
(1993) 02 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 363 of 1990

Chandu Ram

APPELLANT

Vs

Farangi Lal

RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A, 9
East Punjab Urban Rent Restriction Act, 1949 — Section 3

Citation : (1993) CivCC 683 : (1993) 104 PLR 434

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : H.S. Ahluwalia, for the Appellant; R.L. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This is defendant's regular second appeal against the judgment and decree of the Additional District judge whereby the appeal filed by the plaintiff was accepted and thus the suit of the plaintiff was decreed.

2. The plaintiff filed a suit for permanent injunction restraining the defendant from making any alteration, construction, steel/iron shutters etc, on shop No. 3120 situated near Bus stand Bathinda on the ground that the plaintiff is owner of shop whereas defendant is tenant at a monthly rent of Rs. 250/- per month. The defendant has no right to make any alteration in the shop in dispute but all the same he is bent upon putting up steel/iron shutter, Despite request by the plaintiff not to put any shutter on the gate of the shop, the defendant paid no heed to his request hence this suit

3. The defendant put in appearance and filed written statement. The factum of tenancy was admitted. He, however, denied that he was making any alteration/construction in the shop in dispute. All the same he pleaded that he wanted to fix up a shutter at, the gate of the shop as quite often his goods were being burgled and on failure of the plaintiff to accede to his just request he has fixed a

collapsible gate of his own but the same does not amount to material alteration/addition. The defendant further averred that he has fixed the shutter in the shop on 6-5-1986.

4. On the pleadings of the parties, following issues were framed :--

1. Whether the plaintiff is entitled to the injunction prayed for? OPD,.....

2. Whether the suit has become infructuous ? OPD

3. Whether the Civil Court has no jurisdiction to try the present suit ? OPD.....

4. Whether the respondent has disobeyed the directions contained in order dated 3-5-1986 ? OPP

5. Relief.

5. The trial Court decided issue Nos. 1 and 4, against the plaintiff. Issue No. 2 was decided in favour of the defendant whereas issue No. 3 was decided against the defendant. Resultantly, the suit of the plaintiff was dismissed.

6. The Appellate Court once again appraised the evidence led by the parties and came to the conclusion that the defendant violated the interim restrain order granted by the Court and so is clearly guilty in terms of Order 39 Rule 2-A of the CPC. The appellate Court thus reversed the finding of the trial Court in respect of issue Nos. 1 and 2 and so decreed the suit. Since it was held that the defendant had been guilty of violating the interim restraint order, he was directed to remove the shutter within a period of one month from passing of the order and further restrained from raising any construction/alteration without written consent of the plaintiff. The lower appellate Court further directed the trial Court to summon the respondent after deposit of necessary charges by the plaintiff and thereafter send the defendant to civil imprisonment for a period of two months as per its finding under issue No. 4.

7. The learned counsel for the appellant has assailed the findings of the lower appellate Court terming the same to be wholly illegal. Elaborating the counsel urged that the lower appellate Court has indeed erred in law in not properly perusing the evidence, produced by the defendant and even otherwise has clearly erred in relying upon the report of Bakshi Ram, Process Server. According to the counsel, the report of the process server was not worthy of credence and reliance by the lower appellate Court on his solitary statement has vitiated its conclusion.

8. Reference to the facts of the case would be appropriate to judge the merit of the pleas raised by the appellant. The suit for permanent injunction restraining the defendant from making any alteration/construction, steel/iron shutters etc on shop No. 3120 was filed on 26-4-1986. Along with this an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure was also filed seeking interim restrain order on the same date. Keeping in view the urgency of the matter, the trial Court took the matter for consideration on 3

5-1986 and forming a prima facie view in favour of the plaintiff passed the restrain order against the defendant preventing him from making any construction etc in the demised premises till 7 8-1986 The plaintiff was, however, directed to comply with the provisions of Order i9 Rule 3 of the CPC by 5-5-1986. Admittedly, compliance to the same was made on 6-5-1986 and thereafter notice was issued on 7-5-1986 and the service was effected upon the defendant on 9-5-1986 when the stay order was still in force.

9. There is dispute between the parties as to whether the shutter was fixed on 9-5-1986 as is the case of the plaintiff or on 6-5-1988, the case set up by the defendant. The lower appellate Court after careful perusal of the statements of the witnesses has come to the conclusion that the shutter was, in fact, fixed in the evening of 9-5-1986. For this conclusion the appellate Court relied upon the statement of Bakhshi Ram, Process Server, who deposed that till the time he effected service upon the defendant in the morning of 9-5-1986 the shop in dispute was without any shutter. The lower appellate Court did not find much merit in the plea of the defendant that he purchased the shutter vide Exhibit D 1 on 6-5-1986 and fixed too on the same date. The conclusion of the lower appellate Court is based upon appreciation of evidence and so the same is not amenable to any interference u/s 100 of the Code of Civil Procedure. No error otherwise too is discernible in the light of the facts given and noticed above.

10. The counsel next contended that in view of the dismissal of the suit of the plaintiff the interim order automatically stood vacated and construed thus the lower appellate Court erred in law in invoicing the provisions of Order 39 Rule 2 A of the CPC Elaborating further the counsel urged that the order passed under Order 39 Rule 2-A is an appealable order under Order 43 Rule 1 of the Code of Civil Procedure. Since no appeal was filed by the plaintiff, passing of the composite order by the Additional District Judge has, in fact, greatly prejudiced the case of the appellant. In any case, the appellate Court could not order for punishment even by accepting the appeal as no separate grievance was made by the plaintiff In the present case, the plaintiff filed an application under Order 39 Rule 2. A read with Section 151 of the CPC for initiating proceedings against the defendant and punishing him for having violated the interim injunction granted by the Court. The trial Court, however, chose to examine this also by framing issue No. 4 which reads as "whether the respondent has disobeyed the directions contained in order dated 3-5-1986 ? OPP" and hence disposed of the same vide judgment and decree dated 18-7-1988. Since no separate order was passed by the trial Court, the plaintiff too for very obvious reason could not assail the correctness of the same by filing the separate appeal as suggested by the counsel for the appellant. This objection has thus no merit. Even otherwise, no prejudice has accrued to the defendant who has been ordered to be punished by the Additional District Judge in view of his defiance of the order passed on an application under Order 39 Rules 1 and 2 read with Section 151 of the CPC by the trial Court on 3-5-1986.

11. The learned counsel for the appellant next contended if for any reason the Court is of the view that shutter has been fixed on the shop in dispute yet the same does not amount to any material alteration/construction. In any case, the plaintiff is well within his right to seek his eviction on the ground that he is guilty of materially impairing the building in dispute by filing an eviction application in terms of Section 13 of the East Punjab Rent Restriction Act. This was so opined by the trial Court also. Examined thus, the appellant ought not to have been ordered to be put in civil imprisonment as per facts adverted to above. This contention too has no merit. In the present case, the plaintiff filed a suit for permanent injunction restraining the defendant from raising construction putting up shutter etc on his shop under tenancy of the defendant wherein he also prayed for interim injunction. Such a suit is within the competence of the Civil Court and has to be decided in the light of the contentions raised by the respective parties and the evidence adduced by them. Merely for the reason that there is another additional remedy available to a party to knock the door of the Rent Controller if a case is made out u/s 13 of the East Punjab Rent Restriction Act by itself is no ground to debar a party from invoking his civil right to get the desired relief.

12. The counsel next submitted that in any case the Court could order for removal of shutter which could be termed to be the intended relief sought by the plaintiff and thus direction given by the Additional District Judge to send the defendant to civil imprisonment for a period of two months would be quite harsh in the given circumstances and so the same needs to be modified.

13. Admittedly, the purpose of Order 32 Rule 2-A of the Code of Civil Procedure is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similar to the provisions of Order 21, Rule 32 of the CPC which provide for the execution of a decree for injunction. The mode of execution given in Order 21 Rule 32 is the same as provided in Rule 2-A of Order 39. In either case, for the execution of the order or decree of injunction, attachment of property is to be made and the person who is to be compelled to obey the injunction can be detained in civil prison. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by disobedience of the order is remedied and the status quo ante is brought into effect. Order 39 Rule 2-A of the CPC further envisages lifting the order of imprisonment as soon as the order has been complied with. In the instant case, the order passed by the lower appellate Court has yet to be complied with and in the absence of the same it would be wholly improper not to punish such a person who has been held to have violated the order of the Court. Accordingly, I grant 15 days time, to the defendant-appellant to remove the shutter/construction raised despite the order granted by the Court and on his faithfully complying the direction of the Court, order for putting him in civil prison shall not be enforced. The defendant shall inform the Court as to the removal of shutter/construction etc.; who if satisfied would record it so. In case the decree-holder is compelled to take the assistance of the Court in executing the order for

removal of shutter etc. then necessary steps will be taken by the trial Court i.e. directing the plaintiff to deposit the charges and thereafter sending the appellant-Defendant to civil imprisonment for a period of two months. With this modification, the appeal is dismissed.