

**(2009) 07 P&H CK 0099**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Amarjit Singh

APPELLANT

Vs

Joga Singh

RESPONDENT

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**Date of Decision:** July 3, 2009

**Acts Referred:**

- Contempt of Courts Act, 1971 - Section 20

**Citation:** (2009) 156 PLR 277

**Hon'ble Judges:** Rakesh Kumar Garg, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Rakesh Kumar Garg, J.

The present petition has been filed by the petitioner for punishing the respondent for willfully disobeying the undertaking given in the Court of Additional District Judge, Amritsar on 4.9.2002 (Annexure P-4) wherein the respondent made a statement that he will make construction on the disputed property as per the sale deed dated 15.5.1974 and will not construct anything more than that.

2. As per the averments made in this petition, there was a dispute between the parties and petitioner had filed a civil suit for permanent injunction restraining the defendant from encroaching upon the area of the petitioner as detailed in the suit and further restraining him from raising any construction on the said portion of the land. Along with the suit the petitioner had also filed an application under Order 39 Rules 1 and 2 CPC for grant of interim injunction. During the pendency of his appeal before the Additional District Judge, on the question of interim stay the respondent made a statement that he will make construction on the disputed property as per sale deed dated 15.5.1974 and the petitioner got his appeal dismissed as withdrawn.

3. In the present petition, it has been alleged by the petitioner that the respondent raised the construction on a wall covering an area beyond 75 feet in land on

11.7.2003 and thus, has committed a contempt of the Court by violating his undertaking given before the Additional District Judge, Amritsar in the proceedings under Order 39 Rules 1 and 2 CPC.

4. I have heard learned Counsel for the petitioner and perused the record of the contempt petition.

5. Undisputedly, the alleged statement/undertaking was given by the respondent in, an appeal arising out of proceedings under Order 39 Rules 1 and 2 CPC and on the basis of the aforesaid undertaking an order dated 4.9.2002 (Annexure P-5) was passed by the Additional District Judge, Amritsar. A remedy is provided under Order 39 Rule 2A CPC for disobedience or breach of injunction granted under Order 39 Rules 1 and 2 CPC and the person guilty of such disobedience or breach can be detained in the civil prison. Admittedly, the petitioner also filed a contempt petition in the Court of Additional District Judge, Amritsar on 25.7.2003 which was dismissed. However, the petitioner has not challenged the correctness of that order. The Hon'ble Supreme Court in the case of *FCI v. Sukhdeo Prasad* 2009 (2) R.C.R. (Civil) 834 has held that when an interim order is disobeyed contempt or penal proceedings do not lie as the aggrieved party has a remedy to execute the said order under Order 39 Rule 2A CPC for disobedience or breach of injunction granted under Order 39 Rules 1 and 2 CPC and the person guilty of such disobedience or breach can be detained in the civil prison. Admittedly, the petitioner also filed a contempt petition in the Court of Additional District Judge, Amritsar on 25.7.2003 which was dismissed. However, the petitioner has not challenged the correctness of that order. The Hon'ble Supreme Court in the case of *FCI v. Sukhdeo Prasad* 2009 (2) R.C.R. (Civil) 834 has held that when an interim order is disobeyed contempt or penal proceedings do not lie as the aggrieved party has a remedy to execute the said order under Order 39 Rule 2A CPC.

6. It may also be pointed out here that it is the case of the petitioner himself that the alleged undertaking was breached by the respondent on 11.7.2003 whereas the present petition has been filed before this Court on 28.5.2009 i.e. after the expiry of limitation period of one year as provided u/s 20 of the Contempt of Courts Act, 1971. It may also be noticed that the petitioner has concealed the material facts and has tried to mislead this Court by misstating the facts. In para No. 3 of this contempt petition, the petitioner has stated that he withdrew the appeal as well as his suit vide Annexure P-5 whereas a perusal of Annexure P-5 would show that the petitioner had withdrawn his appeal only which was filed by him against the order of the trial Court passed on his application filed under Order 39 Rules 1 and 2 CPC. The petitioner has not placed on record the order of the Court withdrawing his suit on the basis of the alleged statement/undertaking made by the respondent.

7. Thus, in my view, the present petition is liable to be dismissed being frivolous. Ordered accordingly.