

(2013) 05 DEL CK 0455

In the Delhi High Court

Case No : I.A. No. 18877/12 in CS (OS) No. 288/12

Asha Rani Gupta

APPELLANT

Vs

Rajender Kumar and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Constitution of India, 1950 — Article 129, 215

Citation : (2014) 1 AD 619

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Sandeep Sethi, with Mr. Vijayender Kumar and Ms. Megha Bansiwali, for the Appellant; Ashok Bhasin with Mr. Anubhav Bhasin and Mr. Arav Kapoor, Advocates with Contemnor in person, for the Respondent

Judgement

P.K. Bhasin, J.—Defendant no. 1 stands held guilty of having violated the directions of this Court given to him in this suit for permanent injunction. Now is the stage for awarding appropriate punishment to the contemnor. For arriving at a proper conclusion in the matter of punishment to be awarded to the contemnor little background facts leading to his being held guilty need to be noticed again. The two defendants in the suit were alleged to have inherited the tenancy rights from their deceased father in respect of one shop and back courtyard on the ground floor of property no. 7, Jor Bagh Market, New Delhi, which is residential-cum-commercial property. However, defendant no. 1 alone was doing dry cleaning business in the said tenanted shop. There is one more shop also on the ground floor besides a verandah and a toilet which were, however, meant for common use for the occupants of the two shops on the ground floor as well as the first floor portion which at the time of filing of the suit were in possession of the plaintiff. It was pleaded in the plaint that defendant no. 1 had on 30.04.2010 broken the back side wall of the open space in his occupation and unauthorisedly kept a heavy dry cleaning machine in the common verandah restricting the passage to common area of common verandah and the common toilet and he

had also installed a water treatment plant in the open space under his tenancy which created noise, air and water pollution due to which the plaintiff-landlady started having health problems. Similarly, the defendant no. 1 also closed the entry to the common verandah and toilet. When called upon by the plaintiff to undo what he had done illegally the defendant no. 1 refused to oblige and that led to the filing of the present suit in which the plaintiff-landlady prayed for restraining defendant no. 1 from creating any hindrances in peaceful enjoyment of the common verandah and toilet and also for directing him to remove the dry cleaning machine from the common verandah and water treatment plant and other encroachments also.

2. This Court vide order dated 3rd September, 2012 directed the defendant no. 1 to remove the dry cleaning machine from the common verandah in dispute within four weeks and not to create any hindrance in the plaintiff-landlady's enjoyment of the common verandah and toilet on the ground floor. Defendant no. 1 though removed the wall which had closed the entry to the verandah and the common toilet but he did not remove the dry cleaning machine within the period given by the Court.

3. The plaintiff then moved I.A. No. 1887/2012 in October, 2012 for taking action against the contemnor, including sending him to jail, for not complying with the directions of the Court.

4. During the pendency of that application, there was a huge fire on the ground floor of the property in question on 13th February, 2013 and due to that fire not only defendant no. 1's dry cleaning machine was totally burnt but even plaintiff's property also got badly damaged.

5. This Court after considering the defence taken by the contemnor in reply has already held defendant no. 1 guilty of disobedience of the directions given to him. Thereafter opportunity was given the contemnor and the plaintiff to make submissions on the point of punishment. Submissions were then made on behalf of the contemnor by learned senior advocate Mr. Ashok Bhasin and by Mr. Sandeep Sethi, learned senior advocate, for the plaintiff.

6. Learned senior counsel for the contemnor had submitted that earlier also before the contemnor had been held guilty he had tendered an unconditional apology to this Court for his lapse and after his having been held guilty also he was tendering sincerest apology and so he should be dealt with leniently in the matter of punishment. Mr. Bhasin further submitted that the contemnor even otherwise already stands harshly punished under the law of nature with the destruction of the dry cleaning machine, which was his source of livelihood, due to fire which had taken place before that machine could be removed in compliance of the directions of this Court from the place where it was installed. Mr. Bhasin also submitted that in these circumstances it would be too harsh a punishment for the contemnor if he is sent to jail and, therefore, lesser punishment should be awarded to the contemnor by imposing fine and also

directing him to compensate the plaintiff due to the damage caused to her property. While pleading for leniency the learned senior counsel drew my special attention to one decision dated 29th September, 2005 of this Court in a contempt matter (being CCP. NO. 16/2001), "Ved Parkash and Anr. Vs. Ashok Mehta and Anr." wherein this Court had after noticing the conduct of the contemnors of that case made a reference to the following words of Swami Vivekananda:

Might and Mercy guide the conduct of human beings. The exercise of Might is invariably the exercise of selfishness. The exercise of Mercy is heavenly.

7. Mr. Bhasin also cited one decision of the Supreme Court rendered in a contempt matter and which is reported in Samee Khan Vs. Bindu Khan, wherein the defendant in a suit between two neighbours was held guilty of violation of the injunction order of the trial Court whereby he was directed to maintain status quo in respect of some space of land between his property and that of the plaintiff but the defendant still put a brick wall in the disputed space thereby creating an obstruction to the use of that space by the plaintiff also. The defendant was awarded sentence of imprisonment of one month by the trial Court. The appellate Court maintained that punishment. Before the High Court the contemnor, inter alia, pleaded for mercy for the reason that he had subsequently removed the obstruction and had also tendered his apology. That prayer was accepted and he was exonerated. The plaintiff took the matter to the Supreme Court but the Supreme Court did not consider it proper to send the contemnor to jail in view of his subsequent actions including tendering of unconditional apology.

8. On the other hand, Mr. Sandeep Sethi, learned senior counsel for the plaintiff submitted that no leniency whatsoever should be shown to the contemnor and no punishment except that of sending him to jail would be justified for his contumacious act. In support of the submission that in contempt matters Courts should not be lenient towards the contemnors who have no respect for the majesty of the Courts Mr. Sethi placed reliance on some judgments of the Hon'ble Supreme Court which are reported as Priya Gupta and Another Vs. Addl. Secy. Ministry of Health and Family Welfare and Others, , Patel Rajnikant Dhulabhai and Another Vs. Patel Chandrakant Dhulabhai and Others, and " Delhi Development Authority Vs. Skipper Construction and Another,

9. During the course of arguments, learned senior counsel from both the sides, however, made a common submission that when the Court is dealing with a matter in which violation of Court's orders/directions has been brought to its notice the powers of the Court to deal with the contemnor under Order XXXIX Rule 2-A CPC, under the provisions of the Contempt of Courts Act as also under Article 215 of the Constitution of India can be invoked. It was also submitted from both the sides that as far as the power of the High Court to punish someone for its contempt under Article 215 is concerned, there is no specific punishment provided thereunder and the High Court can award any kind of punishment to the contemnor, including exemplary costs, which, in fact, the Supreme Court has

been imposing on the contemnors in exercise of the powers under Article 129 of the Constitution of India which declares the Supreme Court to be a Court of Record having the power to punish for its contempt and High Courts also, including this Court, have been in exercise of the powers under Article 215, which declares High Courts also to be Courts of Record having the power to punish for contempt, have been imposing huge costs by way of punishment upon the contemnors, depending upon the facts and circumstances of each case.

10. However, Mr. Sethi had submitted that though this Court can award costs or compensation payable to the plaintiff by the contemnor for the damage caused to her property because of the fire which had taken place in the property due to the heavy load of the dry cleaning machine of the contemnor but in the facts and circumstances of the present case punishment of only damages would not meet the ends of justice. Mr. Sethi had submitted that due to the fire which had taken place in the plaintiff's premises because of the contemnor's fault in not removing the dry cleaning machine plaintiff's property had got damaged to such an extent that a sum of about Rs. 50 lacs would be required for the repairs etc. and even if that much amount is ordered to be paid by the contemnor to the plaintiff that would not meet the ends of justice. Mr. Sethi, thus, concluded by submitting that the contemnor must be sent to jail so that a clear message is sent to the public at large that breach of orders of the Courts is not considered lightly by the Courts and such kind of violations are not even attempted by the litigants in future.

11. There is no doubt that once someone is found guilty of having willfully violated orders of the Court the contemnor should not be let off lightly, as was the submission of the learned senior counsel for the plaintiff Mr. Sethi, but, in the facts and circumstances of the present case as narrated above, I do not feel that sending the contemnor to jail would be justified and that punishment only would serve the ends of justice.

12. As noticed already the Supreme Court in Samee Khan's case (supra), cited by the learned senior counsel for the contemnor, under almost similar circumstances did not send the guilty contemnor to jail. Here the dry cleaning machine which was to be removed by the contemnor stands removed due to the fire in which it has got totally burnt. In that way, the contemnor already stands punished by the law of nature also. Reference can also be made to another decision of the Apex Court in a contempt matter reported in C. Elumalai and Others Vs. A.G.L. Irudayaraj and Another, where the Supreme Court even after finding the contemnors guilty of violation of its own orders by creating third party interest in the suit property which they were prohibited from creating imposed on each one of them only exemplary costs of Rs. 2,00,000/- and were ordered to undergo imprisonment only in case of non-payment of the costs.

13. Relying upon this decision of the Supreme Court a Single Judge Bench of this Court has also in a recent order dated 1st June, 2012 in a contempt petition (being I.A. No. 2122/2007 in CS(OS) 1565/2006), "Rajesh Jain vs. Devender

Kumar Saigal" directed each one of the contemnors who were held guilty of contempt by creating party interest in the suit property in defiance of the injunction order of the Court to shell out Rs. 2,00,000/- and custodial sentence of imprisonment was not awarded.

14. In the facts and circumstances of the present case, the contemnor is directed to pay three lacs of rupees to the plaintiff-landlady within a period of fifteen days as that would be a sufficient punishment for him and would serve the ends of justice. However, in case of default in payment of this amount, the contemnor shall undergo simple imprisonment for a period of fifteen days. IA No. 18877/2012 now stands disposed of finally.