

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

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CR-2719-2021

Date of decision: 20.09.2022

SABAR KHAN AND ORS.

..Petitioners

Versus

HARCHARAN SINGH AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rai Singh Chauhan, Advocate
Mr. Rohit Sapehiya, Advocate
Ms. Deepika Chauhan, Advocate
for the petitioners.

ANIL KSHETARPAL, J(Oral)

The First Appellate Court has affirmed the order passed by the trial Court in an application under Order XXXIX Rule 2-A of the Code of Civil Procedure, 1908. The *sine qua non* for filing an application under Order XXI Rule 32 for the execution of such order is that the judgment debtor despite an opportunity to obey the decree, has wilfully disobeyed it.

The relevant observation made by the First Appellate Court reads as under:-

“It is a settled provision of law that the proceedings under order 39 rule 2-A being one culminating into making the violators liable for penal action therefore the violation alleged in such a petition should be proved beyond reasonable shadow of doubt. Since no ownership rights were conferred upon the appellant he had no business to contest the mutation proceedings. There was no act by the respondent vide which they interfered in the possessory rights of the appellant thereby violating the compromise. It is significant to note that the respondent did not indulge into any unlawful activity to take the possession from the appellant. The appellant since claimed ownership of the property in the mutation proceedings that respondent under the rightful belief that he has violated the compromise approached the court for the possession of the property. It is not a case of outrage where after entering into or compromise the respondent willfully and intentionally in utter violation of principles

of law violated the terms of the compromise. There is nothing to show that the respondents have intentionally and willfully violated the order passed by the court in any manner.”

The learned counsel representing the petitioner though made sincere attempts, however, failed to draw the attention of the Court to any substantive error or perversity in the aforesaid observations.

Hence, no ground to interfere is made out.

Dismissed.

Needless to observe that the observations made while disposing of the application under Order XXXIX Rule 2A shall not be construed as final opinion upon the merits of the case.

All the pending miscellaneous applications, if any, are also disposed of.

September 20th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*