

**2023 STPL(Web) 24 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE SANDEEP SHARMA, J.)

SANJAY KUMAR

Petitioner

VERSUS

VIJAY KUMAR AND OTHERS

Respondents

CMPMO No. 166 of 2021-Decided on 13-7-2023

Civil, CPC

Code of Civil Procedure, 1908 – Section 151 - Police assistance to comply order – Status quo – To implement the status quo order, so that nature of suit property is not changed in any manner during the pendency of the suit – Rejection of application by trial court – Approach to High Court – Held: Once, it had come to the notice of learned court below through report of Gram Panchayat Pradhan, that stones are stacked in front main door of applicant, there was no occasion for learned court below to reject the application filed by the plaintiff for police assistance. Till the time, status quo order is vacated/modified, the same is required to be complied with, in letter and spirit but since it was not being abided by the respondents, learned court below had no option but to order providing of police assistance to implement the status quo order, so that majesty of law is upheld. Trial Court order quashed and set aside and learned court below is directed to pass appropriate orders for providing police assistance to the plaintiff to ensure compliance of status quo order

(Para 4, 9)

Advocate(s): For the Petitioner: Mr. Naveen Awasthi, Advocate.

For the Respondents: Mr. M.A. Khan, Senior Advocate with Ms. Hem Kanta Kaushal, Advocate.

JUDGMENT

Sandeep Sharma, Judge (oral): Being aggrieved and dissatisfied with order dated 13.7.2021 passed by learned Civil Judge (Junior Division), Baijnath, Kangra, Himachal Pradesh in CMA No. 175/2021 in Case No. 13/2021, whereby an application under S.151 CPC having been filed by the petitioner/plaintiff (hereinafter, 'plaintiff') seeking therein police assistance for implementation of order dated 3.6.2021, came to be rejected, plaintiff has approached this court in the instant proceedings filed under Art. 227 of the Constitution of India, praying therein to set aside order dated 13.7.2021 and direct learned court below to provide police assistance to implement the status quo order, so that nature of suit property is not changed in any manner during the pendency of the suit.

2. Having heard learned counsel for the parties and perused material available on record vis-à-vis reasoning assigned in the order impugned in the instant proceedings, this court finds merit in the submission of learned counsel for the plaintiff, that learned court below, while passing impugned order has gone astray. While considering application filed by the plaintiff under S.151 CPC for providing police assistance to implement status quo order, learned court below was only required to see whether status quo order dated 3.6.2021 is being complied by both the parties or not? Learned court below definitely could not go into question of existence of path, if any, leading to the house of plaintiff, while rejecting prayer of the plaintiff for providing police assistance. Though learned court below took cognizance of report of Pradhan, Gram Panchayat to the effect that stones were stacked in front of main door of the plaintiff, but yet proceeded to reject the application on the ground that there is no sufficient material to suggest that path on Khasra No. 1548 leads to the house of the plaintiff.

3. Interestingly, learned court below also took cognizance of the fact that gate and some steps are being constructed towards Khasra No. 1548 but yet dismissed the application on the ground that there is Gair Mumkin Rasta, which touches Khasra No. 1554. Firstly, it is not understood that from where factum of existence of Gair Mumkin Raasta came to the notice of learned court below. Otherwise also, once learned court below, having taken note of averments made in application under Order 39 rules 1 and 2 CPC having been filed by plaintiff, had directed parties to maintain status quo qua nature and possession of suit property till disposal of the suit, there was no occasion for it to make observation if any, with regard to existence of Gair Mumkin Raasta, which allegedly touches land comprised in Khasra No. 1554.

4. Since learned court below had directed the parties to maintain status quo, while considering the application under 151 CPC for police assistance, it was only required to see, "whether the status quo order

passed by it is being flouted or not?" Once, it had come to the notice of learned court below through report of Gram Panchayat Pradhan, that stones are stacked in front main door of applicant, there was no occasion for learned court below to reject the application filed by the plaintiff for police assistance. Till the time, status quo order is vacated/modified, the same is required to be complied with, in letter and spirit but since it was not being abided by the respondents, learned court below had no option but to order providing of police assistance to implement the status quo order, so that majesty of law is upheld.

5. Mr. M.A. Khan, learned senior counsel for the respondents duly assisted by Ms. Hem Kanta Kaushal, Advocate, states that as per instructions imparted to him by his clients, no obstruction has been caused in front of main gate leading to the house of the plaintiff, and in any case, obstruction, if any, stands removed as on today.

6. Since no obstruction has been caused by the respondents, there cannot be any occasion for defendants to oppose prayer made by the plaintiff for providing police assistance, which is only to visit the spot to ensure compliance of status quo order.

7. This Court in Jaishi Ram and others Vs. Salig Ram, 1981 Sim. L.C. 156 has held that if the circumstances of a case are such that assistance of police for the enforcement of an order is necessary, an order to this effect can be passed. The learned Single Judge has held as under:

“3. I have perused the order passed by the Sub-Judge. He has based his judgment on a decision in Ravapati Audemma V. Pothineni Narasimham, AIR 1971 A.P. 53. This is a Division Bench judgment of that High Court. In the said judgment the point involved was the same as in the present case. The learned Judges have discussed the case-law on the point. They have not agreed with certain prior decisions. The relevant observations may be reproduced:

“The observations in the aforesaid decision no doubt support the contention of the learned counsel for the petitioner. The learned Judge Bhima Sankaram, J., referred to Section 151, C.P.C. but took the view that because an order of injunction is capable of enforcement by punishing its disobedience in the manner provided by Order 39 Rule 2(3), C.P.C., it is not open to the Civil Courts to enforce the same with the aid of the police. With great respect we are unable to agree with this reasoning. It has to be noticed that Order 30, Rule 2(3), CPC., provides only for punishment by attachment of the property or by detention in civil prison of the person who committed breach. But it does not further provide for implementation of the order of injunction itself. Order 39, Rule 2(3) cannot be said to be an express provision with respect to implementation of the order of injunction, but is only a provision which provides penalty for disobedience of the order. In such a case there being no other express provisions in the Code for enforcement of the order, it is not only proper but also necessary that the courts should render all aid to the aggrieved party to derive full benefits of the order. Though the order of injunction under Order 39, C.P.C. is only interim in nature, still it clothes the person who obtained the order with certain rights and he is entitled to enforce the aforesaid right against the party who is bound by the order. No doubt in such a case, the aggrieved party himself could approach the police authorities to prevent obstruction to the enforcement of the order or to the exercise of the right which he derives under the order or to the exercise of such right which he derives under the order of Court. But we do not see why when the same person brings to the notice of the Court that enforcement of the order is sought to be prevented or obstructed, the Court should not exercise its inherent power under Section 151, C.P.C. and direct the police authorities to render all aid to the aggrieved party in the implementation of the Court's order. In our opinion the exercise of such power is necessary for the ends of justice or to prevent abuse of the process and the civil court has ample jurisdiction to pass such order under Section 151, C.P.C. The learned Judge's observation “that the police are not bound to obey and directions of the court in the absence of any statutory obligation to do so and a civil court would be stultifying itself by giving directions which may not be complied with”, with great respect, cannot be said to be correct. Inasmuch as we are of the opinion that such a direction to be police authorities could be given under the inherent powers of the Court under Section 151, C.P.C. the police are bound to obey such directions.”

The learned Judges have also referred to some decisions on the point, including the observations in Padam Sen Vs. State of U.P. (AIR 1961 SC 218). It is desirable to reproduce the same:

“The following observations in AIR 1961 e also apposite in this context:

“The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purpose mentioned in Sec. 151 of the Code when the exercise of those powers is

not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature.’ In view of these clear observations of their Lordships with regard to the scope and ambit of the inherent powers of the Court under Section 151, C.P.C., we are clearly of the opinion that in order to do justice between the parties or to prevent the abuse of process of the Court, the Civil courts have ample jurisdiction to give directions to the police authorities to render aid to the aggrieved parties with regard to the implementation of the orders of Court or the exercise of the rights created under orders of Court. That the police authorities owe a legal duty to the public to enforce the law is clear from a decision of the Court of Appeal, reported in R.V. Metropolitan Police Commr., (1968) 1 All DR 763, where Lord Denning, M.R. observed at page 769 as follows: “I hold it to be the duty of the Commissioner of Police, as it is of every chief constable to enforce the law of the land....but in all these things he is not the servant of anyone, save of the law itself. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.”

The same view was expressed by the other learned Judges. We may also refer to the judgment of the Madras High Court, in Varadachariar V. Commr. Of Police (1969) 2 Mad. LJ 1, where the learned Judge, Kailasam, J., after referring to the English case cited above held that the Commissioner of Police should proceed and act in accordance with the directions indicated in the aforesaid judgment.”

8. In P. Shanker Rao v. Smt. B. Susheela, AIR 2000 Andhra Pradesh 214, learned Single Judge of Andhra Pradesh has held that the court in its inherent powers under section 151 of the Code of Civil Procedure can grant police aid to ensure effective implementation of temporary injunction pending suit for perpetual injunction and procedure under order 39 rule 2-A of the Code of Civil Procedure need not be followed. Learned Single Judge has held as under:

“[3] The observations, in my considered view should be confined to the facts of that particular case. In that case, the defendant sought police protection on the ground that the plaintiff was interfering with his possession despite the fact that the temporary injunction granted earlier in favour of the plaintiff was vacated. Thus, it is not a case where the order to extend police aid was granted in order to ensure compliance with an order of injunction in force pending the suit. The mere fact that the action could be taken against either party for flouting the injunction under Order XXXIX Rule 2-A or under the Contempt of Courts Act does not come in the way of the Court taking all necessary steps for ensuring obedience of the injunction order. The Court need not wait till the injunction is breached. In a fit case, the Court can undoubtedly direct police aid as a preventive measure. This power though not expressly conferred, is a power incidental or ancillary to the exercise of the power to grant injunction pending the suit. With great respect, I am not in a position to record my concurrence with the broad observations made by the learned Judge that the civil Court cannot direct police aid for execution of its order - interlocutory or final and that the party should only have recourse to the procedure laid down under Order XXI, Rule 32 or the Contempt of Courts Act. The observations are in the nature of obiter and therefore not binding on me. It is therefore unnecessary to refer the matter to the Division Bench, more so in view of the decision of this Court relied upon by the trial Court. I would however like to point out that the police aid should not be granted for mere asking. The Court has to be satisfied, prima facie, that there is an imminent threat of violation of interim order, if police does not intervene and that there is no other way of ensuring effective compliance. If however an alternative could be found such as, deploying an Officer of the Court to oversee the implementation of the order, the Court can avoid granting order for police aid.”

9. In view of detailed discussion made supra, this court finds merit in the petition and same is allowed. Order dated 13.7.2021 passed by learned Civil Judge (Junior Division), Baijnath, Kangra, Himachal Pradesh in CMA No. 175/2021 in Case No. 13/2021 is quashed and set aside and learned court below is directed to pass appropriate orders for providing police assistance to the plaintiff to ensure compliance of status quo order dated 3.6.2021.

10. The petition stands disposed of in afore terms, alongwith all pending applications. Interim directions, if any, stand vacated.
