

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

115

CR No.5499 of 2018

Date of Decision:14.09.2018

Jagsir Singh and another**....Petitioners****Versus****Harpreet Singh and others****....Respondents****CORAM : HON'BLE MR. JUSTICE B.S.WALIA**

Present: Mr.Gurmeet Singh Saini, Advocate for the petitioners.

B.S.WALIA, J (Oral)

[1] Revision petition has been filed under Article 227 of the Constitution of India, against order (Annexure P-3) dated 19.07.2018, passed by the learned Civil Judge (Junior Division), Ferozepur, dismissing the application filed by the petitioners-plaintiffs under Order 39 Rule 2 (A) CPC on account of respondent Nos.1 to 8 having intentionally and knowingly disobeyed order dated 16.03.2018 i.e. Annexure P-1 with a further prayer for initiating proceeding against respondent Nos.1 to 8 under the Contempt of Courts Act for disobeying order (Annexure P-1) dated 16.03.2018.

[2] Brief facts of the case, leading to the filing of the revision petition are that a civil suit was filed by the petitioner/plaintiff against respondent Nos.9 to 15 and Gurbhagat Singh and Jasbir Singh for a permanent injunction, leading to order directing the parties to maintain *status quo* as regard possession over the suit property during the pendency of the suit. Thereafter, application (Annexure P-2) was filed against proforma respondent Nos.9 to 15 and respondent Nos.1 to 8, alleging willful and intentional disobedience of the orders of *status quo* dated 16.03.2018 i.e. Annexure P-1, passed by the Court of

the learned Civil Judge (Junior Division), Ferozepur. While issuing notice to respondent Nos.9 to 15, application under Order 39 Rule 2(A) CPC *qua* respondent Nos.1 to 8 was dismissed on the ground that relief of temporary injunction was a right in personam and not a right in rem and the application was maintainable only *qua* parties to the suit/application.

[3] Learned counsel contended that after hearing the parties to the suit, the learned Civil Judge (Junior Division), Ferozepur vide order dated 16.03.2018 (Annexure P-1) had directed parties to the suit to maintain *status quo* with regard to possession over the suit property during the pendency of the suit. However, the respondents had intentionally and willfully disobeyed the order of the learned Civil Judge (Junior Division), Ferozepur, therefore, the impugned order was legally unsustainable and alongwith respondent Nos.9 to 15, respondent Nos.1 to 8 were also liable to be proceeded against under Order 39 Rule 2 (A).

[4] On query, learned counsel for the petitioner frankly conceded that respondent Nos.1 to 8 were not impleaded as defendants in the civil suit.

[5] Proceedings under Order 39 Rule 2(A) lie only against persons, who were party to the suit in which the injunction order was passed. It is settled law that if the person sought to be proceeded against under order 39 Rule 2(A) CPC is neither a party to the suit nor had knowledge of the injunction order of which breach was alleged, no case of willful disobedience is made out against such persons under Order 39 Rule 2(A) CPC. Reference in this context can be made to the decision of Hon'ble the Bombay High Court in case titled as '**Mohiddin Basha Abdul Razak versus Municipal Corporation of Gr. Bombay and others**', 2001 AIR (Bombay) 18 as well as the decisions of

Allahabad High Court in case titled as '**Manoj Kumar Kesharwani** versus **Sanjai Kumar Kesharwani and others**', 2006(11) RCR (Criminal) 739 (DB), '**Mohd. Rafeeq and others** versus **Mohd. Hafeez @ Abdul Hafeez**', 2015(1) CivCC 126, and '**Shri Rajendra Sharma** versus **Shri Satish Chandra Garg and others**', 2015(20) RCR (Civil) 585.

Relevant extract of the decision passed in '**Mohiddin Basha Abdul Razak** versus **Municipal Corporation of Gr. Bombay and others**', 2001 AIR (Bombay) 18 by Hon'ble the Bombay High Court is as under:-

"None of them was defendants in the original suit and there was no order of injunction against them. At the outset I therefore, hold that they cannot be held guilty of breach of any order passed by the Court in any proceedings where they were not the parties."

Relevant extract of the decision passed in '**Manoj Kumar Kesharwani** versus **Sanjai Kumar Kesharwani and others**', 2006(11) RCR (Criminal) 739 (DB), by Hon'ble the Allahabad High Court is as under:-

"In the present case, we do not think that this Court should exercise suo motu powers to proceed for criminal proceedings against the opposite parties. Several reasons are lined up to back our this view. First, as per the own case of the applicant the lower court has passed a temporary injunction order directing both the parties to maintain status quo. It would be debatable question as to who actually was in possession of the disputed property when the temporary injunction order was passed. It would naturally be in the range of the factual controversy. Second, the order passed by the lower court was an order 'in personam'. To say in other words, it was not an order 'in rem'. Such an order binds only the parties to it. The opposite party Nos.3, 4, 5 and 6 were not at all parties to that suit."

Relevant extract of the decision passed in '**Mohd. Rafeeq and others** versus **Mohd. Hafeez @ Abdul Hafeez**', 2015(1) CivCC 126, by Hon'ble the Allahabad High Court is as under:-

“5. A proceeding under Rule 2A Order 39 is a serious matter. The Court is empowered to order to take away the liberty of an individual and order detention of the person who violates the order, in civil prison. The power is penal in nature. If so, the burden is heavily on the person who alleges disobedience to prove the ingredients of the offence beyond reasonable doubt. An order under Rule 2A cannot be passed on suspicion or as a matter of course. These should be clear proof that the order to be obeyed was clear, unambiguous and, with full knowledge of the content of the order it was disobeyed.

The purpose of Rule 2A Order 39 is not to punish a person who has disobeyed the injunction order, but to enforce it. Only willful disobedience invites the wrath of penal action as envisaged in the said provision. Unless knowledge of the order of Court is proved, the breach thereof cannot be said to be willful.

6. In the case of Margo Municipal Council v. Pandurag Kusta Alve, AIR 2000 Bombay 78 it has been held that a person who is neither impleaded in the suit nor any order of injunction is passed against him cannot be held guilty for breach of any order passed in such proceedings.

7. In the case of Bhupinder Singh v. Parmodh Singh, AIR 2008 HP 3 it has been held that if the respondents are neither a party in the suit nor they had enjoyed knowledge of the injunction order of which breach was alleged, no case of willful disobedience can be made against them under Order 39, Rule 2A CPC.

Thus, Order 39, Rule 2A is not intended to give power to visit (for contempt) against those persons who are not a party in a

suit in which the injunction order has been passed and not served on them.”

Relevant extract of the decision passed in ‘**Shri Rajendra Sharma** versus **Shri Satish Chandra Garg and others**’, 2015(20) RCR (Civil) 585, by Hon’ble the Allahabad High Court is as under:-

“12. On behalf of the appellant, it has been argued that the learned trial Judge has wrongly held that respondent nos.1 to 3 were not bound by injunction order dated 23rd February, 2004 since they were not party to the suit on the relevant date. In the impugned order the learned trial Judge has noticed this fact that respondent nos.1 to 3 were impleaded as defendants on 6th August, 2009. Thus, on the date of the order dated 23rd February, 2004, they were not party to the suit nor the appellant could prove that they were aware about the said interim order. The contention of the appellant in this regard is not substantiated from the record, hence, rejected.”

[6] However, there is an exception to the said rule and even a person, who is not a party to the suit can be proceeded with under Order 39 Rule 2(A) CPC, in case he had knowledge of the injunction and still intentionally and willfully disobeyed the same. Although in the revision petition, the petitioners have become wiser and have mentioned that respondent Nos.1 to 8 intentionally and willfully flouted order dated 16.03.2018 (P-1) in knowledge of the said order yet a perusal of the application (Annexure P-2) reveals that the allegation of knowledge of order dated 16.03.2018 (P-1) is attributed only to respondent Nos.9 to 15. In other words to the defendants in the suit and not to respondent Nos.1 to 8 herein, who were not defendants in the suit. Even otherwise order dated 16.03.2018 (P-1) had ordered the parties to the suit to maintain *status quo qua* the possession of the suit property.

[7] In the light of the position as noted above, I do not find any infirmity with the well reasoned order, passed by the learned Civil Judge (Junior Divison), Ferozepur. Accordingly, the revision petition being bereft of merit is *dismissed in limine*.

(B.S.WALIA)
JUDGE

September 14, 2018

rajneesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No