

(121) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1370 of 2019 (O&M)
Date of decision: 21.05.2019

Hawa Singh and others Petitioners

Versus

Bul Singh and others Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. R.S. Sangwan, Advocate for the petitioners.
Mr. Sumit Sangwan, Advocate for respondent Nos.1 to 5.

B.S. WALIA, J. (ORAL)

[1] Challenge in the revision petition is to order Annexure P-2 dated 08.01.2019 passed by the learned Additional Civil Judge (Sr. Div.), Charkhi Dadri ordering civil imprisonment of the petitioners for a period of three months on account of the petitioners creating a hurdle in the free usage of the passage by the respondents.

[2] Brief facts of the case leading to the filing of the revision petition are that vide judgment dated 22.09.2014 Civil Suit No.467 of 2010 titled as Bul Singh and others vs Gulab Singh and others was decreed by the Court of the learned Civil Judge (Jr. Div.), Charkhi Dadri and the petitioners-respondents/JDs were restrained from creating any hindrance in the free usage of passage lying on Western doll of Killa Nos.88//24 and 99//4 and 7 situated at village Nimli i.e. passage having width of 11 feet on the western side of the said khasra numbers which had been left for ingress and outgress of the respondents.

[3] The respondents herein filed an application under Order 21

in the free usage of the aforesaid passage by the respondents. The learned Additional Civil Judge (Sr. Div.), Charkhi Dadri vide judgment Annexure P-2, dated 08.01.2019 held that the petitioners/JDs were violating judgment dated 22.09.2014 (Annexure P-1) and were not allowing the respondents to use the passage for ingress and outgress towards their houses and tubewell. Accordingly, the application under Order 21 Rule 32 CPC was allowed and the petitioners/JDs were directed to undergo civil imprisonment for a period of three months in order to enable the execution of judgment dated 22.09.2014 (Annexure P-1).

[4] At the time of preliminary hearing, learned counsel for the petitioners stated that he did not challenge the impugned order on merits but confined his arguments to the plea that the drastic action of ordering imprisonment without resorting to attachment of the property of the petitioners/JDs to secure compliance with the judgment and decree was legally unsustainable. Learned counsel further undertook that the petitioners/JDs would faithfully comply with the judgment and decree i.e. Annexure P-1. While issuing notice of motion and notice regarding stay for 09.04.2019, arrest/detention of the petitioners/JDs in terms of the impugned judgment was stayed till the next date of hearing vide order dated 28.02.2019. On 09.04.2019, Sh. Sumit Sangwan, Advocate had put in appearance on behalf of respondent Nos.1 to 5 and filed power of attorney and requested for time to prepare and to argue the matter.

[5] Learned counsel for the petitioners states that during the pendency of the proceedings, the matter has been amicably resolved between the parties and the obstruction which the respondents were complaining of has since been removed and further the petitioners/JDs undertake to

P-1) passed by the learned Civil Judge (Jr. Div.) Charkhi Dadri in Civil Suit No.467 of 2010 in case titled as Bul Singh and others vs Gulab Singh and others.

[6] Learned counsel for the respondents on the other hand while admitting that the obstruction complained of had been removed and that in the circumstances, the respondents did not wish to oppose the claim of the petitioners for setting aside the impugned order especially in view of the assurance given by the petitioners/JDs that they would faithfully comply with the judgment and decree dated 22.09.2014 (Annexure P-1) passed by the learned Civil Judge (Jr. Div.) Charkhi Dadri in Civil Suit No.467 of 2010 in case titled as Bul Singh and others v. Gulab Singh and others. Learned counsel, however, contends that there is an electric pole in the middle of the passage installed by the Electricity Department in order to supply electricity to the tubewell installed in the fields of the petitioners.

[7] Learned counsel for the petitioners states that as per instructions of the petitioners, an application would be moved by the petitioners/JDs before the Electricity Department requesting for shifting of the pole from the middle of the passage to their fields within a period of 15 days from today.

[8] The same satisfies learned counsel for the respondents.

[9] In the light of the position as noted above as also the undertaking of the petitioners to scrupulously adhere to and comply with the judgment and decree dated 22.09.2014 (Annexure P-1) passed by the learned Civil Judge (Jr. Div.) Charkhi Dadri in Civil Suit No.467 of 2010 in case titled as Bul Singh and others vs Gulab Singh and others, impugned judgment directing the petitioners/JDs to undergo civil imprisonment of three months for violating the judgment and decree dated 22.09.2014

Civil Suit No.467 of 2010 in case titled as Bul Singh and others vs Gulab Singh and others, is set aside as the extreme step of arrest and imprisonment was ordered without resorting to other options for securing compliance. However, in case of failure to adhere to the undertaking to comply with the judgment and decree dated 22.09.2014 (Annexure P-1) passed by the learned Civil Judge (Jr. Div.) Charkhi Dadri in Civil Suit No.467 of 2010 in case titled as Bul Singh and others vs Gulab Singh and others, the respondents would be at liberty to take action in accordance with law.

[10] Needless to mention, not only would the petitioners/JDs faithfully comply with the undertaking to not violate the judgment and decree dated 22.09.2014 (Annexure P-1) passed by the learned Civil Judge (Jr. Div.) Charkhi Dadri in Civil Suit No.467 of 2010 in case titled as Bul Singh and others vs Gulab Singh and others, but they would also move an application before the Electricity Department within the stipulated period of time as per details given above. On receipt of the application/representation from the petitioners/JDs to shift the electricity pole from the middle of the passage to the fields of the petitioners/JDs, the Electricity Department would take appropriate action in respect thereto in accordance with law expeditiously preferably within a period of two months from the date of receipt of application/representation.

[11] Revision petition allowed in the aforementioned terms.

21.05.2019
amit

(B.S. Walia)
Judge

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.