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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on :7th May, 2018

+ CM(M) 764/2016 and CM 28732/2016

BHAJINDER SINGH & ORS Petitioners

Through: Mr. Atul Kumar and Mr.
Abhimanyu Sharma, Advocates

Versus

JASPAL SINGH & ORS Respondents

Through: Mr. Maninder Jeet Singh, Adv. for
R-1, 2 & 5

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners brought a challenge through the present petition to the correctness, legality or propriety of the order dated 17.11.2015 of the court of the Civil Judge on the file of the miscellaneous case (M no.45/2011) whereby the application under Order XXII Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) of the first to fifth respondents (successors-in-interest of Darshan Singh) was allowed and the petitioners (they being successors-in-interest of Didar Singh) were substituted in his place in the proceedings arising out of application under Order XXXIX Rule 2A read with Section 151 CPC which was submitted in July, 1999 in relation to a civil suit that had been instituted by the said Darshan Singh against the said Didar Singh statedly impleading sixth respondent (Surinder Singh @ Swinder Singh) as second defendant / respondent. The petitioners also

question the continuation of the proceedings on the said application under Order XXXIX Rule 2A CPC post the dismissal of the suit in which the order the breach whereof is alleged had been passed.

2. The counsel on both sides have been heard and the record has been perused. It may be noted here that the costs which were imposed by order dated 22.11.2017 have been paid today by the petitioners to the counsel for the first to fifth respondents (collectively representing the plaintiff of the suit in question).

3. The pleadings and the documents on record reveal that the parties have been locked in litigation since 1981. Didar Singh (predecessor-in-interest of the petitioners) had instituted a civil suit no. (347/2000/1981) against Darshan Singh seeking the relief of declaration and perpetual injunction. The said suit indisputably came to be decreed by judgment dated 31.07.2001, the challenge to which order by the defendants of the suit, in which context present case arises, by appeal (RCA 12/2001), having been unsuccessful before the first appellate court that dismissed the said appeal by judgment dated 24.12.2002. It is also not in dispute that second appeal (RSA 11/2003) filed before this court was dismissed by judgment dated 08.12.2005 and the special leave petition brought before the Supreme Court was also dismissed by judgment dated 07.04.2006, the review petition and curative petition having been dismissed by orders dated 20.07.2006 and 29.09.2009 respectively.

4. Though there is another suit having been instituted on 22.10.2007, the facts pertaining thereto are not necessary and may be

kept aside. The suit in the context of which the application under Order XXXIX Rule 2A CPC was filed, was instituted in 1988, wherein an order directing the parties to maintain *status quo* with regard to the subject property was passed by the trial court on 17.03.1988. The application under Order XXXIX Rule 2A CPC was filed in July 1999 statedly on the basis of construction of a wall by Didar Singh, the said wall having resulted in closure of a door of a room in the subject property, this allegedly in collusion with Surinder Singh. The application remained pending while the suit in question was dismissed, after trial, by judgment dated 09.06.2011. The said judgment was challenged by the plaintiff, Darshan Singh before the first appellate court but unsuccessfully so as the appeal was dismissed by judgment dated 16.04.2015. Though the petitioners would state that the review petition filed by the plaintiff of the case was also dismissed by the first appellate court by order dated 04.05.2016, it is the submission of the counsel for the contesting respondents that another application pointing out deficiency in the said order dated 04.05.2016 is still pending.

5. Be that as it may, on 28.11.2014, Didar Singh died. This led to application under Order XXII Rule 4 CPC read with Section 151 CPC being moved on 13.02.2015. The said application was resisted by the petitioners who are the successors-in-interest and whose substitution was the prayer made in the said application. While allowing the application, the objections of the petitioners were repelled by the Civil Judge, though seemingly agreeing with the submission that the

contempt proceedings cannot be “initiated” against the legal representatives of the deceased alleged contemnor.

6. The counsel for the contesting respondents places reliance, *inter alia*, on *Shyam Sundar Rakshit Vs. Satchidananda Rakshit and Anr.*, AIR 1955 Calcutta 351, *Sahib Zada Adbul Bais Khan Vs. Budh Singh Bapna*, AIR 1973 Rajasthan 201 and *Urban Improvement Trust, Jodhpur and Ors. Vs. Barkat Khan*, 2003 AlHC 818. His argument is that the application under Order XXXIX Rule 2A CPC having been submitted at the stage when the suit was still pending and the order, the breach of which is alleged was then still operative, the proceedings cannot be scuttled in the manner sought to be done, the cause of action to secure due obedience having survived the death of Didar Singh.

7. *Per contra*, the petitioners place reliance on *Kanwar Singh Saini Vs. High Court of Delhi*, (2012) 4 SCC 307 to argue that the interim order stood effaced from the record after the dismissal of the suit, such interim order having merged in the final order and, therefore, the proceedings under Order XXXIX Rule 2A CPC cannot continue, particularly after the death of the alleged contemnor.

8. Having heard both sides and having gone through the record carefully, this court finds substance in the submissions of the petitioners. The reliance as mentioned earlier on the rulings of Calcutta High Court and Rajasthan High Court by the contesting respondents is misplaced. The objective of Order XXXIX Rule 2A CPC is primarily to secure compliance with the interim injunction. The said interim injunction order having itself been vacated with the

dismissal of the suit, there is no purpose served by continuation with the inquiry into the alleged disobedience or breach of the said interim order.

9. In the opinion of this court, the petitioners are correct in submitting that the allegations of breach were levelled against their predecessor-in-interest and it is he only who could have been made answerable, if at all the proceedings could be permitted to continue. Having regard to the nature of the proceedings under Order XXXIX Rule 2A CPC, such continuation against the legal representatives after the death of the alleged contemnor is wholly unfair and unjust, particularly in view of the fact that the interim order itself has been effaced from the record. In the opinion of this court, it is not expedient to continue with the inquiry on the application under Order XXXIX Rule 2A CPC which is thus, hereby directed to be closed.

10. The petition and the pending application stand disposed of with above directions.

R.K.GAUBA, J.

MAY 07, 2018

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