

(1997) 07 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Contempt Petition No. 440 of 1985

Ashiwani Kumar Srivastava

APPELLANT

Vs

Anwarul Hassan and Another

RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 12

Citation : (1998) CriLJ 3821 : (1998) 4 RCR(Civil) 416

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : D.K. Jain, D.P. Singh and B.B. Paul, for the Appellant; Vineet Saran, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—This is an application u/s 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act") with the prayer that the respondents be punished for disobeying the orders passed by this Court in second appeal No. 2451 of 1984 arising out of Original Suit No. 668 of 1978.

2. Briefly stated, the facts of the case are that the services of late Ashiwani Kumar Srivastava, who was an employee of New India Assurance Company Ltd. were terminated in the year 1972. He filed Civil Suit No. 568 of 1978 in the Court of Munsif West, Allahabad challenging the order of termination. The aforesaid suit was dismissed. He filed appeal, which was allowed on 31-7-1984 by the I Additional District Judge, Allahabad Following order was passed by the appellate Court :-

The appeal is allowed with costs throughout, the judgment along with the decree is set aside and it is hereby declared that the plaintiff still continues in service of the New India Assurance Co. Ltd. and is entitled to attend the office, discharge his duties and draw his pay and allowances as admissible from time to time.

Fifteen days lime is allowed to the defendants to enforce the decree of the Court failing which they will be liable in contempt.

New India Assurance Company filed a Second Appeal No. 2461 of 1984 before this Court, which was dismissed on 24-1-1986. A review petition was preferred which too was dismissed by this Court on 7-8-1986. Late Ashiwini Kumar Srivastava moved a number of applications for implementing the order passed by the appellate Court on 31 -7-1984 and as confirmed in Second Appeal by this Court. A letter dated 9-10-1986 was issued to late Ashiwini Kumar Srivastava by the company to join the duties at the Naini Branch, Allahabad. Subsequently, it transpired that late Ashiwini Kumar Srivastava had already attained the age of superannuation on 31st May, 1986 (as his date of Birth was 14th May, 1926).

Consequently, by another letter dated 13-10-1986, the earlier letter dated 9-10-1986 whereby the late petitioner was asked to join the duties, was cancelled. During the pendency of the petition, the original petitioner, namely, Ashiwini Kumar Srivastava, died and in his place, his brother Jitendra Kumar has been substituted as his legal representative.

3. In the contempt petition, S/Sri Anwarul Hasan, Divisional Manager and I.S. Mathur, Branch Manager were impleaded as respondents. Both of them filed separate counter-affidavits. Sri I. S. Mathur has pointed out that he has been unnecessarily impleaded as party to the contempt petition as the petitioner late Ashiwini Kumar Srivastava never worked in his Branch. Respondent No. 1, Sri Anwarul Hasan who had also been transferred as Senior Divisional Manager, Kanpur, in his counter-affidavit has mentioned that after the receipt of the orders of the Court, required papers were immediately sent to the Head Office of the company but the difficulty in the office was to find out the earlier service record of the petitioner, who was not even in the service of the present company and as such Head Office is finding difficulty in ascertaining the correct amount of the past arrears payable to the petitioner. It was also averred that realising the difficulties of the petitioner, the company has agreed to make "On Account Payment" of Rs. 25,000/- to the petitioner, which the petitioner had received through cheque. Sri Anwarul Hasan has since retired, from service. This contempt petition, therefore, does not survive against the original respondents, namely, S/Sri Anwarul Hasan and I. S. Mathur. The New India Assurance Company, the Divisional Manager and the Branch Manager of the said company have now been impleaded as respondents to the petition.

4. Sri Ravi Kiran Jain, Senior counsel appearing on behalf of the substituted petitioner Sri Jitendra Kumar frankly conceded that the petitioner is no more interested in seeking the punishment of any one of the officers of the company under the provisions of the Act and the only purpose for continuing with this petition is to get the decree passed in Civil Suit No. 668 of 1978 executed.

5. A preliminary legal point was raised by Sri A. P. Saran, learned counsel appearing on behalf of the respondent-company that the present petition under

the Act is not maintainable as the proper remedy of the petitioner is to put the decree for execution before the executing Court.

6. The learned counsel for petitioner urged that the present petition should not be thrown out on the ground of non-maintainability alone, or, on the plea of availability of the alternative remedy as the petition has remained pending for more than a decade before this Court. It was also urged that since this Court is a Court of record, it has ample powers to proceed with the matter in view of the provisions of Article 215 of the Constitution. It was also urged that the availability of alternative remedy by itself is not a sufficient ground to non-suit the petitioner. In support of his contention, the learned counsel for the petitioner placed reliance on certain observations made by the Supreme Court in the case of Dr. Bal Krishna Agarwal v. State of U. P. 1995 LIC 1396 : 1995 AIR SCW 800 . In that case, the question involved was regarding inter se seniority of the appellant: Dr. Bal Krishna Agarwal and the respondents Dr. Murli Manohar Joshi and Dr. P. K. Sharma as Professor in Physics in the Allahabad University. High Court had dismissed the writ petition on the ground that an alternative remedy was available to the petitioner u/s 68 of the Universities Act. The writ petition remained pending before High Court for the last more than five years. In the backdrop of the above facts, Supreme Court observed that the High Court was not right: in dismissing the writ petition on the ground of availability of an alternative remedy especially when the writ petition, which was filed in the year 1988, had already been admitted and was pending in the High Court for the past more than 5 years. It was further observed that since the question that it raised is a pure question of law and even if the matter is referred to the Chancellor u/s 68 of the Universities Act, it is bound to be agitated in the Court by the party aggrieved by the order of the Chancellor, the High Court should not have dismissed the petition on the ground of availability of an alternative remedy. A reference was also made to two other decisions of the Supreme Court in the case of M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, and Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, .

7. I have carefully studied the aforesaid rulings relied upon by the learned counsel for the petitioner and find that they are of no help in the instant case.

8. The moot point for consideration is whether a decree passed in the Civil Suit should be executed by invoking the elaborate provisions made in the CPC or it should be executed by this Court by invoking the provisions under the Act. As said above, the learned counsel for the petitioner has been frank enough in conceding that he does not want any person to be punished under the Act but the sole object of continuing with the present petition before this Court under the Act is to get the decree executed by obtaining payment of the dues which the deceased employee late Ashiwini Kumar Srivastava was entitled to consequent upon the setting aside of his termination order.

9. It would be a novel procedure to execute a decree passed by a civil Court by

moving a petition before this Court under the provisions of the Act. The remedy provided under the Act is not intended to supersede the modes of obtaining relief before the Civil Court or to deny defence, which may be legitimately open to the judgment debtor. So far as the question of executability of a decree is concerned, CPC contains elaborate and exhaustive provisions for dealing with it in all its aspects. The enormous rules of Order XXI of the Code take care of different situations, providing effective remedies to both the parties, i.e. the decree holders and the judgment debtor.

10. In *Ghan Shyam Das Gupta and another Vs. Anant Kumar Sinha and others*, , the Hon'ble Supreme Court has observed that the remedy under the CPC is of superior judicial quality that what is generally available under other statutes and the Judge being entrusted exclusively with administration of justice is expected to do better. In *S.G. Paggare v. Zonal Manager, Food Corporation of India* 1987 All WC 506 : 1987 All LJ 1349 *Smt. Indu Tewari Vs. Ram Bahadur Chaudhari and Others*, and *Anis Ahmad Khan v. State of U.P.* 1985 All WC 25 : 1985 All LJ 30, it has been held that it would not be proper exercise of discretion on the part of the High Court to exercise its jurisdiction under the Contempt of Court Act when such an effective and alternative remedy is available to any person. In *Paggare's* case (*supra*), it was specifically held that the proceedings under the Act should not be taken where an effective alternative remedy of the nature specified under Order 39, Rule 2-A of the CPC is available.

11. On the analogy of the above rulings, it may safely be concluded that a decree cannot be executed by means of a petition under the Act in view of the fact that a complete and effective apparatus of executing the decree is to be found in the Code of Civil Procedure. The original petitioner, it appears, had unwittingly slipped into a subtle but fatal error in invoking the provisions of the Act. His proper remedy was to have moved an application for execution of the decree. The initial mistake was committed in entertaining the contempt petition, which should not have been entertained as not maintainable, Merely on the ground that the present petition has remained pending before this Court for the last about 11 years, by itself, cannot be a ground to execute a decree which otherwise is executable by a competent Civil Court under the provisions of the Code of Civil Procedure, more so, when disputed facts about the length of service, arrears of pay and pensionary benefits, if any, are required to be gone into.

12. For the reasons stated above, the present contempt petition is not maintainable. It is dismissed leaving the present petition to have the remedy before the appropriate executing Court Civil Court, Notices issued to the respondents are hereby discharged. It may be made clear that the respondents shall not be permitted to raise the question of limitation in filing of the execution application, if any, before the concerned Court.