

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.243

LPA-1191-2023 (O&M)

Date of decision : 21.02.2024

Mukul Dev

..... Appellant

Versus

A.K.Rathee

..... Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr.Akshay Bhandari, Advocate, for the appellant.

Mr.Saurabh Gulia, Advocate, for the respondent.

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DEEPAK SIBAL, J. (Oral)

1. The appellant instituted a suit before the Civil Judge (Senior Division) Gurugram (for short – the civil court) in which the Resident Welfare Association of Sispal Vihar, Sector 49, Gurugram (for short, RWA) was the defendant. Through his suit, the appellant sought the issuance of directions to the RWA to allow the appellant to use the rooftop of his penthouse flat in terms of the Clause 26(a) of the booking letter and to withdraw all notices/emails sent by the RWA to the appellant with regard to restraining him from using the rooftop of his flat as also to injunct the RWA from forcing the appellant to remove the solar panels installed by him on the rooftop of his flat. Alongwith his suit, the appellant filed an application under Order 39 Rules 1 and 2 CPC seeking therein issuance of interim directions. On being put to notice, the RWA appeared before the civil court and disputed the appellant's claim. On 06.09.2021 the civil court directed both parties to maintain *status quo*. Thereafter, on an application filed by the appellant, through an order dated 23.12.2022, the civil court permitted the appellant to connect the solar panels installed by the appellant on the roof of his flat with the main electric grid. When the RWA failed to comply with the afore interim directions by the civil court the

appellant knocked the doors of this Court invoking its contempt jurisdiction. While these contempt proceedings were pending, against the order of the civil court dated 23.12.2022, the disobedience of which had been complained of in the appellant's contempt petition, the RWA filed an appeal before the Additional District Judge, Gurugram (for short, the appellate court). Through order dated 19.05.2023, passed in RWA's appeal, the appellate court remitted the matter to the civil court with a direction to take a fresh and final decision on the application filed by the appellant under Order 39 Rules 1 and 2 CPC. In the meanwhile, the appellate court stayed the operation of the interim order of the civil court dated 23.12.2022.

2. In line with the directions issued by the appellate court, the civil court, through its order dated 26.05.2023, finally disposed of the appellant's application filed under Order 39 Rules 1 and 2 CPC by directing the parties to maintain *status quo* qua possession. Thereafter, the appellant's contempt petition, alleging the disobedience of the civil court order dated 23.12.2022, was taken up and decided by a learned Single Judge of this Court on 28.07.2023. The learned Single Judge was of the view that the civil court had passed orders dated 23.12.2022 and 26.05.2023 without considering the fact that the solar panels had been installed by the appellant on the roof of his flat without any prior permission from the competent authority and that the appellant had no right to lock the entry to the roof of his flat as this would directly interfere with the rights of other flat owners who according to the learned Single Judge also had the right to use the rooftop as there were water tanks and other common electricity connections installed over there. The learned Single Judge then went on to dismiss the appellant's contempt petition with an advisory to the civil court as to how it should proceed with the matter. The judgment of the learned Single Judge dismissing the appellant's contempt petition is the subject matter of challenge through the present intra court appeal.

3. Learned counsel for the appellant restricts his challenge to the observations made by the learned Single Judge effecting the merits of the appellant's pending civil suit as also to the advisory issued by the learned Single Judge to the civil court as to how the civil court should proceed with the suit as according to the learned counsel by having made these observations and issuance of the advisory the learned Single Judge has prejudged and prejudiced the appellant's suit. In this regard, attention of this Court is drawn to the order dated 06.12.2023 passed by the appellate court in an appeal preferred by the RWA against the order of the civil court dated 26.05.2023 wherein the appellate court has allowed the RWA's appeal by merely referring to and quoting the impugned observations and advisory by the learned Single Judge.

4. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

5. The appellant had invoked the contempt jurisdiction of this Court complaining therein violation of the interim stay granted in his favour by the civil court through its order dated 23.12.2022. During the pendency of the contempt petition the order of the civil court dated 23.12.2022 was appealed against by the defendant in the appellant's suit-RWA. Since the order of the civil court dated 23.12.2022 was an ad interim order in the application filed by the appellant under Order 39 Rules 1 and 2 CPC, the appellate court, through its order dated 19.05.2023, passed in the appeal by RWA directed the civil court to take a fresh and final decision on the interim prayer made by the appellant. In the light of these directions the civil court, through its order dated 26.05.2023, finally disposed of the appellant's application under Order 39 Rules 1 and 2 CPC by directing the parties to the appellant's suit to maintain *status quo*. Neither party complained of any violation of the *status quo* order of the civil court dated 26.05.2023. In the light of

these subsequent developments the learned Single Judge could have simply disposed of the appellant's contempt petition but he did not do so. Rather, he dismissed the appellant's contempt petition after recording the following observations: -

“However, in both the orders, the trial Court miserably failed to understand that before installation of solar panel, prior permission of A.W.H.O./R.W.A./DHBVNL, was required and merely because the petitioner at his own has fixed the solar panel will not give a right to the petitioner either to lock the entry of rooftop or use it in a manner, which is directly affecting the user by other flat owners, who also have a right to go to the rooftop as there are water tanks and other common electricity connections are installed. The trial Court has failed to appreciate this aspect of the case that the petitioner has adopted a novel method of fixing solar panel on the rooftop so as to use it exclusively by him.

Finding no merit in this contempt petition, the same is dismissed.

The trial Court is advised to keep it in mind that while considering the balance of convenience and a prima facie case, the interest of other flat owners in the same tower where the penthouse of the petitioner is situated is also to be taken care and if no permission was granted by either of the aforesaid three authorities i.e. A.W.H.O./R.W.A./DHBVNL, mere fixing the solar panel at his own by the petitioner, no preferential right can be claimed by the petitioner against the other flat owners of the same tower.”

(emphasis supplied)

6. Through the afore quoted observations the learned Single Judge has held that the appellant had installed the solar panels on the rooftop of his flat without permission from the competent authority(ies) and that the appellant had no right to lock the entry to the rooftop of his flat to protect the said solar panels. The learned Single Judge was further of the view that the other flat owners had also the right to use the roof over the appellant's flat.

7. The appellant has filed his suit seeking therein issuance of directions to the RWA to allow him to use the roof over his flat and to restrain the RWA from removing the solar panels installed by him on the roof of his flat as also to direct the RWA to withdraw all notices/emails sent by the RWA to the appellant with regard to restraining him from using the rooftop of his flat. The appellant's suit is still pending. In fact, issues in his suit are yet to be framed. At this stage, the afore quoted observations by the learned Single Judge and that too in contempt

proceedings were avoidable as such observations by a superior court would certainly prejudice the appellant during the course of decision of his suit.

8. In the exercise of his contempt jurisdiction even the afore quoted advisory by the learned Single Judge to the civil court to decide the appellant's interim application in a particular manner and by keeping in mind a particular fact was also, least to say, uncalled for especially when there was no challenge before the learned Single Judge to either of the orders of the civil court dated 23.12.2022 or 26.05.2023 or even to the order of the appellate court dated 19.05.2023. In the exercise of its contempt jurisdiction the learned Single Judge should have not delved into the merits of the appellant's pending suit and opined thereupon. By doing so, the learned Single Judge clearly transgressed the scope and extent of his contempt jurisdiction.

9. In the light of the above, we find that the learned Single Judge, while deciding the appellant's contempt petition, travelled well beyond his jurisdiction to opine on the merits of the appellant's suit as also to render advice to the civil court to proceed with the appellant's suit in a particular manner. Therefore, the afore quoted observations made on the merits of the appellant's suit and the advisory issued to the trial court are unsustainable. Accordingly, they are set aside. The civil court shall proceed to decide the appellant's suit on its merits and completely uninfluenced by the observations/findings/advisory in the impugned judgment.

10. Allowed in the above terms.

[DEEPAK SIBAL]
JUDGE

21.02.2024
shamsher

[DEEPAK MANCHANDA]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No