
Amarjit Singh Vs Joga Singh

None

Court: High Court Of Punjab And Haryana At Chandigarh

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

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dismissed as withdrawn.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.