

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

111

CR-1950-2018

Date of Decision: 30.11.2023

Sunder Pal Goyal

....Petitioner

Versus

Pankaj Goyal and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate
for the petitioner.

Mr. Jashan Chopra, Advocate
for the respondents.

SANJAY VASHISTH, J.(Oral)

1. Present revision petition has been filed for setting aside the order dated 29.09.2017 (Annexure P-1), passed by learned Additional District Judge, Sonapat, whereby, an appeal against order dated 29.01.2015 (Annexure P-2) passed by learned Civil Judge (Junior Division), Ganaur awarding petitioner two months imprisonment in the proceedings under Order 39 Rule 2A CPC, has been dismissed as time-barred.

2. Proceedings in the present revision petition have arisen from the Civil suit No.231 of 2010 titled as ***Pankaj Goyal and others Vs. Sunder Pal Goyal and others***. In the proceedings of the said civil suit, on 16.07.2010, both the defendants appeared through their respective counsel, and opportunity was granted to file the written statement and reply to the temporary injunction application filed under Order 39 Rule 1 and 2 CPC. Learned trial Court vide order

alienation of the suit property till the next date of hearing i.e. 04.09.2010. Further, then Tehsildar Ganaur was informed about the interim order by giving an application in writing on 19.07.2010 at 10:30 a.m., but defendants executed one registered sale deed despite knowing that a restrain order regarding alienation of the suit property has already been passed by the learned trial Court. Even, the purchaser was also aware of the injunction order dated 16.07.2010 and despite that, he became a party to the sale deed.

3. Resultantly, plaintiffs filed an application under Order 39 Rule 2A CPC for seeking punishment of the contemnors for violation of the Court order. After issuance of notice and filing of reply from the defendants, learned Civil Judge (Junior Division), Ganaur concluded that Sunder Pal Goyal (petitioner herein) is guilty of violating the interim order dated 16.07.2010, however, willful disobedience was not found to be proved qua the remaining respondents. Resultantly, vide order dated 29.01.2015, the learned Civil Judge, ordered for arrest of the petitioner and awarded a sentence of two months civil imprisonment from the date of his arrest.

4. Thereupon, Sunder Pal Goyal (petitioner herein) preferred an appeal bearing CA No. 189 dated 15.04.2015, however, the same was dismissed by the learned Additional District Judge, Sonapat, on the ground of delay.

Hence, the present revision petition has been filed assailing the order dated 29.09.2017 (Annexure P-1), passed by learned Additional District Judge, Sonapat as well as the order dated 29.01.2015 (Annexure P-2) passed by learned Civil Judge (Junior Division), Ganaur.

5. Petitioner has already placed on record the order dated 14.12.2022 passed in RSA No. 1983 of 2018 (Annexure P-3).

Learned Senior counsel for the petitioner submits that in fact, during the pendency of the present revision petition, the proceedings in the civil suit had reached before this Court also and the same has been finalized in RSA No. 1983 of 2018. Infact, parties to the *lis* have compromised their dispute and on that account by taking note of the factum of compromise appeal has been disposed of. Even, this Court vide order dated 14.12.2022 passed in RSA No.1983-2018, has ordered to make the compromise (Annexure PX) as part of the decree. For the sake of convenience, the same is reproduced below:

'RSA-1983-2018

As per the compromise, the parties have resolved their disputes, and hence, the present appeal is disposed of in terms of compromise as Annexure PX, which may form part of the order.

Counsel for both the parties have stated at bar that both the parties shall abide by the terms and conditions stated in the compromise.

In the light of the above, the present appeal is disposed of in above terms with the stipulation that all the parties shall abide by the terms and conditions of compromise. Compromise (Annexure PX) is made part of the decree.

Accordingly, the present appeal is disposed of.

Miscellaneous applications, if any, also stand dispose of.'

The said order has also been taken on record of the present revision petition vide order dated 28.11.2023 passed in CM-20821-CII of 2023.

7. Thus, on the strength of the factum of compromise and consequential order passed by this Court, the learned Senior counsel for the petitioner submits that proceedings under Order 39 Rule 2A

6. CPC, do not survive in view of the finalization of the dispute amongst

the parties. Therefore, prays for setting aside of the orders dated 29.09.2017 (Annexure P-1) and 29.01.2015 (Annexure P-2) passed by the Courts below.

8. On 28.11.2023, during the course of hearing, a question arose before this Court i.e.;

“Whether the order of punishment passed under Order 39 Rule 2A CPC after holding someone as violator of Court order can be quashed on the basis of compromise amongst the parties?”

On the said legal aspect, the learned Senior counsel for the petitioner relies upon a judgment passed by this Court (Punjab and Haryana High Court) in CR No.1170 of 1981 dated 24.01.2002 titled as **Darshan Singh Vs. Sadha Singh and others**, 2002(2) PLR 680: Law Finder Doc Id #72490, wherein this Court while relying upon the observations made by Hon'ble Apex Court in **State of Bihar Vs. Rani Sonabati Kumari, AIR 1961 Supreme Court 221** and Division Bench of this Court in case of **Rashpal Singh Vs. Gurdarshan Singh, AIR 1985 Punjab and Haryana 299**, held that :-

“ no proceedings under Order 39 Rule 2(3) of the Code are competent to be continued after the order of interim injunction has been vacated by virtue of dismissal of the suit.”

9. Taking help of the said observation, learned Senior Counsel for the petitioner submits that even in the present case, the parties have entered into a compromise and infact, no dispute exists amongst the parties. Therefore, the proceedings under Order 39 Rule 2A CPC also stand nullified.

Learned Senior counsel for the petitioner further relies upon the judgment passed by this Court (Punjab and Haryana High

Singh and others 2010(7) R.C.R (Civil)669 : Law Finder Doc Id

#206192, and submits that in the aforementioned case, a similar question arose before this Court, which was shaped as under:

'4(i) xxx

4(ii) *Whether the application under Order 39 Rule 2A of the Civil Procedure Code would be maintained after the suit has been decided and when the interim order granted during the pendency of the proceedings stands merged with the final order?'*

Learned Senior counsel for the petitioner further refers to paragraphs No.7 and 8 of **Prem Singh's case (supra)**. For the sake of convenience, the same are reproduced hereunder:

'7. *The Division Bench of this Court in Rachhpal Singh v. Gurdarshan Singh, AIR 1985 Punjab and Haryana 299 has held that proceedings under Order 39 Rule 2A of the Civil Procedure Code are to seek compliance of the ad interim order as it is evident from the reading of the provisions of Order 39 Rule 2A of the Civil Procedure Code as the detention is for the period till such time the injunction order is complied with. Once the injunction order is complied with the defaulter cannot be detained in civil prison. It was held to the following effect:*

"From the combined reading of the provisions of these two sub-rules, it appears that their purpose is the enforcement of the injunction and not the punishment for its disobedience. From the phraseology used in the said rule, it is further evident that detention in the civil prison and attachment of the property are to continue for a specified period and that too only during the continuance of the disobedience of the breach. In the case of detention in the civil prison, the Court is empowered to release the person guilty of disobedience or breach even prior to the expiry of the maximum period of three months and obviously it can be ordered only if the disobedience or breach discontinues. Similarly, attachment of the property cannot remain in force for more than one year and has to be withdrawn if any time prior thereto the disobedience discontinues. It would not be possible for the court to order the sale of property if the disobedience or breach comes to an end prior to the period of one year. Similar are the provisions contained in R.32 or Order 21 which relates to the enforcement of a decree for permanent injunction. It cannot be disputed that the measures contained in Rule 32 are intended only to enforce the decree and not for awarding any punishment to the judgment-debtor for its disobedience. The conclusion, therefore, appears to be irresistible that the provisions of Rule 2-A are meant for enforcing an ad interim injunction and not for punishing the person guilty of such disobedience."

8. *In view of the aforesaid judgment, the purpose of introduction of provisions of Order 39 Rule 2A of the Civil Procedure Code is to provide a mechanism to seek compliance of the orders passed by the Civil Court. It is not the proceedings for Contempt of Court governed by the provisions of Contempt of Courts Act, 1971. '*

Learned Senior counsel for the petitioner also relies upon a decision of the Hon'ble Apex Court titled as **Kanwar Singh Saini Vs. High Court of Delhi** 2012(4) SCC 307: Law Finder Doc Id #270890 and refers to paragraphs Nos. 9 and 10, which reads as under:

'9. *Application under Order 39 Rule 2A Civil Procedure Code lies only where disobedience/breach of an injunction granted or order complained of was one, that is granted by this Court under Order 39 Rules 1 & 2 Civil Procedure Code, which is naturally to ensure during the pendency of the suit. However, once a suit is decreed, the interim order, if any, merges into the final order.*

No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. (Vide: Dr. A.R. Sircar v. State of U.P & Ors., 1993(1) S.C.T. 212: 1993 Suppl. (2) SCC 734; Shiv Shanker & Ors v. Board of Directors, UPSRTC & Anr., 1995 Suppl (2) SCC 726; Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and Anr. v. Sree Kumar Tiwary & Anr., 1997 (2) S.C.T. 747; M/s. GTC Industries Ltd. v. Union of India and Ors., AIR 1998 Supreme Court 1566; and Jaipur Municipal Corpn. v. C.L. Mishra, 2006(1) R.C.R. (Criminal) 774:2006(1) R.C.R (Civil)588:2006(1) Apex Criminal 292:(2005) 8 SCC 423).

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 21 Rule 32 Civil Procedure Code 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 39 Rule 2A Civil Procedure Code is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order 21 Rule 32 Civil Procedure Code and 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 decretal 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 39 Rule 2A Civil Procedure Code would include the case of violation or breach of permanent injunction granted at the time of passing of the decree.'

Learned Senior counsel for the petitioner further relies upon a judgment of Himachal Pradesh High Court titled as **Satpal Singh Vs. Raksha Pal Kaundal and others** 2019 Latest HLJ (H.P.) : Law Finder Doc Id #1653714, whereby, it was held that once parties have arrived at a compromise, an order passed by Civil Judge sentencing the petitioner to civil imprisonment for a period of 3 months in an application under Order 39 Rule 2 A CPC does not stand. Relevant findings recorded on the said issue are reproduced here under:

'10. In view of the parties have arrived at a compromise, therefore, the order passed by the learned Civil Judge (Senior Division), Nalagarh, District Solan in CMP No.219/6 of 2008 whereby he sentenced the petitioner to civil imprisonment for a period of three months in an application filed by the respondents under Order 39 Rule 2A CPC and order dated 14.04.2018 whereby the learned Additional District Judge-I, Solan, District Solan, camp at Nalagarh affirmed the said order, are set aside.'

9. After appreciating the cited judgments as well as material available on record, this Court is of the considered view that the order dated 29.01.2015 (Annexure P-2) passed by learned trial Court in an application under Order 39 Rule 2A of C.P.C. whereby the petitioner was awarded a sentence of 2 months civil imprisonment from the date of arrest has been passed under the provisions of Code of Civil Procedure and not under the Contempt of Courts Act 1971, which in itself is an independent statute. Once, the proceedings of civil suit are governed under the provisions of Code of Civil Procedure, an application moved under Order 39 Rule 2A CPC is also to be considered as civil proceedings during the pendency of the civil suit,

the order of punishment passed by the learned Civil Judge (Junior Division) under Order 39 Rule 2A CPC cannot be equated with the order passed, if any, by a Competent Court of jurisdiction in a Contempt of Courts Act, 1971.

10. Thus, keeping in view that totality of the facts mentioned above as well as taking note of the cited judgments, this Court is also of the view that the proceedings under Order 39 Rule 2A CPC, under which the petitioner is facing the punishment of 2 months civil imprisonment, is arising out of the suit proceedings as a part of the main civil suit and not under any independent proceedings.

Further, once the matter has been compromised and the same has been endorsed in the proceedings of second appeal i.e. RSA No. 1983 of 2018 by this Court, for the purpose of disposal of the said appeal, no point is left to continue with the impugned order passed by the learned Civil Judge, Ganaur, punishing the petitioner herein.

Accordingly, on the basis of the submissions addressed, observations made by this Court in RSA No.1983 of 2018 and relying upon the principle of law laid down by the Hon'ble Apex Court as well as various High Courts, **this Court deems it appropriate to allow the present revision petition and hereby set aside the impugned order dated 29.09.2017 (Annexure P1) and order dated 29.01.2015 (Annexure P2).**

November 30, 2023

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**[SANJAY VASHISTH]
JUDGE**

Whether speaking/reasoned

yes/no

Whether reportable?

yes/no