

26.08.2019 **Present:** Mr. Naveen K. Bhardwaj, Advocate for the appellant /non-applicant.

Ms. Kusum Chaudhary, Advocate for respondents/ applicants No. 1 to 7.

CMP No. 3626 of 2019

By way of this application, the applicants /respondents have made a prayer that as the non-applicant/appellant has willfully disobeyed the order passed by this Court on 11.04.2018 and has raised construction over the suit land, she be punished for the contempt of the Court order.

Brief facts necessary to be taken note of at this stage are that a suit for declaration and injunction was filed by the applicants against the non-applicants, i.e. Civil Suit No. 56 of 1999 (2007), which was decreed by the Court of learned Civil Judge (Sr. Division) Lahaul & Spiti at Kullu, on 07.07.2007 in favour of the present applicants to the effect that the applicants, i.e. plaintiffs were declared to be owner in possession of the suit land, mutation No. 2327, dated 23.09.1997 and mutation No. 2384, dated 21.11.1998, as also sale deed dated 25.11.1998, executed by defendants No. 1 to 3 in favour of defendant No. 4 were held to be wrong, illegal, null and void and not binding on the rights of the plaintiffs and defendant No. 4 was directed to put the plaintiff in vacant possession of the suit land after

demolishing the structure raised by defendant No. 4 over the suit land.

The judgment and decree so passed by the learned Trial Court was assailed by way of an appeal preferred by defendant No. 4 before the learned Appellate Court, i.e. Civil Appeal No. 33 of 2007. The appeal was dismissed by the Court of learned Additional District Judge (Fast Track Court), Kullu, HP, vide judgment dated 17.1.2008.

Feeling aggrieved, appellant/defendant No. 4 filed the present appeal.

Alongwith the appeal, an application was filed praying for interim relief. On 07.05.2008, while issuing notice in the appeal as also in the miscellaneous application, this Court directed the parties to maintain status quo.

Thereafter on 19.11.2008, the appeal was admitted and the miscellaneous application was disposed of with the direction that the execution of the decree in appeal stood stayed during the pendency of the appeal.

It appears that during the pendency of the appeal, the appellant started raising construction over the suit premises. In these circumstances, CMP No. 1976 of 2018 was filed by the applicants, in which, on 15.03.2018, this Court directed the parties to maintain status quo as on the date qua the nature and

possession of the suit land. This was followed by order dated 11.04.2018, which reads as under:-

“CMP No. 1976 of 2018

Reply stands filed.

Heard. The appellant/non-applicant seems to have erected the pillars for construction of a house over the land in dispute, perhaps because of modification of status quo order passed in CMP No 329 of 2008 on 07.05.2008 which merged into final order passed in the said application on 19.11.2008, whereby the execution of the decree was ordered to be stayed. Anyhow, there shall now be a direction to the appellant/non-applicant not to raise further construction on the spot and maintain status quo qua the construction as per its status reflected in the photographs Annexure-C to this application. It is also made clear that further construction, if any, raised by her shall be liable to be pulled down on her own costs besides initiating appropriate proceedings against her including under the Contempt of Court Act. The application is accordingly disposed of.”

Reply to the said application was filed. Least to say, the same was as cryptic and as evasive as it could have been. In para 5 of the same it was mentioned that the appellant's son had

kept building material on the lintel and no construction has been started by the non-applicant/appellant.

It is thereafter that the application under the provisions of Order 39, Rule 2-A of the Code of Civil Procedure stood filed by the applicants/plaintiffs alleging therein that the said order passed by the Court were willfully disobeyed by the non-applicants/appellants, as despite subsequent status quo orders also having been passed, the non-applicants/appellants had raised construction over the suit land. To substantiate this fact, again photographs have been appended with the application.

A perusal of the photographs which were appended with the application in which *status quo* order was passed by this Court and subsequent photographs annexed with application filed under Order 39, Rule 2-A of CPC demonstrates that the nature of the property stands changed by the appellant/non-applicant.

Reply to the said application has also been filed, in which also stand is to the effect that the contemnor/non-applicant has not raised any construction over the suit land. Except this one line defence, nothing else is mentioned in the application.

Rejoinder to the reply is also on record. Alongwith it, photographs stand appended. A perusal of the those photographs demonstrates that what to that of initial violation of status qua order passed by this Court, the position of the suit property stands altered by the non-applicant/appellant even

during the pendency of this application so filed under the provisions of Order 39, Rule 2-A of the CPC. Thus, this Court is *prima facie* convinced that there is willful disobedience of the Court order.

Learned Counsel for the non-applicant/appellant submits that issues are to be framed to adjudicate this application. In my considered view, it is not as if in each and every application filed under Order 39, Rule 2-A of CPC, the Court is duty bound to frame issues. This application can be adjudicated without framing the issues

As this Court is *prima facie* convinced that the non-applicant/appellant has committed contempt of the Court Order, she is called upon to show cause as to why she should not be punished for violation of the Court order.

For the said purpose, list the matter on **09.09.2019**, on which date, contemnor shall remain present in the Court.

Copy dasti.

(Ajay Mohan Goel)
Judge

August 26, 2019
(narender)