

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.121 of 1986 (O&M)

Date of Decision: 04.12.2018

Mohan Meakin Ltd.

... Appellant

VS.

Swarup Vegetables Products Industries Ltd.

... Respondent

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

Present: None for the appellant

G.S. SANDHAWALIA, J. (Oral)

The present appeal is directed against the order whereby the application filed under Order 39 Rule 2-A read with Order 39 Rule 5 and Section 151 of CPC was as such dismissed as it was held that it shall be open to the applicants to take such steps as it may be advised for initiating proceedings under the Contempt of Courts Act, if so advised and that Rule 2-A is meant for enforcing an ad interim injunction and not for punishing the persons guilty for such disobedience.

None is present on behalf of the appellant. The appeal of the respondent being RFA No.2185 of 1984 has also been dismissed against the suit for recovery vide order of even date. This Court in **Bhagwan Dass vs. Jai Kishan & Ors. 2017(3) PLR 244** has held that the purpose of the provisions is to enforce the orders of the Court and not punish the violators. The relevant portion of the said judgment reads as under:-

“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.”

Admittedly the case has been transferred to the Court of the District Judge, Muzaffarnagar, for execution of the decree.

Accordingly no case as such is made out to proceed ahead in the present FAO which is as such dismissed, for want of prosecution.

04.12.2018

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**(G.S. Sandhawalia)
Judge**

1. Whether speaking/reasoned?
2. Whether reportable?

**Yes
No**