

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

CR no.7359 of 2018

Date of Decision: 22.11.2018

Mahender Singh

...Petitioner

Vs.

Mahender Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. K.S. Khehar, Advocate, for the petitioner.
Mr. G.C. Shahpuri, Advocate, for respondent no.1.

Amol Rattan Singh, J (Oral)

Learned counsel for the petitioner submits that, firstly, the order of the learned trial court, dated 30.07.2015, (a part of Annexure P-3), passed on the application filed by the respondent under Order 39 Rule 2A CPC, by which the trial court had not imposed any punishment upon the petitioner but had directed him to get the sale-deed cancelled subject to final decision of the court (in the suit), was an order not challenged by the respondent but by the petitioner himself and therefore, the impugned order passed by the learned appellate court (Annexure P-5), dated October 3, 2016, remitting the matter to the trial court to pass fresh orders on punishment of the petitioner, in the light of the observations made by that court, virtually holding that the petitioner was guilty of contempt, was an order which could not have been passed in such appeal, when no appeal was filed by the respondents herein, further especially at a time when the suit itself had been dismissed on August 13, 2015, i.e. more than one year prior to the passing of the impugned order.

Mr. Khehar also relies upon a judgment of a Division Bench of this Court in Rachhpal Singh v. Gurdarshan Singh, AIR 1985 Punjab and Haryana 299, wherein though in that case the suit had been withdrawn, after

which the application under Order 39 Rule 2A CPC was filed, the Division Bench held as follows:-

“Once it is held that the provisions of rule 2-A are not meant to punish the person guilty of disobedience and instead their purpose in substance is only to enforce an injunction, the answer to the question involved has to be that no initiation or continuation of the proceedings under the aforementioned rule would be competent after the *ad interim* injunction has been vacated.”

He also relies upon a judgment of a coordinate Bench of this Court in **Babu Lal v. Deep Chand and others**, 2016 (2) PLR 485, to similar effect.

In response, Mr. Shahpuri, learned counsel appearing for respondent no.1, submits that there having been admittedly a violation of the order of the trial court dated February 10, 2011, restraining the petitioner herein from alienating the suit property, despite which it was alienated on March 14, 2011, the factum of the suit having been dismissed thereafter in the year 2015, would have no effect, especially when the respondent is in appeal against the judgment of the trial court dismissing her suit.

Having considered the matter, though undoubtedly learned counsel for respondent no.1 is correct in submitting that once there is a violation of the order, the petitioner had opened himself to proceedings under Order 39 Rule 2A CPC, but in my opinion, with the ratio of the judgment of the Division Bench in Rachhpal Singhs' case (*supra*) being to the effect that once the interim injunction had been vacated, there can be no initiation or continuation of the proceedings under rule 2A, I do not see how the impugned order can be sustained, which, to repeat, had been in fact passed not on an appeal filed by the respondent (applicant, as regards the application under Order 39 Rule 2A), but on the appeal filed by the

petitioner against the order of the trial court directing cancellation of the sale deed.

Consequently, this petition is allowed with the impugned order set aside.

However, nothing stated herein above shall be taken to be an observation of this Court on the merits of the case of either party, with the appeal (stated to be still pending before the appellate court), to be decided wholly on its own merits.

22.11.2018
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes