

(2023) 09 CAL CK 0037
In the Calcutta High Court

Case No : CRC No. 5 Of 2023 In FA No. 316 Of 2016, IA No: CAN/2/2023

Ashoke Ghosh

APPELLANT

Vs

Shyamal Roy

RESPONDENT

Date of Decision : 08-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 215
Kolkata Municipal Corporation Act, 1980 — Section 401

Citation : (2023) 09 CAL CK 0037

Hon'ble Judges : Arijit Banerjee, J; Apurba Sinha Ray, J

Bench : Division Bench

Advocate : Milan Ch. Bhattacharya, Sulangna Bhattacharya, K.K. Lahiri

Judgement

Arijit Banerjee, J

1. This contempt application has been filed for alleged willful violation of an order dated November 28, 2018, whereby an application being CAN 1270 of 2017 filed in a first appeal being FA 316 of 2016 (Shyamal Ray @ Roy v. Sandip Das & Ors.), was disposed of. The relevant portion of the said order reads as follows:-

"The application is disposed of by directing the parties to maintain status as on today with regard to the possession, nature and character of the suit properties till the disposal of the appeal."

2. The first appeal is still pending. Accordingly, the order of status quo extracted above is still in force.

3. Appearing for the petitioner, Mr. Bhattacharya, learned Senior Advocate, submitted that with full knowledge of the status quo order, the respondent started construction on the second floor of the building in question. He submitted that various complaints were lodged by the petitioner with the concerned Authorities including the Police, the local councillor, the local member of the Legislative Assembly and the Kolkata Municipal Corporation (KMC). Learned Senior Counsel, drew our attention to copies of such complaints which are

annexed to the contempt petition.

4. According to learned Senior Counsel, in spite of such complaints, none of the authorities took any action excepting KMC which issued a stop work noticed dated March 21, 2022, to the respondent herein under Section 401 of the KMC Act. This was after the petitioner lodged a written complaint dated March 19, 2022, with the Executive Engineer (Building), Borough-V, KMC. Mr. Bhattacharya also drew to our attention certain photographs annexed to the contempt petition to substantiate the petitioner's contention that the respondent has made new construction in breach of the status quo order.

5. Appearing for the respondent, Mr. Lahiri, learned Counsel, submitted that the aforesaid order of status quo has not been breached in any manner by the respondent. The respondent is a law abiding citizen having highest regard for orders of Court. The respondent never had nor now has any intention of acting in breach of the Court's order.

6. Learned Counsel submitted that the building in question, like all other buildings on Sashi Bhusan Dey Street, Kolkata, is very old. The building suffered serious damage during cyclone 'Amphan'. The respondent and his family reside in that building. It became absolutely essential to do certain basic repairing works to keep the building in a habitable state. No new construction work has been undertaken. The repairing works have also been stopped upon receipt of notice under Section 401 of the KMC Act.

7. Being prima facie of the view that the respondent had made new construction thereby changing the nature and character of the concerned suit property, we had issued a Rule on January 30, 2023. Pursuant to service of the Rule, the respondent personally appeared in Court and filed an affidavit in response to the rule. The petitioner subsequently filed his rejoinder to such response.

8. Our prima facie satisfaction that the respondent has acted in violation of the order of status quo was based on the photographs annexed to the contempt petition as also the notice under Section 401 of the KMC Act which describes the unauthorized construction as "RCC slab casting partly at 2nd floor roof along with new room at 2nd floor. Without sanction". It appeared to us, what the respondent has done is more than repairing works and included new construction.

9. In the affidavit filed by the respondent in answer to the Rule, the respondent has consistently maintained that he has made no new construction. Only repair works have been done. For such purpose some masonry materials was stored at the said premises. No new room has been constructed. The petitioner is in cahoots with the KMC Authorities. This will appear from the fact that the KMC Authorities acted with unusual promptitude by issuing stop work notice to the respondent on March 21, 2022, upon receipt of the petitioner's complaint dated March 19, 2022. The respondent stated that only for the purpose of making some unavoidable repairs to the severely damaged roof and cracked wall of the

kitchen, some masonry materials had been brought with the consent of all the inhabitants of the building including the petitioner. The photographs which have been annexed to the contempt application were allowed to be taken by him and none of them shows any new construction of any additional room.

10. In other words, the respondent categorically denied having violated the interim order of status quo. However, in paragraph 13 of his affidavit, the respondent stated as follows:-

"13. That despite my statements as made hereinabove in support of my genuine and bona-fide cause, I hereby tender my unqualified apology before this Hon'ble Court if it is felt that I should not have done whatever I have done as stated hereabove. While asserting again that there was no wilful disobedience on my part in respect of the order of the Hon'ble Court, I beg your Lordship pardon having undertaken the repairs inadvertently without seeking permission of this Hon'ble Court on the ground of exigency."

11. In his argument, learned Counsel for the respondent, in effect, repeated what is stated in the respondent's affidavit filed in response to the Rule.

12. Mr. Bhattacharya, learned Counsel for the petitioner, submitted that the photographs and the notice issued under Section 401 of the KMC Act, 1980, leave no room for doubt that the respondent has made new construction violating the status quo order. He further submitted that the purported apology tendered in paragraph 13 of the respondent's affidavit should not be accepted by the Court. It is not an unconditional apology. In this connection learned Advocate referred to two decisions which are as follows:-

(i) S. Venkataraman, v. P.V. Singri & Anr., reported at 1997 CRI. L. J. 1840: In this case a Division Bench of the Karnataka High Court held, inter alia, as follows:-

"Even though it is always open to a party to defend a contempt proceeding on merits and to show to the Court that no contempt has been committed or to explain the conduct away, that such a procedure involves an inherent risk in so far as if the defence fails, the party cannot in the alternative seek to tender an apology. This aspect of the matter is of some importance because when a contempt notice is issued, the Court is prima facie satisfied that a case of contempt has been made out and it is a matter of propriety that if a party desires to tender an apology at the earliest point of time, that it must be unqualified and unconditional and furthermore, it must be a genuine apology. It is not permissible under the law to plead elaborate defences and to thereafter end the reply or the explanation with a submission that in the event of the Court holding that contempt has been committed, that an apology is being tendered. The correct procedure is that the apology be first tendered and it is certainly open to the party to request the Court to consider the circumstances or the explanations or even possible defence so that even if one fails in that respect, the contempt will not be aggravated."

(ii) *Ishwar Naidu & etc. v. Municipal Corporation of Greater Bombay & Ors.*, reported at 1997 CRI. L. J. 712: The Court held that unless the apology tendered is found to be unconditional, the same cannot be accepted.

13. We have given our anxious consideration to the rival contentions of the parties.

14. Nobody is above the law. Rule of law must prevail at any cost. Otherwise, there will be anarchy in the society. The power of the High Court to punish for contempt inheres in the Court. It is an inherent power recognized by Article 215 of the Constitution and the Contempt of Courts Act, 1971.

15. When a Court of competent jurisdiction passes an order against a person, that person is bound to obey the order, unless the order is recalled by the Court on his prayer or is set aside by a higher forum. The person has no choice but to act in accordance with the order, however much he may dislike it. If with knowledge of the order that person violates the order wilfully, he will be exposed to action under the Contempt of Courts Act.

16. The contempt jurisdiction of the High Court is exercised with two fold objective. Firstly, to punish the person violating Court's order. Secondly, to uphold the dignity and majesty of the Court. A person violating a competent Court's order cannot be allowed to get away lightly. Unless that person is taken to task, the confidence of the members of the society in the judiciary will dwindle. As a corollary to punishing the violator of the order, the High Court will ensure that the concerned person is not permitted to enjoy the benefit he has derived by acting in violation of Court's order.

17. The High Court always exercises the jurisdiction to punish for contempt of Court, very carefully and sparingly. It is a quasi-criminal jurisdiction having severe consequences for a person who is held to be guilty for contempt of Court. He is liable to suffer imprisonment and also to pay fine or both. Hence, unless the Court is reasonably certain that the alleged contemnor has wilfully violated an order, the jurisdiction to punish for contempt is not exercised. Any benefit of doubt is ordinarily given to the alleged contemnor. However, when the Court is reasonably sure that the act complained of amounts to willful violation of Court's order on the part of the alleged contemnor, it is imperative that the alleged contemnor is held to be guilty of contempt and punished accordingly. This is necessary to instill confidence in the judiciary, in the minds of the members of the public and to send the message to people at large that a citizen cannot flout Court's order with impunity.

18. In the present case we find that Kolkata Municipal Corporation, the statutory civic authority entrusted with the duty and function to ensure that unauthorized constructions are not made by reckless or unscrupulous builders, has issued a stop work notice under Section 401 of the KMC Act, to the respondent. The unauthorized construction is described in such notice as "RCC slab casting partly at 2nd floor roof along with new room at 2nd floor. Without sanction". This, along

with the photographs annexed to the contempt petition, clearly shows new construction. From the annexures to the respondent's affidavit filed in response to the Rule, which are copies of letters written by the respondent to KMC Authorities as well as the Police, in March 20, 2022, it appears that the respondent sought permission from the civic Authorities to construct a washroom. This was with full knowledge of the order of status quo.

19. Furthermore, the respondent does not dispute the authenticity of the photographs annexed to the contempt petition. However, the respondent maintains that he has only done repairing work and no new construction. The photographs belie such stand.

20. We are therefore reasonably ascertain that the respondent has made new construction, albeit not of a major proportion, but in willful violation of the interim order of status quo. We hold the respondent guilty of contempt of Court.

21. The purported apology tendered in paragraph 13 of the respondent's affidavits, can hardly be said to be an unconditional apology. It does not reflect to any extent that the respondent is sorry or contrite for having violated this Court's order. The respondent has consistently tried to justify his action and only as the last resort has tendered apology keeping in mind that his attempted justification may not be acceptable to the Court. We are not inclined to accept the so-called apology tendered by the respondent.

22. However, keeping in view the magnitude of the new construction and the nature and extent of violation of this Court's order, we take a lenient approach in so far as imposing punishment on the respondent is concern. We impose a fine of rupees one thousand on the respondent for having committed contempt of Court. The fine is to be paid within a week from date, failing which, the respondent will stand to suffer simple imprisonment for 7 days.

23. Since, apart from the construction in question having been made in breach of the status quo order, such construction also appears to be unauthorized as is indicated in KMC's notice under Section 401 of the KMC Act, KMC would be at liberty to take necessary steps in respect of such alleged unauthorized construction, in accordance with law, observing the principles of natural justice. With the aforesaid directions, the contempt application practically stands disposed of.

24. However, this matter will be listed again one week hence under the heading "To be mentioned" for ascertaining whether or not the respondent has paid the fine and for further consequential orders, if necessary.

25. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.