

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

**CR No.4369 of 2016(O&M)
Date of Decision: 14.11.2019**

Gurmeet SinghPetitioner
Versus
SM Cold Warehouse Pvt. Ltd. and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. B.D. Sharma, Advocate
for the petitioner.

Ms. Ruchi Sekhri, Advocate
for respondent No.2.

Mr. Vikram Jeet Singh, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 30.09.2014 passed by Civil Judge (Junior Division), Jalandhar and order dated 18.01.2016 passed by Additional District Judge, Jalandhar, vide which application under Order 39 Rule 2-A CPC was dismissed concurrently.

[2]. Plaintiff/petitioner filed an application under Order 39 Rule 2-A CPC for initiating contempt proceedings against the respondents for violation of order dated 02.08.2008 passed by Civil Judge (Junior Division), Jalandhar in a suit for partition titled Gurmeet Singh Vs. S.M. Cold Warehouse Pvt. Ltd.,

directing the parties to the suit to maintain *status quo* regarding removal of articles from the joint property. The case was adjourned to 01.09.2008. No material has been placed on record whether the order of *status quo* was extended thereafter. At the same time, there is no order available on record vacating the interim order. The Court has to appreciate whether the respondents have violated the interim order or not. The petitioner was required to prove that despite the order of *status quo*, the respondents have removed the articles from the Warehouse. The pleadings on record are silent with regard to date, mode and manner of disobedience of the order.

[3]. Learned counsel for the petitioner relied upon appointment of Mr. Kunal Goel, Advocate as Local Commissioner to prove the violation. Local Commissioner was not allowed to inspect the site. Vide order dated 09.08.2008, Mr. Kunal Goel, Advocate was appointed as Local Commissioner and he was directed to make inventory/list of articles lying in S.M. Cold Warehouse in the presence of both the parties after giving a prior notice to them and directed to submit his report till 01.09.2008.

[4]. According to report dated 12.08.2008 submitted by aforesaid Mr. Kunal Goel, Advocate, due to conduct and behaviour and non-cooperation shown by the defendants at the

spot, he could not inspect the site. He remained at the spot for more than 1 hour, but could not make any inventory. He further submitted that huge quantity of potatoes were lying on the floor outside the cooling chamber of the cold storage which may range from 20-25 quintals approximately. The Manager namely Vicky told him that there are about 1,15,000/- bags of potatoes in the cold storage, but he did not count the same personally due to strong objections raised by the defendants.

[5]. Thereafter, vide order dated 25.09.2008 passed by the High Court in CR No.5186 of 2008, trial Court was directed to grant necessary police help to the Local Commissioner to carry out the task assigned to him.

[6]. Thereafter, Mr. Kunal Goel, Advocate visited the spot where the Chowkidar was present who disclosed his name as Karam Chand and told him that the premises was locked from inside on the instructions of the defendants and he had no authority to unlock the same. Local Commissioner could not inspect the cold storage due to locking of the premises from inside. However, police officials noticed across the boundary walls of the premises that few persons were present in the open compound and the police officials tried their level best to get the lock opened, but none of the persons came forward. Some photographs were taken. Local Commissioner could not inspect

the site despite his presence for more than 1 hour at the spot. Thereafter, it would remain debatable as to whether Mr. Kunal Goel, Advocate was appointed as Local Commissioner or one Mr. D.K. Gupta, Advocate was appointed as Local Commissioner by the Civil Judge (Junior Division), Jalandhar vide order dated 08.10.2008.

[7]. Admittedly, Mr. D.K. Gupta, Advocate was appointed as Local Commissioner who has been examined as DW-1 in the context of compliance of the order passed by the trial Court. The aforesaid Local Commissioner has prepared the inventory of articles lying in the Warehouse and submitted the same in the Court on 17.10.2008. Local Commissioner has simply submitted that the articles were lying in the Warehouse, but has not stated anything about removal of articles in his report. It could not come on record as to how many articles were present at the time of passing of order of *status quo* and how many articles were removed by the respondents. The pleadings are silent as regards the aforesaid fact and also the date, time and manner in which the order of *status quo* was violated by the respondents. Local Commissioner namely Mr. D.K. Gupta, Advocate who was subsequently appointed by the Civil Judge (Junior Division), Jalandhar vide order dated 08.10.2008 has not made any report regarding removal of any article from the suit property. The

statement of witness is found to be contradictory to the stand taken by the petitioner that the articles were removed by the respondents. The petitioner has failed to prove on record as to exact number of articles lying in the godown at the time of filing of the suit and the exact number of articles allegedly removed by the respondents. It was only hearsay at the time of first visiting of the Local Commissioner that the Manager allegedly said something in the context of potatoes lying in the godown. There is no serious dispute with regard to removal of articles by the respondents which has to be proved with reference to violation of order on a particular date, time and manner.

[8]. During course of arguments, it came to fore that the suit itself has been dismissed vide judgment and decree dated 24.07.2014 passed by Civil Judge (Junior Division), Jalandhar. However, liberty was granted to the plaintiff to file fresh suit for partition after joining all the co-sharers and that too, within a reasonable period of time from the date of aforesaid judgment.

[9]. The contempt in terms of Order 39 Rule 2-A CPC terminated with the culmination of suit proceedings on merits. The rigour of order of *status quo* merged into order of dismissal vide which proceedings were finally terminated by the trial Court. Reference can be made to **Kirpal Singh and others Vs.**

Satish Kumar Sabharwal and others, 2007(3) RCR (Civil)**787.**

[10]. Learned counsel for the petitioner however submitted that the violation has to be seen by virtue of relevant date and subsequent decision of the suit would not hamper the intensity of violation done by the contemnors.

[11]. The aforesaid contention may give rise to arguable point, but in the present case, the petitioner could not prove the factum of removal of articles by the respondents even with the help of report of Local Commissioner. Secondly, the alleged violation did not correspond to the date, time, place and manner of violation. The pleadings of the petitioner are conspicuously silent about the day on which the violation took place and the manner in which the same was carried out by the contemnors. Petitioner has taken contradictory stand. On the one hand, in para No.7 of the pleadings, the petitioner has submitted that the Local Commissioner submitted his report on 12.08.2008, wherein he specifically submitted report regarding potatoes bags to the tune of 1,15,000/- present in the premises and thereafter, potatoes bags more than worth Rs.20,000/- were removed. On the other hand, in the next para of his pleadings, the petitioner submitted that the respondents intentionally and deliberately did not allow the Local Commissioner to make

inventory at the spot. There was no material to prove the fact that Mr. Kunal Goel, Advocate was ever appointed as Local Commissioner for the visit which was ultimately taken by Mr. D.K. Gupta, Advocate who has been examined as DW 1, but he could not depose anything about removal of articles in his report.

[12]. Once the factum of removal of articles could not be demonstrated by the petitioner with reference to any such material on record, therefore, the order of *status quo* regarding removal of articles from the joint property cannot be presumed, particularly when the pleadings and material adduced by the petitioner are silent with regard to time, place, mode and manner of violation of the interim order of *status quo* dated 02.08.2008.

[13]. For the reasons recorded hereinabove, I find no merit in this revision petition. This revision petition is accordingly dismissed.

14.11.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No