

COCP-1876-2022

Date of Decision :12.09.2022

M/s Bellsonica Auto Components India
Pvt. Ltd.

...Petitioner

versus

Atul Kumar and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Siddharth Gupta, Advocate for the petitioner.

B.S. Walia, J. (Oral)

1. Prayer in the petition is for initiating proceedings against the respondents for intentional and willful defiance of judgment and decree Annexure P-1, dated 21.04.2016 in Civil Suit No.231 of 2014.

2. A perusal of order Annexure P/1 reveals that Civil Suit No.231-2014, was decreed vide judgment dated 21.04.2016 and a decree for permanent injunction was passed in favour of the petitioner permanently restraining the defendants and their members from holding activities including demonstrations, carrying out processions, sitting on dharna etc. thereby causing hindrance of the business of the petitioner's company either inside the factory premises or at the gates of the factory premises.

3. Learned counsel for the petitioner relies upon the decision in COCP-1162-2011, in case titled as TarunSadana vs. Sucha Singh, decided on 18.07.2011 as well as in CR No.4817 of 2009, in case titled as Mohinder Singh vs. Karamvir and others, decided on 30.08.2010, in

support of plea of maintainability of a Contempt Petition for disobedience

of judgment and decree as referred to above.

4. I have considered the submission of learned counsel.

5. Hon'ble the Supreme Court in the case of **Kanwar Singh Saini vs. High Court of Delhi** 2011 (4) Civil Cases 294, held that execution of an injunction decree is to be made in terms of Order 21 Rule 32, Civil Procedure Code as the same provides a particular manner and mode of execution, therefore, no other mode is permissible. Relevant extract of the decision in Kanwar Singh Saini's case (supra) is reproduced as under:-

10. In case there is a grievance of non-compliance of the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order XXI Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. Application under Order XXXIX Rule 2A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order XXI Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the Act 1971 when an effective and alternative remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decreetal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings. There is a complete fallacy in the argument that the provisions of Order XXXIX Rule 2A CPC

would also include the case of violation or breach of permanent injunction granted at the time of passing of the decree.

11. In Food Corporation of India v. Sukha Deo Prasad, AIR 2009 SC 2330, this Court held that the power exercised by a court under Order XXXIX Rule 2A is punitive in nature, akin to the power to punish for civil contempt under the Act 1971. Therefore, such powers should be exercised with great caution and responsibility. Unless there has been an order under Order XXXIX Rule 1 or 2 CPC in a case, the question of entertaining an application under Order XXXIX Rule 2A does not arise. In case there is a final order, the remedy lies in execution and not in an action for contempt or disobedience or breach under Order XXXIX Rule 2A. The contempt jurisdiction cannot be used for enforcement of decree passed in a civil suit.

12. The proceedings under Order XXXIX Rule 2A are available only during the pendency of the suit and not after conclusion of the trial of the suit. Therefore, any undertaking given to the court during the pendency of the suit on the basis of which the suit itself has been disposed of becomes a part of the decree and breach of such undertaking is to be dealt with in execution proceedings under Order XXI Rule 32 CPC and not by means of contempt proceedings. Even otherwise, it is not desirable for the High Court to initiate criminal contempt proceedings for disobedience of the order of the injunction passed by the subordinate court, for the reason that where a decree is for an injunction, and the party against whom it has been passed has wilfully disobeyed it, the same may be executed by attachment of his property or by detention in civil prison or both. The provision of Order XXI Rule 32 CPC applies to prohibitory as well as mandatory injunctions. In other words, it applies to cases where the party is directed to do some act and also to the

cases where he is abstained from doing an act. Still to put it differently, a person disobeys an order of injunction not only when he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing. Execution of an injunction decree is to be made in pursuance of the Order XXI Rule 32 CPC as the CPC provides a particular manner and mode of execution and therefore, no other mode is permissible. (See: Hungerford Investment Trust Ltd. (In voluntary Liquidation) v. HaridasMundhra&Ors., AIR 1972 SC 1826).

6. In view of grievance of the petitioner being w.r.t. disobedience of the judgment and decree, therefore in view of the decision of Hon'ble the Supreme Court as referred to above, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree merely because other remedy is likely to take time or is cumbersome. Violation of the permanent injunction can be set right by through execution proceedings and not through contempt proceedings. Contempt jurisdiction cannot be availed for enforcement of decree passed in a civil suit. Order XXI Rule 32 CPC provides for procedure for the parties to lead evidence, examine and cross-examine witnesses as opposed to summary nature of proceedings in contempt. Contempt proceedings would be maintainable under the Contempt of Courts Act, 1971 only when an effective and alternative remedy is not available to the aggrieved person. As noticed above, the petitioner has a efficacious remedy under Order 21 Rule 32 CPC. In the light of the position noted above, the instant

petition is dismissed with liberty to the petitioner to avail remedy before the learned Courts below, in accordance with law.

(B.S. Walia)
Judge

12.09.2022
ps/rajesh

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>