

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

112

CR No.2586-2018

Date of Decision: 27.03.2019

Gurmail Singh

... Petitioner

Vs.

Swaran Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr.Gagandeep Singh Virk, Advocate
for the petitioner.

Mr. S.S.Siao, Advocate
for the respondent.

Amol Rattan Singh, J (Oral)

Mr. Siao, learned counsel for the respondent, had submitted on the last date of hearing that as a matter of fact with the petitioner herein having lost in the *lis* up to the stage of second appeal also, this petition has been rendered infructuous.

Learned counsel for the petitioner on the other hand submits that regardless of the outcome of the suit filed by the petitioner, once there was a violation of the interim order passed by the trial Court, on an application filed under Order 39 Rules 1 & 2 CPC, the respondent cannot be allowed to go scot-free, for deliberate violation of the said order. He relies upon various judgments of this Court as also Co-ordinate Benches of other High Courts, to substantiate his aforesaid contention.

Whereas the principle contained in that argument is obviously not refutable, however, it is seen that vide the orders impugned the learned

trial Court, as also the learned Appellate Court, (on an application filed by the petitioner under Rule 2A of Order 39 of the CPC), found that it was not determinable as to whether the construction raised on the suit property was prior to the interim order passed by the trial court (directing that *status quo* be maintained) or whether it was thereafter.

Learned counsel for the petitioner has drawn attention of this Court to the report of the Local Commissioner appointed to determine the factual position on the property, by which report it was stated that a new construction had been raised on the ground floor and the first floor of the property, and that shuttering was fixed under the roof/lined on the first floor. He therefore submits that even with the shuttering not having been removed on the date of the visit of the Local Commissioner, i.e. 16.03.2006, and the order having been passed in June 2005, there would be no question of any old shuttering remaining on the suit property.

Whereas normally that would be correct, however, whether that was shuttering that was existent prior to the order directing *status quo* to be maintained, and for that reason was not removed, or it was shuttering subsequently erected to support a roof constructed after the order, is something which is not determinable, especially with learned counsel for the respondent having pointed out that, in his cross-examination, the Local Commissioner admitted that he could not comment on the age of what he described to be new construction.

That being so, with the suit property admittedly having been found to be that of the respondent, right up to the stage of a second appeal, I see no reason to entertain this petition.

It is consequently dismissed.

(AMOL RATTAN SINGH)
JUDGE

27.03.2019
anju

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