not be maintainable. Provisions of Order 39 Rule 2A of CPC pertain to only violation of the interim order.

Though in Meera Chauhan Versus Harsh Bishnoi & Anr., 2007 (1) RCR (Civil) 597, it has been held that a person aggrieved of can always take the assistance of Section 151 of the CPC for the purpose of implementation of the interim order. Interim order merged with the decision of the suit. The main relief has not been granted. It would be a farcical exercise in seeking alleged breach of the undertaking, for, the plaintiffs were not able to succeed in the main suit and there is likelihood of contradictory decisions.

In Kanwar Singh Saini's case (supra), it was held that application Order 39 Rule 2A of CPC, though was filed after the decision of the suit, cannot continue, for, the suit had already been decided. Here also, during the pendency of the application, the suit came to be decided. It tantamounts to the same. Even otherwise, the respondent-plaintiffs have not been able to prove the alleged violation in view of the decision dated 11.1.2018 rendered by the Civil Judge (Junior Division), Jalandhar in a petition titled as “Ved Bhatia & others Versus Rajiv Kumar & others”.

As an upshot of my aforementioned findings, I find that the order under challenge is not sustainable. The petition Order 39 Rule 2A of CPC could not have been proceeded and rightly so, application was moved which should have been allowed. Therefore, the impugned order is set-aside and application filed by the petitioners for dismissal of the contempt petition under Order 39 Rule 2A of CPC is allowed.

Revision petitions stand allowed.

April 16, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No