

113

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

**Civil Revision No.5482 of 2018 (O&M)
Date of Decision: 26.10.2018**

Naresh Kumar and another

.....Petitioners

Vs

**Subhash Dramatic Club (Regd.) Hansi through its President
and Others**

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Rohit Kumar, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioners against the order dated 31.03.2015 passed by the Civil Judge (Jr. Divn.) Hansi, dismissing the application under Order 39 Rule 2-A CPC and order dated 08.05.2018 passed by the Addl. District Judge, Hisar, whereby the appeal preferred against the order dated 31.03.2015 was also dismissed.

[2]. The application under Order 39 Rule 2-A CPC was filed by the plaintiffs/petitioners on the ground that in the civil suit, interim order was passed on 21.01.2009 and the defendants No.1, 2, 4, 6 and 7 were restrained from continuing any construction work over the site in question till 28.02.2009 i.e. the

date fixed for filing of written statement. Petitioners asserted that despite the stay granted by the trial Court, defendants raised the construction of staircase and new water hut in eastern and southern sides and further demolished the stage meant for playing Ram Leela and other dramas of patriotic and religious character. Defendants also demolished visitors gallery. It was further asserted by the plaintiffs that the aforesaid activities were done by the defendants intentionally by disobeying the interim order dated 21.01.2009. The prayer was made to punish the defendants for disobeying the aforesaid order passed by the trial Court.

[3]. The application was contested by the defendants/respondents on number of grounds. The allegations were denied and it was asserted that there were four staircase in the premises of the club. The plaintiffs did not disclose as to which staircase was constructed in violation of the interim order of the trial Court nor they filed any site plan to substantiate their allegations of disobeying the order of the trial Court by the defendants. No construction was raised by the defendants after passing of the order by the trial Court. The construction on the site was raised prior to passing of the order.

[4]. The trial Court after framing necessary issues held that the plaintiffs have examined Laxmi Kant Goel as PW-1. The

said witness was not the member of the club as his membership had already been cancelled by the Arbitrator vide order dated 16.11.2007. He had no right to file contempt application against the defendants and to appear as witness to depose against the members of the club. Except the aforesaid witness PW-1, no witness was examined by the plaintiffs to prove the allegations against the defendants in the context of alleged violation of the interim order dated 21.01.2009 passed by the trial Court. The photographs placed on record did not show any type of construction raised after passing of interim order dated 21.01.2009. The photographs were not found sufficient to attribute any violation on behalf of the defendants. In the absence of any evidence led by the plaintiffs, the material ingredients viz. time, place and manner of alleged violation could not be demonstrated by the plaintiffs on record so as to attract any consequence of action under Order 39 Rule 2-A CPC.

[5]. Having perused the material on record in the aforesaid context, I find that the plaintiffs could not lead any such incriminating material to prove the alleged violation with reference to any such construction raised by the defendants after the order dated 21.01.2009 passed by the trial Court. The photographs produced on record are not suggestive of the fact

that the same were the existing photographs only after 21.01.2009 and the construction was raised only after 21.01.2009. The execution of such photographs would remain debatable for want of evidence.

[6]. The solitary statement of PW-1 that too on behalf of a person, who was not member of the club would not bring any alleged culpability on behalf of the defendants within the four corners of Order 39 Rule 2-A CPC. The ingredients of Order 39 Rule 2-A CPC remained missing in terms of alleged violation with reference to date, time, place and manner of such event. Both the Courts below have concurrently dismissed the application under Order 39 Rule 2-A CPC. There cannot be any exception to the findings recorded by the Courts below after due appreciation of material on records.

[7]. In view of aforesaid, finding no merit in this revision petition, I hereby dismiss the same.

October 26, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No