

Pirthipal Singh Vs Gurdev Singh and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 7, 2000

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 115
Constitution of India, 1950 â€” Article 227

Citation: (2001) 1 CivCC 24 : (2000) 4 RCR(Civil) 203

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Inderjit Malhotra, for the Appellant; Arun Jain, for Respondent No. 1, Mr. G.S. Gandhi, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.

This order disposes of Civil Revision filed by Pirthipal Singh under Article 227 of the Constitution of India read with

Section 115 C.P.C. for calling the record of Civil Suit No. 526 of 1992 pending in the Court of Sub Judge 1st Class. Fatehgarh Sahib and for

setting aside the order dated 1.6.1996 passed by the Court of Mr. D.K. Sarpal, Sub Judge, Fatehgarh Sahib and for setting aside the further

proceedings of granting temporary injunction vide order dated 5.8.1996 passed by Ms. Manju Rana, Sub Judge 1st Class, Fatehgarh Sahib and

order dated 13.9.1997 passed by the Court of Additional District Judge. Fatehgarh Sahib.

2. Some facts can be noticed in the following manner:

Gurdev Singh son of Gurdial Singh and Gurbachan Singh son of Surain Singh filed a suit for permanent injunction restraining the defendant and his

servants from blocking and encroaching upon the passage mentioned in the suit by ploughing it or in any other manner and from preventing the

plaintiffs from using the said passage illegally and forcibly and from dismantling the Khal running in the same. Along with the plaint. they Gled an

application under Order 39 Rules 1 and 2 C.P.C. praying that during the pendency of the suit the ex-parte injunction order be also issued in favour

of the plaintiffs against the defendant.

3. The suit as well the application came up for hearing before Sub Judge 1st Class (Mr.P.S. Virk), Fatehgarh Sahib on 4.7.1992. It may also be

mentioned here that along with the application under Order 39 Rules 1 and 2 C.P.C. The plaintiffs also file one more application for appointment

of Local Commissioner. On 4.7.1992 the following order was passed by the trial Court;-

Present: Counsel for the plaintiff.

Presented today. Let defendant be summoned for 30.7.1992.

The plaintiff has filed this application for grant of ex parte ad-interim injunction. This application is supported by copy of jamabandi for the year

1988-89. Apart from that, this application is also supported by an affidavit. Accordingly sufficient grounds are made out for allowing this

application which is accordingly allowed restraining the defendant from blocking and encroaching upon the passage by ploughing it or in any other

manner and from preventing the plaintiffs from using the said passage illegally. forcibly and from dismantling the Khal running in the same till 30.7.

1992. In the meantime, plaintiff is directed to comply with the provisions of Order 39 Rule 3 C.P.C. today itself. In case, compliance is not made,

stay granted shall stand automatically vacated.

The plaintiff has also moved an application for appointment of Local commissioner. I have heard learned counsel for the plaintiff. I find sufficient

merit in this application which is accordingly allowed and accordingly Sh. V.K. Arora, Advocate is hereby appointed as Local Commissioner with

the directions that he should inspect the spot and to report about the present position at the spot. His fees is assessed to Rs.250/- to be payable by

the plaintiff. He is directed to furnish his report on or before 30.7.1992.

Sd/-

SJIC/7.4.1992

4. The ex parte injunction order was granted in favour of the plaintiffs and directions were also given to the plaintiffs to comply with the provisions

of Order 39 Rule 3 C.P.C. on that day itself and if the compliance was not made, the ex parte stay granted in favour of the plaintiffs stood

automatically vacated. The compliance of the order dated 4.7.1992 was made by the plaintiffs and notice was issued to the defendant. The record

of the lower Court has been summoned. It appears that the defendant could not be served and the stay order granted in favour of the plaintiffs

continued upto 4.6.1993. Thereafter the formal order of extension of stay for one reason or the other could not be passed by the trial Court, but it

is also clear from the record of the lower court that ex parte stay was never vacated though the application under Order 39 Rules 1 and 2 C.P.C.

was contested by the defendant. The case continued and on 28.5.1996 this case again came up for the hearing before the trial Court (Mr. D.K.

Sarpal. Civil Judge. Junior Division, Fatehgarh Sahib). In the main order-sheet the order dated 28.5.1996 runs as follows:

Present: As above.

An application for cancellation of report of Local Commissioner filed today. For reply to come up on 22.7.1996 for consideration.

So/-

SJ

5. From here the alleged controversy arises. The case set up by the petitioner is that when the case was adjourned to 22.7.1996, till that day there

was no extension of stay in favour of the plaintiffs. It is the grouse of the petitioner that the plaintiffs in connivance with the Presiding Officer, who

was under transfer and was relieved from Fatehgarh Sahib on 1.6.1996, managed the order of extension of stay dated 4.6.1993 passed by Mr.

P.S.Virk. The record of the trial Court shows that on 28.5.1996 Gurdev Singh plaintiff through his counsel Mr. Cheema filed an application before

the Court of Civil Judge (Junior Division), Fatehgarh Sahib and he prayed for the extension of stay order and he made the following averments:-

1. That the above noted suit is pending in the Hon"ble Court and is fixed for 22.7.1996.
2. That the Hon"ble Court granted ad-interim injunction order in the above noted case in favour of the plaintiff/applicants.
3. That inadvertently chutes ad-interim injunction order issued by the Hon"ble Court.

It is therefore prayed that the above said ad-interim injunction granted by the Hon"ble Court may kindly be extended in the interest of justice.

Submitted by,

Dated: 28.5.1996

Gurdev Singh (Plaintiff)

Through Counsel

Sd/-

(J.S. Cheema)

6. It may be mentioned here that para No.3 of the application has not been happily drafted by Mr. Cheema. From the prayer clause as well as

from the heading of the application it is clear that the plaintiffs wanted the extension of the order dated 4.7.1992 The following order was passed

on 28.6.1996 on the application itself and not in the main order-sheet:

Present: Counsel.

To be put up with file at 1.30p.m.

Sd/- SJ

28.5.1996

Second order is as follows:

Notice be issued to opposite counsel for 1.6.1996 on old P.F.

Sd/-

SJ

28.5.1996

Thereafter this application was adjourned to 1 6.1996 and on that day this order was passed:

1.6.1996 Present: Sh. J.S.Cheema, Advocate, counsel for plaintiffs.

Counsel for defendant not served. Notice be again issued to opposite counsel for 22.7.1996, the date fixed on old P.F.
In the meantime ad-interim

injunction already granted ex parte is extended till 22.7.1996, the date fixed.

Sd/-

SJIC

1.6.1996.

7. From the reading of the above orders this Court is of the opinion that main case was adjourned to 22.7.1996. After the adjournment of the

case, the disputed application dated 28.5.1996 was presented by Mr. Cheema because he realised that the stay which has been granted in favour

of the plaintiffs on 4.7.1992 and has not been vacated by any competent Court of jurisdiction has not been extended due to inadvertence of the

Court and, therefore, he thought proper to move an application. It is the basic law that no party should suffer on account of the fault of the Court.

It the Court of Mr. Virk or his successor Court could not extend the interim directions specifically, it has to be inferred that those directions are in

force, in whose favour those have been issued, till those are set aside or vacated. The defendant cannot make a cry that since the stay has not been

specifically extended, therefore, it should be deemed to have been vacated There is no deemed vacation unless the order is so vacated either by

the trial Court or by the Appellate Court. Be that as it may, the ground of the petitioner is that the order dated 1.6.1996 has been fabricated by

Mr. Sarpal in connivance with the plaintiff. It is too much to say on behalf of the defendants.

8. The learned counsel for the petitioner Mr. Malhotra submitted that if the stay in favour of the plaintiffs had already been extended on 1.6.1996,

there was no occasion on behalf of the plaintiffs to file a separate suit and get similar stay which he got from the Court on 4.7.1992 and, therefore,

a reasonable inference should be drawn that the plaintiffs in connivance with the Presiding officer of the Court had obtained the order dated

1.6.1996 in a fictitious manner and the powers of the High Court are vast enough to rectify the mistake or illegality which has been committed by

the Courts below. The learned counsel for the petitioner further submitted that if any order has been obtained in an illegal manner, the High Court

has the ample power for the rectification of that order. He submitted that the order passed by Ms. Manju Rana and Mr. L.R. Roojain have already

been challenged in the present revision u/s 115 C.P.C., therefore, both the orders may also be set aside on merits. In support of his contention Mr.

Malhotra has drawn my attention to the judgments of Hon"ble Supreme Court in Delhi Development Authority Vs. Skipper Construction Company

(P) Ltd. and another, and Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., . The observations of the Hon"ble Supreme Court are that if the

judgments are obtained by fraud, then there is nothing to prevent the Courts from recalling that judgments/orders or setting aside the same because

nobody can get an order by playing fraud either with the Court or with the opposite party.

9. On the contrary, the learned counsel appearing on behalf of respondent No. 1 submitted that, in fact, on 28.5.1996 the case was adjourned to

22.7.1996. A format application was made and the Presiding Officer instead of writing the order in the main order wrote the order on the

application itself Firstly, he directed the office to put up the main file on 28.5.1996 at 1.30 p.m. and thereafter he issued the notice to the counsel

opposite for 16.1996 when the service on the defendant was not effected for 1.6.1996, the Presiding Officer simply extended the order dated

4.7.1992 which was already on the file of the Court and he has not fabricated the order nor he had any occasion to fabricated the order dated

1.6.1996 when the order dated 4.7.1992 was already in favour of the plaintiffs. Even this order could be extended at any time by a successor

Judge without any difficulty because the order dated 4.7.1992 was never vacated or deemed to have been vacated by any competent court of

jurisdiction. Mr. Gandhi, learned counsel, appearing on behalf of respondent No.2 also submitted that the defendant had been participating in the

proceedings after 1.6.1996. So much so the defendant filed one application for inspection and on that application it was never the grouse of the

defendant that Mr. Sarpal or the plaintiffs entered into hands in gloves for the passing of order dated 16.1996 for the extension of the order dated

1.6.1992. It was also jointly submitted by Mr. Jain and Mr.Gandhi that after 1.6.1996 the defendant contested the application under Order 39

Rules 1 and 2 C.P.C. tooth and nail and vide detailed order the successor Court of Mr. Sarpal i.e. Ms. Manju Rana passed the order dated

5.8.1996 and the order dated 4.7.1992 passed by Mr. Virk was confirmed. Not only this, the defendant challenged that order before the first

Appellate Court under Order 43 C.P.C. and Mr. L.R. Roojam, Assistant Additional District Judge, Fatehgarh Sahib dismissed the appeal of the

present petitioner. In the grounds of appeal the defendant never stated nor raised a little finger that the order dated 1.6.1996 passed by Mr. Sarpal

has been fabricated or forged in order to give benefit to the plaintiffs. With regard to the suit it was submitted by the learned counsel for the

respondents that if advice has been given to the plaintiffs to file a separate suit for which no inference should be drawn that the said order was

fabricated. There was no occasion for the fabrication of this order, the plaintiffs could even make a request to the Additional District Judge or to

any Court for the extension of the order dated 4.7.1992.

10. After considering the rival contentions of the parties, this Court is of the considered opinion that the defendant-petitioner is fighting a lost battle.

I have already given above how and under what circumstances the order dated 1.6.1996 has been passed. I would have agreed with the

contention of Mr. Malhotra had the order dated 4.7.1992 was never passed by Mr. Virk, the competent Court of jurisdiction. The fact is that this

order remained under extension for two years. It was never vacated either by Mr. Sarpal or any competent Court of jurisdiction. Why a judicial

officer should enter into hands in gloves with the plaintiffs. Mr. Sarpal was not passing the order for the first time. He was just extending the order

which was already in favour of the plaintiffs. Why an irresponsible allegation has been made by the petitioner and such allegation deserves to be

condemned and curtailed. This Court expects the litigants to behave in a responsible manner before levelling allegations against the judicial officers

or the judiciary. I do not want to protect a corrupt judicial officer, but at the same time this is my duty to protect the dignity and magnity of law. I

also do not want to give a long handle to the judicial officers simply for the reason that they are staying in the glass houses.

11. The judgments relied upon by Mr. Malhotra are not applicable to the facts in hand. No fraud has been committed by the plaintiffs in

connivance with respondent No. 2. In this view of the matter, I dismiss this revision with exemplary costs of Rs. 5,000/-. If the costs are paid, the

same shall go to the legal Aid Committee of the Punjab and Haryana Court.

12. Nothing stated above shall amount an expression of my opinion on the merits of the case.

The record of the trial Court be sent back forthwith.