

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

COC-1731-2023 (O&M)
Date of decision: 02.06.2023

Jaspal Singh and others

....Petitioners

Versus

Imanbir Singh Dhaliwal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. N.K. Verma, Advocate
for the petitioners.

ARVIND SINGH SANGWAN J. (Oral)

This is an unfortunate and ill advised litigation in which the petitioner is praying for initiation of contempt proceedings against two serving judicial officers, without there being any fault on their part.

Though, the petitioners has not attached the plaint with the contempt petition, however the facts as gathered from the order dated 22.02.2023 passed in CR No.1184 of 2023, would reveal that one M/s. Omaxe Chandigarh Extension Developers Private Limited (hereinafter to be referred to as ‘the plaintiff’) has filed a suit for specific performance of an agreement to sell against the petitioners/defendants (wrongly described as plaintiff in the memo of parties). The plaintiff has filed a suit for specific performance of an agreement to sell dated 21.03.2015, qua the land of the petitioners measuring 28 Kanals 18 Marlas in Village Bansepur, District S.A.S. Nagar, Mohali, on the basis of some assignment agreement.

The order further reveals that the suit came up for the first time before the Civil Judge (Jr. Division) on 28.11.2018 and an ex parte injunction was granted on 14.12.2018. Since the application under Order 39 Rules 1 and 2 CPC could not be decided for the reasons as noticed in the aforesaid order, primarily either due to COVID-19 situation or on account of various applications filed by the parties and transfer of the Presiding Officers, the aforesaid revision petition was disposed of with the following observations:-

“9. Resultantly, the present revision petition is allowed. Ld. Trial Court shall dispose of pending application within a period of 4 weeks from the date of receipt of the instant order or a copy of the web print being produced before it by petitioner/defendants. Registry to convey this order to Ld. Presiding Officer of the Trial Court as well as to Ld. District Judges of the States of Punjab, Haryana and U.T. Chandigarh for sensitizing Ld. Presiding Officers of Trial Courts about the significance and importance of timely disposal of injunction applications in such like pending cases.

10. In the parting, I may also hasten to add here that I am fully alive to the situation that delay is not attributable to any one particular Presiding Officer. From the date of filing of the suit until the date, it is the third Presiding Officer, in the interregnum, dealing with the application. Even he has not taken note of statutory duty cast on him, inasmuch as, case was listed before him for first time on 08.07.2022, but he has been adjourning the disposal of the application without recording any acceptable reasons, knowing fully well that ex parte injunction was granted way back on 14.12.2018. It is thus not the negligence of any singular Presiding Officer.

However, it is a duty of every Presiding Officer to be self vigilant and mindful of the duty as envisaged under the provisions of Order 39 Rule 3A CPC. The current incumbent though joined as Presiding Officer in the Court in question only in the month of July, 2022 but ought to have been careful in mechanically adjourning the pending application even that the same had already been pending before his predecessors for about 4 years.

11. Furthermore, there is another conspectus of the matter viz. the petitioner having not availed his appellate remedy before first Court of appeal. This Court is not interfering in ex parte injunction with liberty to petitioner to seek his remedy of appeal in case he so choses but given that the Ld. Trial Court has already been asked to decide the same within 30 days it is for the petitioner to take a call on his options. The power reposed with Trial Court to pass ex-parte injunctions is contained under Order XXXIX Rule 1 CPC which reads as under:

“1. Cases in which temporary injunction may be granted.—

Where in any suit it is proved by affidavit or otherwise- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying

and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.”

12. It is thus clear that any ex parte interim orders can only be passed under the aforesaid rule and the same has since specifically been made appealable under Order 43 Rule 1 CPC which reads as under:

“1. Form of appeal.

What to accompany memorandum—

(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the Judgment.

Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.

13. In view of the aforesaid provision, it was thus open to petitioner to seek mitigation of his grievance by approaching learned Appellate Court due to inordinate delay in disposing the application under Order 39 Rules 1 and 2 CPC owing to which the ex parte injunction continued to be in operation.

14. Be that as it may, revision petition is being disposed of in above terms without interfering with the subsistence of the impugned order.

15. Pending civil miscellaneous application(s), if any, shall also stand disposed of.”

The petitioner alleges that despite the order dated 22.02.2023, the two proposed respondents, who are the Civil Judges, have not decided the application in time.

Counsel for the petitioner has submitted that even an application was filed before the District Judge, S.A.S. Nagar, Mohali, seeking transfer of the civil suit pending in the Court of respondent No.1 to some other Court alleging that the Presiding Officer is having soft corner for the plaintiff. The another reason was given that there is a delay in disposal of the interim application.

This transfer application was filed on 01.05.2023. Counsel for the petitioner has further submitted that the District Judge, S.A.S. Nagar, Mohali, has issued notice for 19.05.2023 and in the meantime, on 05.05.2023, the trial Court passed an order that the petitioners/defendants have moved some applications for transfer of the case but no order from the Court of District Judge was produced and the case was adjourned for 08.05.2023. On 08.05.2023, Mr. Sanjeev Kumar, Advocate, filed Power of Attorney on behalf of the plaintiff along with an application for substitution of the authorized representative on behalf of the plaintiff, however, in the order it was recorded that nobody was present on behalf of the defendants i.e. the petitioners and the case was adjourned for 10.05.2023. On 10.05.2023 again, no one appeared for the petitioners/defendants and the case was

again adjourned for the next day i.e. 11.05.2023, for the appearance of the defendants and arguments on the said application.

On 11.05.2023, again no body appeared for the petitioners/defendants and the trial Court in its order recorded that the copy of the order dated 22.02.2023 passed in CR No.1184 of 2023, is placed on record by the plaintiff vide which directions were issued to decide the application within a period of 30 days. In the later part of the order, it is stated that the case has been called several times but nobody appeared for the defendants and the case was adjourned for 15.05.2023.

Counsel for the petitioners has further contended that though on 11.05.2023, the case was shown to be adjourned for 05.07.2023, however later on, the case was shown to be adjourned for 15.05.2023, a fact which is contrary to the contents of order dated 11.05.2023 itself.

The arguments by counsel for the petitioners is two fold. Firstly, that the order dated 22.02.2023 passed by this Court in CR No.1184 of 2023, directing the trial Court to decide the application under Order 39 Rules 1 & 2 CPC within a period of 30 days is not complied with and secondly, once the application for transfer of the civil suit from the Court of trial Judge was filed before the District Judge wherein notice was issued for 19.05.2023, without awaiting the decision, the trial Judge has disposed of the application under Order 39 Rules 1 & 2 CPC.

It is worth noticing that contempt petitions are being filed in a casual manner against the sitting Civil Judges/Judicial

Magistrates as well as the Presiding Officers who are Additional District Judges/Additional Sessions Judges, therefore, this Court instead of issuing notice has sought the comments of the concerned officer through e-mail yesterday i.e. 01.06.2023 and adjourned the case for today i.e. 02.06.2023. The trial Judge has sent his synopsis as well as the detailed order dated 15.05.2023 deciding the application under Order 39 Rules 1 & 2 CPC. The synopsis along with the orders are taken on record as “Mark X”, collectively.

It is clarified by the trial Judge that the order of the High Court was placed on record for the first time on 11.05.2023 and within a period of 04 days, the same was complied with by passing a detailed order deciding the application under Order 39 Rules 1 & 2 CPC.

A perusal of the order dated 15.05.2023, deciding the application would reveal that a detailed order running into 13 pages, has been passed, allowing the application in favour of the respondent/plaintiff and directing the defendants/petitioners to maintain status quo and not to alienate the suit property or any portion in any manner till the disposal of the suit.

The trial Judge has also reported that counsel for the defendants/petitioners was continuously absent on three dates i.e. 08.05.2023, 11.05.2023 and 15.05.2023.

It is also worth noticing that this contempt petition is filed on 30.05.2023 without even disclosing that on 15.05.2023, the necessary compliance has been made and a detailed order deciding the

application under Order 39 Rules 1 & 2 CPC, has already been passed by the Additional Civil Judge (Sr. Division).

After hearing the counsel for the petitioners, this Court find no ground to issue notice to the respondents/Judicial Officers, for the following reasons:-

- 1. In the order dated 22.02.2023 itself, the Co-ordinate Bench has observed that the delay is not attributable to any particular Presiding Officer as in the intervening period, 03 officers were transferred.*
- 2. The petitioner has neither placed on record the copy of the plaint nor the order dated 15.05.2023, which was passed in compliance of the direction issued by this Court and has very conveniently concealed these facts, so as to get notice for unnecessarily putting pressure on the Presiding Officer of the trial Court, a practice which needs to be deprecated.*
- 3. The ground taken by the petitioners that the transfer application was filed before the District Judge, S.A.S. Nagar, Mohali on 01.05.2023, in which the District Judge, S.A.S. Nagar, Mohali on 03.05.2023, issued notice for 19.05.2023, therefore, the trial Court Judge should have adjourned the case beyond the date fixed before the District Judge again is an act of delaying tactic on behalf of the petitioners themselves and even contrary to the mandate of the order dated 22.02.2023.*

Once on 11.05.2023, this fact came to the notice of the trial Judge that this Court on 22.02.2023 has directed to decide the application under Order 39 Rules 1 & 2 CPC, within a period of 30 days, in the absence of any stay granted by the District Judge, S.A.S. Nagar, Mohali, regarding the proceedings before the trial Judge, the trial Court Judge was bound to comply with the order dated

22.02.2023, passed by this Court and therefore, no fault can be found with the trial Judge.

- 4. The conduct of the petitioners in not appearing before the trial Court for three consecutive dates itself shows that the petitioners are trying to play smart i.e. on one side, this contempt petition is filed that the trial Judge has not complied with the directions passed by this Court directly to decide the application within a period of 30 days and on the other side, an application was moved before the District Judge for transfer of the case by levelling bald allegations that the trial Judge has soft corner for the plaintiff.*
- 5. Even it is already noticed in the order that more than 03 Presiding Officers, have already been changed and even the petitioners/defendants are themselves not appearing before the trial Court, which lead the Court to pass an ex parte order so as to avoid the violation of the order of this Court.*
- 6. The petitioners are even guilty of concealing the fact that on 15.05.2023, a detailed order is already passed and this contempt petition has been filed after 15 days of passing of this order stating that the compliance has not been made.*
- 7. Even Section 3 of the Judges (Protection) Act, 1985, reads as under:-*

“3. Additional protection to Judges. --

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section(2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section(1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or

any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.”

Therefore, the petitioner has a remedy to challenge the order dated 15.05.2023 by way of filing appeal and this contempt petition is misplaced.

On all accounts, the conduct of the petitioners itself show that they are themselves trying to delay the disposal of the case by putting blame on the Presiding Officer of Court.

Accordingly, this Court finds that no willful disobedience is made out by either of the respondents and therefore, this petition is dismissed with the costs of Rs.5,000/-, which will be payable by the petitioners, with the District Legal Services Authority, S.A.S. Nagar, Mohali.

Considering the number of contempt petitions being filed against the Judicial Officers, in a casual manner, the Registry is directed to take an affidavit of the Advocate, who is filing a contempt petition against any subordinate Judge to the effect **“That the action of the respondent (Judge) is not protected under the Judges (Protection) Act, 1985”**.

(ARVIND SINGH SANGWAN)
JUDGE

02.06.2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No