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

**Civil Revision No.4934 of 2019 (O&M)
Date of Decision: 22.11.2019**

Mohinder Singh

.....Petitioner

Vs

**Swaran Singh (since deceased) through his LRs & Anr.
...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. S.P. Soi, Advocate
for LRs of respondent No.1.

Mr. Sahil, Advocate for
Ms. Parveen, Advocate
for respondent No.2

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 03.05.2019 passed by the Addl. Civil Judge (Sr. Divn.) Bholath, vide which the application filed by the plaintiff/petitioner under Section 151 for restoration of water channel and to allow the plaintiff to use the electric motor was dismissed.

[2]. Plaintiffs filed a suit for permanent injunction restraining the defendant/respondent from stopping to use of electric motor connection. An application under Order 39 Rules 1 and 2 read

with Section 151 CPC was also filed along with the suit.

[3]. The trial Court vide order dated 27.05.2013, allowed the aforesaid application and the defendant was restrained from interfering and stopping to use of electric connection, till disposal of the main case. It was also observed that any observation made while disposing of the application shall have no bearing on the merits of the main case. The said order was assailed in appeal before the lower Appellate Court. The order was upheld in appeal by lower Appellate Court vide which the appeal was dismissed vide order dated 13.04.2015. The lower Appellate Court also observed that if the trial Court on the basis of evidence of both the parties comes to the conclusion that the present petitioner has no right with regard to electric motor in existence, the Court may pass an appropriate order in this regard to compensate the present respondents. It was also ordered that the observation made shall not affect the merits of the main case.

[4]. Thereafter the petitioner filed an application under Section 151 CPC for restoration of water channel and to allow the use of electric motor through police help. The petitioner alleged that the respondents have demolished the water channel on 19.06.2017 and the matter was reported to the police. Again respondent No.1, who came from Germany on

27.06.2017, demolished the water channel on the next date i.e. 28.06.2017 and stopped the use of electric motor by the plaintiffs forcibly, thereby causing hindrance in the use of electric motor for irrigation purpose by the plaintiffs.

[5]. In the reply filed by the respondents, they have denied that no such incident has taken place. They further pleaded that they have not violated any order of the Court, nor have used any derogatory language. The complaint filed by the petitioner was claimed to be false. All averments were denied, rather it was pleaded that the plaintiffs have nothing to do with the motor connection and *Khall* etc. and there was no hindrance created by the respondents. In pith and substance, the allegations contained in paras No.5 and 6 of the application were denied altogether.

[6]. The trial Court declined the application for police help vide the impugned order dated 03.05.2019, on the premise that violation of the interim order could have been raked up in proper proceedings by the petitioner under relevant provision of law.

[7]. Learned counsel for the petitioner by relying upon **Meera Chauhan vs. Harsh Bishnoi & Anr., 2007(1) R.C.R. (Civil) 597; Ramphal and another vs. Santosh Bhagana and another, 2018(2) R.C.R. (Civil) 826; Hashen Seikh and others vs. Asura Bibi and others, 2019(1) ICC 74 (Calcutta);**

Gampla Anthaiah and others vs. Kasarla Venkat Reddy and Ors., 2013(45) R.C.R. (Civil) 821 (AP) and **Ram Singh vs. Jaggar Singh, 2000(4) R.C.R. (Civil) 637** submitted that inherent power under Section 151 CPC can be invoked.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. Ratio of aforesaid judgments cited by learned counsel for the petitioner is not in dispute. Inherent power can be exercised in order to prevent process of law as the proceedings under Order 39 Rule 2-A CPC may take long time in contrast to an immediate relief which is sought by the petitioner. If the dispossession is found to be in violation of injunction, the inherent power of the Court can be exercised in order to undo the wrong committed by the wrong doer in dishonouring the interim order.

[10]. In the event of filing an application under Order 39 Rule 2-A CPC, the Court would be in position to frame specific issue with regard to the violation, if any, committed by the defendants. The allegations as per paras No.5 and 6 of the application have been denied altogether by the respondents. The violation of interim order is a question of fact which has to be determined by the Court after framing proper issues and only after inviting both the parties to lead evidence in order to establish violation of

interim order on record. In order to grant *ad interim* mandatory injunction, the Court has to record highest degree of satisfaction and the Court has to be satisfied that the respondents have certainly violated the interim order passed by the trial Court.

[11]. The trial Court granted the injunction in the year 2013 and the same was upheld in the year 2015. Filing of application in the month of June, 2017 would give rise to some issues, whether the plaintiffs were in use of electric connection throughout the period or not. This factual position can only be ascertained if the relevant issue is framed by the trial Court in the proceedings under Order 39 Rule 2-A CPC and both the parties are allowed to lead evidence in confirming or denying the same.

[12]. It is a settled principle of law that in terms of ratio of **Meera Chauhan's** case (supra) and **Mohd. Mehtab Khan and Ors. vs. Khushunma Ibrahim and Ors., AIR 2003 Supreme Court 1099**, inherent powers under Section 151 CPC must be exercised only in exceptional circumstances and the police help cannot be resorted to in ordinary circumstances. The only exceptional circumstances are those circumstances for which the civil Court has not provided any procedure for granting mandatory injunction. The Court is required to be satisfied with highest degree of satisfaction. Though, the grant of temporary

order of injunction is well within the jurisdiction of the Court and it is also within the jurisdiction of the Court to get the same implemented by police help, if the same is violated by the wrong doer. The defendants cannot gain advantage in derogation of rights of the parties, who were litigating originally.

[13]. The provision under Order 39 Rule 2-A CPC can be resorted to in case of disobedience of order of injunction. If disobedience of the order is to be prevented before the disobedience is committed, then under Section 151 CPC, the Court has ample powers, even to grant police help for implementation of the order of injunction. The Court in its inherent discretion can set aside the subsequent events, which are in violation of the order of injunction. The inherent power of the High Court under Section 151 CPC is wide enough and is not even subject to any limitation, when disobedience is proved. It will be the duty of the Court as a policy to set the wrong done and not allow the perpetuation of the wrong done. It is also the duty of the Court to see the breach should not continue and the 3rd party should not take any undue advantage of the act of the defendant, who have violated the interim order.

[14]. In the instant case, the injunction was granted by the trial Court on 27.05.2013. The said order was upheld by the lower Appellate Court on 13.04.2015. The alleged violation in

terms of paras No.5 and 6 of the application and Annexure P-7 was committed on 19.06.2017 and 28.06.2017. It would be debatable as to whether after confirmation of injunction, the plaintiffs were in use of *khall* and electric motor in question. In the reply filed by the respondents, they have denied the allegations altogether. In such type of scenario, before granting ad interim mandatory injunction, the Court has to be satisfied with highest degree of satisfaction as the same can be granted only in exceptional circumstances in view of ratio of **Meera Chauhan** and **Mohd. Mehtab Khan and Ors.** cases (supra).

[15]. In view of facts and circumstances of the case, I deem it appropriate to direct the trial Court to frame a specific issue with regard to the alleged violation of order of injunction by the respondents forthwith and proceed to decide the said issue after giving two opportunities each to the parties in a short span of time, keeping in view the urgency involved in the present case and decide the issue within a period of three months from the date of receipt of certified copy of this order.

[16]. The trial Court shall make every endeavour to decide the issue and thereafter, record its satisfaction in respect of violation in question. If the trial Court is satisfied that the respondents have violated the order of injunction, then the trial Court shall proceed to grant interim mandatory injunction for

removal of the hindrance in the use of water channel and electric motor by the plaintiff. In case the alleged violation is not proved, the trial Court would be at liberty to dismiss the application. The trial Court is obligated to do the needful in the aforesaid context within the time prescribed.

[17] With the aforesaid directions, this revision petition is disposed of.

November 22, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No