

REVISIONAL CIVIL

Before C. G. Suri, J.

RAM SARUP, Petitioner.

versus

HARPHUL AND OTHERS,—Respondents.

Civil Revision No. 891 of 1971.

August 30, 1971.

The Northern India Canal and Drainage Act (VIII of 1873)—Sections 30-A to 30-FF and 30-G—Civil suit filed to prevent a threatened wrong of a demolition of water-course—Jurisdiction of the Civil Court to try such suit—Whether barred under section 30-G.

Held, that there is nothing in Section 30-A to 30-FF of the Northern India Canal and Drainage Act, 1873, which suggests that a party has any remedy under the Act where he is trying to prevent a threatened wrong of demolition of a water-course. The Canal Authorities can remedy a wrong that has already been done and it is not necessary that a party should always wait until the damage has been done. During the season of drought, the time taken to set the Canal Authorities in motion can cause irreparable damage to the crop and as no remedy has been provided in the Act for the prevention of a threatened wrong, there is no bar to an aggrieved party coming to Court to enforce a preventive remedy. Hence where a civil suit is filed to prevent a threatened wrong of demolition of a water-course, the jurisdiction of the civil Court to try the same is not barred under section 30-G of the Act.

(Para 5).

Petition under Section 115 C.P.C. for revision of the order of Shri V. D. Aggarwal, Additional District Judge, Jind, dated 29th June, 1971 affirming that of Shri C. D. Vasishta, Senior Sub-Judge, Jind, dated 1st June, 1971, confirming the ex parte ad interim injunction order dated 11th March, 1971 till the final decision of the case on merit.

Civil Misc. No. 5552 of 1971:—

Application under Section 151 C.P.C. praying that pending the final decision of the revision, the operation and implementation of the impugned orders of the courts below be stayed.

Surrinder Sarup, Advocate, for the petitioner.

Puran Chand, Advocate, for the respondents.

Ram Sarup v. Harphul etc. (Suri, J.)

JUDGMENT

SURI, J.—(1) This revision petition has been filed against the order of the Additional District Judge, Jind, whereby he has affirmed on appeal an order passed by the trial Court under Order 39, rules 1 and 2 and section 151 of the Code of Civil Procedure, directing the petitioner and his sons to restore a watercourse (*khal*) which had been demolished after the passing of a stay order against them. Separate proceedings for contempt of Court are said to have been initiated against the petitioner and his sons on the application of the plaintiff-respondent.

(2) The suit had been instituted on 10th March, 1971 and the trial Court had granted *ex parte* stay order against the petitioner and his sons (defendants in the suit) on 11th March, 1971 on the application of the plaintiff-respondent. It has been alleged in the plaint that the defendants had demolished the *khal* on an earlier occasion also and that the canal authorities had got the *khal* restored. The defendants were said to be threatening again to demolish that watercourse. Hence this suit for a permanent injunction to prevent a threatened wrong.

(3) A Local Commissioner appointed by the Court had inspected the spot on 15th February, 1971 and had reported that the watercourse in dispute was in existence at the spot. This watercourse was, however, found to have been demolished some days later after the passing of the *ex parte* stay order. The two Courts below were, therefore, fully justified in directing the restoration of the watercourse and the undoing of a high-handed act which had taken place during the pendency of the proceedings and after the passing of the stay order. There is, therefore, nothing wrong if the two Courts below had made a mandatory order against the defendants directing them to reconstruct the *khal*.

(4) Shri Surinder Sarup, the learned counsel for the petitioner, has drawn my attention to section 30-FF of the Northern India Canal and Drainage Act, 1873. The Divisional Canal Officer can on the application of an aggrieved party direct the restoration of a watercourse but he shall have to make an inquiry after service of a notice in writing on the person concerned as required by sub-section (2) of section 30-FF. If that person fails to carry out the orders, the Divisional Canal Officer can have the watercourse restored to its original condition at the cost of the party at fault and these costs can be

recovered as arrears of land revenue. An appeal lies to the Superintending Canal Officer from the orders of the Divisional Canal Officer. Shri Surinder Sarup argues that the respondent should have taken recourse to his remedies under this section and that the jurisdiction of the civil Courts is barred in view of the provisions of section 30-G of Northern India Canal and Drainage Act, 1873. This section runs as follows :—

“30-G. Notwithstanding anything contained in this Act or other law for the time being in force, no Civil Court shall have jurisdiction to entertain or decide any question relating to matters falling under sections 30-A to 30-FF.”

(5) There is, however, nothing in sections 30-A to 30-FF which may suggest that a party has any remedy under this Act where he is trying to prevent a threatened wrong. The canal authorities can remedy a wrong that has already been done and it may appear that the respondent has had to avail of those remedies on a previous occasion also. The petitioner's conduct had created an apprehension in his mind that the same wrong was going to be committed again and he had, therefore, filed this suit to prevent that threatened wrong. The subsequent events have also shown that his apprehensions were not without any sound basis. It is not necessary that the party should always wait until the damage had been done. During the season of drought, the time taken to set aside the canal authorities in motion could cause irreparable damage to the crop and as no effective remedy appears to have been provided in the Northern India Canal and Drainage Act, 1873 for the prevention of such a threatened wrong, there was no bar to the plaintiff coming to Court to enforce a preventive remedy. Section 30-FF does not provide for the prevention of a threatened injury. It only provides for a remedy where the injury had already been caused. Section 30-FF, therefore, provides only a poor substitute for the remedy that was called for on the facts of the present case when the suit was instituted.

(6) I see no grounds for interference and dismiss the revision petition with costs.

N. K. S.