

to him, the question will have to be settled on the anvil of as to whether the management at Amritsar remained the transferor or was a transferee.

(6) As is plain, the narrow question mooted here is about the competency of the reference against the respondent-Society i.e. the management of Messrs Rohtak District Transport Cooperative Society Limited, Amritsar, undisputedly when the reference was made the said Society had not been registered at Amritsar and had only its Branch Office. A Cooperative Society registered under the Punjab Cooperative Societies Act, 1961, is a body corporate. Its Branch Office is part and parcel of that body corporate. Misdescription of the said society to be at Amritsar, for all intents and purposes, did not recognise a new being, or a different corporate body, so as to be distinctly existing at Rohtak and Amritsar. The reference was directed against one and the same body. Misdescription thereof in any manner would not render the reference to be misdirected. And after 1st July, 1970 by its legal splitting up and coming into the field of the new registered society at Amritsar, a new corporate body came into being saddled with the assets and liabilities of the parent corporate body. Thus, in my view neither was a reference in this case misdirected nor was it incompetent against respondent No. 3. The view of the Labour Court, Jalandhar, in sheding out its jurisdiction was erroneous and thus need be corrected by the issuance of a writ in the nature of *certiorari*. Thus, this petition is allowed and the impugned award dated 20th October, 1976 (Annexure P-4) is quashed, remitting the reference back to the Labour Court for decision in accordance with law. No costs.

H.S.B.

*Before S. P. Goyal & I. S. Tiwana, JJ.*

RACHHPAL SINGH,—*Petitioner.*

*versus*

SHRI GURDARSHAN SINGH,—*Respondent.*

*Civil Revision No. 2331 of 1983.*

November 6, 1984.

*Code of Civil Procedure (V of 1908)—Order 39 Rules 1, 2 & 2-A(1)—Party to a suit violating order of ad-interim injunction*

*Rachnpal Singh v. Shri Gurdarshan Singh (S. P. Goyal, J.)*

*made under Order 39 Rules 1 and 2—Application under Rule 2-A(1) moved for initiating contempt proceedings against the defaulter—Such application still pending when still disposed of by the Court—Contemners subsequently convicted and sentenced for having violated the injunction order—Order of conviction—Whether sustainable—Such order—whether could be passed after ad-interim injunction ceased to exist.*

*Held*, that sub-rule (1) of Rule 2-A of Order 39 of the Code of Civil Procedure, 1908 provides that in the case of disobedience of any injunction granted under rule 1 or rule 2 of the said order or breach of any of its terms on which the injunction was granted, the Court may order the property of the person guilty of such indiscipline or breach to be attached and may also order such person to be detained in the civil prison for a period not exceeding three months, unless in the meantime the Court directs his release. Sub-rule (2) lays down that no attachment made under the said rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensations as it thinks fit to the injured party. From the combined reading of the provisions of these two sub-rules, it appears that their purpose is the enforcement of the injunction and not the punishment for its disobedience. From the phraseology used in the said rule, the detention in the civil prison and attachment of the property are to continue for a specified period and that too only during the continuance of the disobedience or the breach. In the case of detention in the civil prison, the court is empowered to release the person guilty of disobedience or breach even prior to the expiry of the maximum period of three months and obviously it can be ordered only if the disobedience or breach discontinues. A conclusion, therefore, appears to be irresistible that the provisions of Rule 2-A are meant for enforcing an *ad interim* injunction and not for punishing the person guilty of such disobedience. As such, there could be no initiation of continuation of the proceedings under Rule 2-A(1) after the *ad-interim* injunction has been vacated and has ceased to exist.

(Para 4).

*Case referred by Single Bench consisting of Hon'ble Mr. Justice S. P. Goyal on July 10, 1984 to a Division Bench as the case involves an important question of law. The Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice I. S. Tiwana decided the case on dated 6th November, 1984.*

*Petition for revision of the order of Sh. M. S. Luna Additional District Judge, Hoshiarpur, dated 17th August, 1983 affirming that of Sh. B. S. Teji, Additional Senior Sub-Judge, Hoshiarpur, dated 1st April, 1982 detaining the petitioner in civil prison for a term of one month on depositing of Rs. 420.*

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A. S. Cheema, Advocate with Baljinder Singh Advocate, for the Petitioner.

H. L. Sarin, Senior Advocate with M. L. Sarin, R. L. Sarin, Sukhdev Singh and D. Khanna, Advocates, for the Respondents.

### JUDGMENT

S. P. Goyal, J.

(1) This judgment will dispose of three connected Civil Revision Petitions No. 2331 of 1983, 2344 and 2345 of 1983 which are directed against a common order of the learned Additional District Judge, Hoshiarpur, dated August 17, 1983.

(2) In a suit filed by Gurdarshan Singh, *ad interim* injunction restraining defendant No. 1 from transferring the possession and defendants No. 2 and 3 from alienating the house in dispute was passed on February 26, 1977. During the pendency of the suit, Rachhpal Singh and Swaran Singh defendants executed the sale deed in favour of Jaswant Singh on June 27, 1980. Consequently, Gurdarshan Singh filed an application under Order 39, rule 2-A, Civil Procedure Code, for initiating contempt proceedings against the vendors and the vendee. Before that application was disposed of he withdrew his suit on September 25, 1980, the same having become inoperative. The trial Court held Swaran Singh and Jaswant Singh guilty of the contempt of court and committed them to civil imprisonment for one month. Jaswant Singh, however, was held to have not violated the order. Three appeals were filed against the order of the trial Court, two by Swaran Singh and Rachhpal Singh against their convictions and the third by Gurdarshan Singh against Jaswant Singh. The appeal filed by Gurdarshan Singh was allowed and Jaswant Singh was also committed to civil imprisonment for one month and the other appeals were dismissed by the learned Additional District Judge, Hoshiarpur, by the impugned order. Hence these three petitions by the contemners.

(3) The legality of the impugned order has been challenged by the learned counsel for the petitioners primarily on the ground that no order under the said Rule 2-A could be passed when the *ad interim* injunction stated to have been violated was no more in existence. Reliance for this submission was placed on a decision

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of the Supreme Court in *the State of Bihar v. Rani Sonabati Kumari* (1). A contrary view had been taken by Harbans Lal, J. in *M/s. Bharaj Manufacturing Co. (Regd.) v. Jai Pal and others* (2) without noticing the aforesaid decision of the Supreme Court. The matter otherwise also being of public importance, I referred the same to a Division Bench for authoritative pronouncement. This is how these cases have been laid before us.

(4) Sub-rule (1) of rule 2-A provides that in the case of disobedience of any injunction granted under rule 1 or rule 2 or breach of any of its terms on which the injunction was granted or order made, the Court may order the property of the person guilty of such indiscipline or breach to be attached as may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the court directs his release. Sub-rule (2) lays down that no attachment made under the said rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto. From the combined reading of the provisions of these two sub-rules, it appears that their purpose is the enforcement of the injunction and not the punishment for its disobedience. From the phraseology used in the said rule, it is further evident that detention in the civil prison and attachment of the property are to continue for a specified period and that too only during the continuance of the disobedience or the breach. In the case of detention in the civil prison, the court is empowered to release the person guilty of disobedience or breach even prior to the expiry of the maximum period of three months and obviously it can be ordered only if the disobedience or breach discontinues. Similarly, attachment of the property cannot remain in force for more than one year and has to be withdrawn if any time prior thereto the disobedience discontinues. It would not be possible for the court to order the sale of the property if the disobedience or breach comes to an end prior to the period of one year. Similar are the provisions contained in rule 32 of the Order 21 which relates to the enforcement of a decree for permanent injunction. It cannot be disputed that the measures contained in rule 32 are intended only to enforce the decree and not for awarding any punishment to the judgment-

(1) A.I.R. 1961 S.C. 221.

(2) 1980 P.L.R. 406.

debtor for its disobedience. The conclusion, therefore, appears to be irresistible that the provisions of rule 2-A are meant for enforcing an *ad interim* injunction and not for punishing the person guilty of such disobedience. We are fortified in our view from the following observations of the Supreme Court in *Rani Sonabati Kumari's case* (supra):

“Though undoubtedly proceedings under Order 39, rule 2(3) Civil Procedure Code, have a punitive aspect—as is evident from the contemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by the Civil Procedure Code for the execution of a decree for a permanent injunction. Order 21, rule 32 sets out the method by which such decrees could be executed and Cl.(1) enacts—‘where the party against whom a decree.....for an injunction has been passed, has had an opportunity for obeying the decree and has wilfully failed to obey it, the decree may be enforced, in the case of a decree.....for an injunction by his detention in the civil prison, or by the attachment of his property or by both’ Clauses 2 and 3 of this rule practically reproduced the terms of clauses 4 and 3, respectively of Order 39, rule 2, and the provisions leave no room for doubt that the Order 39, rule 2(3) is in essence only the mode for the enforcement of effectuation of an order of injunction.”

Once it is held that the provisions of rule 2-A are not meant to punish the person guilty of disobedience and instead their purpose in substance is only to enforce an injunction, the answer to the question involved has to be that no intimation or continuation of the proceedings under the aforementioned rule would be competent after the *ad interim* injunction has been vacated.

(5) The learned counsel for the respondent to advocate the contrary view relied on *Thakorlal Parshottamdas v. Chandulal Chunilal* (3) *Gobinda Parida and others v. Chakradhara Routrary and others* (4) and *Calcutta Medical Stores v. Stamed Private Ltd.*

(3) A.I.R. 1967 Gujraat 124.

(4) A.I.R. 1971 Orissa 10.

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and Ors. (5). In *Thakorlal Parshottamdas and Gobinda Parida's cases* (supra), the injunction was still in force when the action against its disobedience was taken. In the case of *Calcutta Medical Stores*, the only question before the Court was whether the High Court would entertain a petition for contempt in the presence of adequate provisions contained in Order 39 for the enforcement of the injunction. The question at hand was neither raised nor debated there. In the three decisions of this Court in *Hari Parshad v. Khilla Ram and others* (6) *Janak Ram and others v. Shri Ganesh Das Puri and others* (7) and *M/s. Bharaj Manufacturing Co.'s case* (supra), the view similar to the one taken in the case of *Calcutta Medical Stores* was expressed and the Court declined to entertain a petition under Contempt of Courts Act on the ground that equally efficacious remedy, was available under Order 39, Civil Procedure Code. In none of the decisions of this Court or the ones noticed above, the observations made by the Supreme Court in *Rani Sonabati Kumari's case* (supra) were taken notice of. The matter came up for direct consideration before S. C. Mathur, J. of Allahabad High Court in *Sheo Kumar Eaxena v. Zila Sakhari Vikas Sangh Gonda and others* (8) who relying on the said Supreme Court decision held that after a temporary injunction has been vacated, it cannot be enforced or execute and, therefore, punitive action also cannot be taken after its vacation. We fully endorse this view and hold that no proceedings can be initiated or action taken under rule 2-A against a person guilty of disobedience or breach of *ad interim* injunction after it has been vacated. Nothing said herein before, however, would debar the taking of proceedings under the Contempt of Courts Act in spite of the vacation of the *ad interim* injunction against the person guilty of its breach during the period it remains in force.

(6) For the reasons recorded above, the impugned order is set aside and the petition under rule 2-A dismissed.

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H.S.B.

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- (5) 81 Calcutta Weekly Notes 209.  
(6) 1974 P.L.J. (Cr.) 71.  
(7) 1975 P.L.J. Cr. 39.  
(8) A.I.R. 1983 All. 180.