

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 4467 of 2019****Date of Decision: 17.11.2023**

Deepak Kumar Dumra and Others

... Petitioner(s)

Versus

S.P.Goyan (Now Deceased) through his Legal Representatives

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Aman Bahri, Advocate
for the petitioner(s).Mr. Saurabh Bajaj, Advocate
for the respondent.**Anil Kshetarpal, J.**

1. Through this revision petition, the petitioner calls in question the correctness of the order passed on 30.05.2019 by the Civil Judge (Junior Division), Ludhiana. In substance, the question that arises for adjudication is “Whether the proceedings commenced under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) for the violation of the interim order passed by the Court will continue after the civil suit in which the order was passed has been finally dismissed?”

2. In this case, the respondent remained unsuccessful in the civil suit filed by him for the grant of specific performance of the agreement to sell. The aforesaid judgment passed by the trial Court to dismiss the suit has been confirmed in the first appeal, second appeal as well as by the Supreme court. However, the respondent wants to continue with the proceedings

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petitioners have raised certain construction during the pendency of the suit in violation of the interim order. With the dismissal of the suit, the property remains with the petitioners. They are continuing in the possession of the property. The respondent has no right, title or interest in the property.

3. The learned counsel representing the petitioner relies upon the judgment passed in ***Kanwar Singh Saini v. High Court of Delhi (2012) 4 SCC 307*** to contend that after the suit is decided, the proceedings under order XXXIX Rule 2A CPC will come to an end because the interim order passed during the pendency of the suit merges in the final order passed in the case.

4. The Supreme Court, after discussing the provisions of the Order XXXIX Rule 2A CPC, has held as under:-

“17. Application under Order 39 Rule 2A CPC lies only where disobedience/breach of an injunction granted or order complained of was one, that is granted by the court under Order 39 Rules 1 & 2 CPC, which is naturally to enure 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 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 & Anr. v. Sree Kumar Tiwary & Anr., AIR 1997 SC 3071; M/s GTC Industries Ltd. v. Union of India, AIR 1998 SC 1566; and Jaipur Municipal Corpn. v. C.L.Mishra, (2005) 8 SCC 423).

18. *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 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 39 Rule 2A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order 21 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 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*

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the provisions of Order 39 Rule 2A CPC would also include the case of violation or breach of permanent injunction granted at the time of passing of the decree.

19. *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 39 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 39 Rule 1 or 2 CPC in a case, the question of entertaining an application under Order 39 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 39 Rule 2A. The contempt jurisdiction cannot be used for enforcement of decree passed in a civil suit.*

20. *The proceedings under Order 39 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 21 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*

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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.”

5. The learned counsel representing the respondent, while relying upon the judgment of the Patna High Court in ***Pratap Mistri v. Sita Ram Mistri AIR 2010 Pat. 104*** submits that if an application under Order XXXIX Rule 2A CPC is filed during the pendency of the suit, the same shall be heard irrespective of the fact that ultimately the suit has been dismissed.

6. This Court has considered the submissions of the learned counsel representing the parties. In para 17 of the aforesaid judgment, the Supreme Court has analysed the aforesaid situation and held that if the case is ultimately dismissed, the interim order stands nullified automatically. Moreover, in this case, the only allegation against the petitioners is that they have made certain construction on their own property. Moreover, the litigation shall come to an end and it shall not be made a never ending process.

7. Keeping in view the aforesaid facts, the present revision petition is allowed. The order dated 30.05.2019 is set aside. The application filed under Order XXXIX Rule 2A CPC shall be consigned to the record by the trial Court.

(Anil Kshetarpal)
Judge

November 17, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No