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

**Civil Revision No.5654 of 2019 (O&M)
Date of Decision:16.12.2019**

Jai Parkash and others

.....Petitioners

Vs

Kapoor Singh

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sanjeev Kodan, Advocate
for the petitioners.

Mr. Nitin Jain, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the orders dated 06.09.2014 and 06.10.2014 passed by the Civil Judge (Junior Division) Bhiwani and order dated 08.07.2019 passed by the Addl. District Judge, Bhiwani in the appeal against the aforesaid orders dated 06.09.2014 and 06.10.2014.

[2]. Perusal of the record would show that the respondent filed an application under Order 39 Rule 2-A CPC against the petitioners in the context of disobedience of the court order dated 10.04.2009, vide which both the parties were directed to

maintain *status quo* regarding construction over the suit property. The said order was affirmed by the lower Appellate Court vide order dated 17.04.2010. Respondent alleged that despite the order of *status quo*, the petitioners raised new construction. The application under Order 39 Rule 2-A CPC was filed against seven persons. Only Jai Parkash, Vikas and Smt. Santra contested the application.

[3]. The trial Court vide order dated 06.09.2014 held the petitioner and others (respondents No.1 to 5 before the trial Court) guilty for raising construction in violation of order of *status quo* dated 10.04.2009. Vide order dated 06.10.2014, the petitioners were ordered to be sentenced for seven days simple imprisonment. The orders dated 06.09.2014 and 06.10.2014 passed by the Civil Judge (Junior Division) Bhiwani were assailed in the appeal before the lower Appellate Court.

[4]. The lower Appellate Court vide order dated 08.07.2019 partly accepted the appeal and the sentence was reduced to simple imprisonment from opening of the Court till rising of the Court from 10.00 a.m. to 4.30 p.m. on the date to be fixed by the Court.

[5]. The petitioners have come forward to assail the aforesaid orders on the premise that the suit itself was

dismissed on merits at a later stage, therefore, the rigour of Order 39 Rule 2-A CPC would terminate with the decision of the suit itself.

[6]. Learned counsel for the petitioners relied upon **Kanwar Singh Saini vs. High Court of Delhi, 2011(4) R.C.R. (Civil) 402; Rita Datta vs. Rajiv Mehta and others, 2019(2) PLR 292, Babu Lal vs. Deep Chand and others, 2016(2) PLR 485; Kirpal Singh and others vs. Satish Kumar Sabharwal and other, 2007(3) R.C.R. (Civil) 787** and **Dalip Singh & another vs. Balwinder Singh & another, 2009(4) R.C.R. (Civil) 527** in support of his contentions.

[7]. Per contra, learned counsel for the respondent submitted that the petitioners have even misbehaved with the local Commissioner and the order of *status quo* was intentionally flouted. The petitioners do not deserve any leniency. Even after termination of the suit proceedings, the rigour of disobedience shall not vanish away. Even if, the interim order was subsequently vacated or the suit was dismissed, it cannot justify the disobedience of the interim order by the petitioners. In the instant case, even the appeal filed against the judgment and decree of the trial Court has been accepted and the appeal being continuation of the suit proceedings has to be appreciated which would show that case of the plaintiff/

respondent was on legal parameters and the same has been accepted by the lower Appellate Court while decreeing the suit at appellate stage.

[8]. Learned counsel by relying upon **Prithawi Nath Ram vs. State of Jharkhand and others, (2004) 7 Supreme Court Cases 261; Tayabbhai M. Bagarsarwalla and another vs. Hind Rubber Industries Pvt. Ltd. and others, (1997) 3 SCC 443; Pratap Mistry, son of late Hari vs. Sita Ram Mistry, son of late Jodhi Mistry & Anr., 2013(7) R.C.R. (Civil) 2015** and **Mrs. Freny Rustumji and Ors. vs. M/s Rustumji Developments A Regd., Bangalore and Anr., 2011(38) R.C.R. (Civil) 640** submitted that the very purpose of the provision under Order 39 Rule 2-A CPC is to prevent violation of decorum of Court and maintain majesty of law. It has nothing to do with the final order passed in the suit/proceedings as the same stands on different footing. The defaulting party cannot have premium over its intentional disobedience of interim order.

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

[10]. In **Kanwar Singh Saini's** case (supra), the Court after relying upon numerous precedents of different Courts held that proceedings under Order 39 Rule 2-A CPC are available only

during pendency of the suit and not after the conclusion of the trial. Any undertaking given to the Court during pendency of the suit on the basis of which the suit itself has been disposed of, becomes a part of the decree and the breach of such undertaking is to be dealt with in execution proceedings under Order 21 Rule 32 CPC and not by means of contempt proceedings under Order 39 Rule 2-A CPC. Order 21 Rule 32 CPC applies to prohibitory as well as mandatory injunction that is, where the parties are directed to do some act and also to the cases, where the parties abstained from doing an act. The execution of an injunction decree is to be made in pursuance of Order 21 Rule 32 CPC, which provides the manner and mode in which the same has to be executed. No other mode is permissible in law.

[11]. In **Kirpal Singh and others'** case (supra) it was held by the High Court that Order 39 Rule 2-A CPC would not apply to the suit in which interim order was granted and suit was subsequently dismissed by the Court. In the aforesaid judgment and ratio of **Tayabbhai M. Bagarsarwalla's** case (supra) decided by the Hon'ble Apex Court was considered. The ratio(s) of **Darshan Singh vs. Sadha Singh, (2002-2) 131 PLR 681;** **State of Bihar vs. Rani Sanobati Kumari, AIR 1961 Supreme Court 221** and Division Bench of this Court in **Rashpal Singh**

vs. Gurdarshan Singh, AIR 1985 Punjab and Haryana 299

were also relied and it was held that the contempt petition under Order 39 Rule 2-A CPC cannot proceed further in view of dismissal of the main proceedings. Neither initiation nor continuation of proceedings under Order 39 Rule 2-A CPC would be competent after injunction had been vacated by virtue of dismissal of the suit. In **Dalip Singh & another's** case (supra) similar view was endorsed by the Co-ordinate Bench of this Court.

[12]. The ratio(s) of case law referred by learned counsel for the respondent in my considered opinion stands explained in view of later judgment of the Hon'ble Apex Court in **Kanwar Singh Saini's** case (supra).

[13]. In the aforesaid facts and circumstances of the case, I deem it appropriate to accept this revision petition. The impugned orders are set aside. However, the respondent would be at liberty to execute the decree for permanent injunction granted by the lower Appellate Court in accordance with law.

December 16, 2019

Atik

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No