
(2013) 01 AP CK 0003
In the Andhra Pradesh High Court
Case No : C.R.P. No. 6251 of 2012

B. Chandra Sekhar Reddy and others	APPELLANT
Vs	
K. Naga Raju Yadav and another	RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 21 Rule 32(1), Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2(3)
Constitution of India, 1950 — Article 226
Specific Relief Act, 1963 — Section 37(2)

Citation : (2013) 2 ALD 626 : (2013) 1 ALT 532

Hon'ble Judges : G. Krishna Mohan Reddy, J

Bench : Single Bench

Advocate : P. Nagendra Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

Hon"ble Sri G. Krishna Mohan Reddy, J.—In this Civil Revision Petition (C.R.P.) assailed order dated 04-12-2012 passed in I.A. No. 175 of 2010 in I.A. No. 1071 of 2009 in O.S. No. 240 of 2009 on the file of the Court of Additional Junior Civil Judge, Nandyal. The respondent herein, who is also the petitioner in the I.A. in question and plaintiff in the suit, filed that suit for permanent injunction on the ground that he got lease in respect of the quarry which is the subject matter of the suit whereas without any manner of right the petitioners involved in damaging the quarry on 19-12-2009 and he also filed the I.A. No. 1071 of 2009 for granting ad-interim injunction/temporary injunction pending disposal of the suit in respect of the suit schedule property against the petitioners herein who are the respondents in the I. As and defendants in the suit and obtained ad-interim injunction. Later he filed the I.A. No. 175 of 2010 for granting police aid on the ground that the order of ad-interim injunction could not be implemented as the petitioners involved in violating it. After hearing both parties, it is observed and held by the Court below:

In this petition both the parties did not file any documents. In particular the petitioner has not filed any document to show that the injunction granted by this Court is being violated or the respondents damaged his quarry. However, in the decision 2nd read above as relied upon by the learned counsel for the petitioner, the Hon"ble High Court held that granting police aid does not show any favour to the plaintiff, but, it would amount to taking steps for effective implementation of the Court's order and thereby upholding the dignity of the judiciary. It is the case of the respondents that they did not trespass into suit schedule property before or after the injunction is granted. What that is the case of the respondents, this Court feels that no prejudice would be caused to the respondents if the police aid is granted to implement the order of this Court."

With those observations, the Court below granted the police aid aggrieved by which the present C.R.P. has been filed.

2. Learned counsel for the petitioners would contend that one G. Venkata Reddy got lease in respect of the subject matter. It was later transferred in the name of the second respondent. The first respondent got no right of any manner over the quarry but he approached the Court with unclean hands. Thereby he claims that it was not proper to grant police aid to implement the order in question without effectively determining the actual question of legal possession over the quarry. Nowhere in the Civil Procedure Code, 1908 (CPC) provided granting of police aid without resorting to the provisions of Section 94 CPC or Order XXI Rule 32 CPC whereas the question of application of Section 151 CPC does not arise when there are specific provisions in that context. In support of his plea he has relied upon the decision in POLAVARAPU NAGAMANI v. PARCHURI KOTESHWARA RAO 1.

3. On the other hand learned counsel for the respondent would contend that the question involved is purely relating to the implementation of the order already passed. When the civil Court passed the order, that Court got all powers to entertain it either approaching u/s 94 or Order XXI Rule 32 or 151 CPC whereby it is not proper to impose any restriction against the Court below in the context of implementing the order.

4. Thereby it is necessary to examine the ambit of Section 94 and 151, Order XXXIX Rule, 1, 2 and 2-A and Order XXI Rule 32 CPC they being relevant here.

Section 94 CPC enjoins-

Supplemental proceedings.-In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,-

(a) issue a warrant to arrest the defendant and bring him before the Court to show-cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.

Therefore, under this Section contemplated the power to issue warrant against the defendant to compel him to give security, to commit to civil prison, to direct to furnish security, to grant temporary injunction, in case of disobedience to commit the person to civil prison and attach and sell his property and to appoint receiver and/or to make such other interlocutory order as may appear to the Court to be just and convenient.

5. In this context in POLAVARAPU NAGAMANI's case it was held as follows:

To prevent the ends of justice from being defeated" the civil Court can pass any orders as specifically mentioned in Section 94(a) to (d) and is also empowered to make any order which it appears to be just and convenient to meet the ends of justice. Section 95 is intended to prevent abuse of power of Court and makes a party obtaining temporary injunction or an order of arrest or an order of attachment without sufficient grounds, liable for compensation at the behest of the party who suffers arrest/attachment or temporary injunction. It is settled law that ordinarily no Court can pass an interlocutory order if it has effect or tend to be susceptible of an inference of prejudging some important or sensitive issue in the main matter. Therefore, there cannot be any doubt that if need arises to enforce an order of temporary injunction a civil Court can always pass an order u/s 94(e) of CPC (besides Section 151 of CPC) directing the local police to give protection to the party who is threatened in spite of the Court order. But, in all cases filed u/s 151 of CPC or cases filed invoking Section 94(e) of CPC, the civil Court cannot grant an order directing the police to give protection to safeguard the property, which is subject matter of the suit.

6. Order XXXIX Rule 1 enjoins-Cases in which temporary injunction may be granted.-Where in any suit it is proved by affidavit or otherwise--

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,
- (c) That the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging,

alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

Rule 2 enjoins-

Injunction to restrain repetition or continuance of breach.-(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right;

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise as the Court thinks fit.

Rule 2A enjoins-

Consequence of disobedience or breach of injunction.-(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the Civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

Order XXI Rule 32 enjoins-

Decree for specific performance for restitution of conjugal rights, or for an injunction.- 1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both. (2) Whereas the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the

attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention. (3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application. (4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease. (5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

7. Order XXXIX CPC deals with various interlocutory orders granting temporary injunctions. Rule 1 is primarily concerned with preservation of the property in dispute till ascertaining the relevant legal rights. According to the dictionary meaning "injunction" is judicial process or order requiring the person or persons to whom it is directed to do or refrain from doing a particular act. In HALSBURY'S LAWS OF ENGLAND (Halsbury's Laws of England (4th Edn.), Vol. 24, para 901, p. 511), it is stated: "An injunction is a judicial remedy by which a person is ordered to refrain from doing or to do a particular act or thing. In the former case it is called a restrictive injunction, and in the latter a mandatory injunction."

8. Injunctions are of various types. They may largely be classified as, (1) temporary or perpetual; (ii) prohibitory or mandatory; (iii) negative or positive; (iv) ad-interim or interim; etc. Temporary or preliminary or interim or interlocutory injunctions are such as are to continue specific time or until further order of the Court. They may be granted at any stage of a suit. In other words they operate during the pendency of suit, appeal or other proceedings or for a specific period. They do not conclude the rights and liabilities of the parties therein finally. A perpetual injunction on the other hand can only be granted by the decree made at the hearing and upon the merits of the suit whereby the defendant is perpetually enjoined from the assertion of a right or from the commission of an act which would be contrary to the rights of the plaintiff (Section 37(2) of the Specific Relief Act).

9. As held in JAGJIT SINGH KHANNA v. RAKHAL DAS MULLICK 2, interim or temporary injunction may consist of two stages: (i) ad-interim injunction which is

granted without finally deciding or disposing an application for injunction and operates immediately till the disposal of the application or till some other order is passed; (ii) interim injunction which is normally granted while deciding and disposing main application to enure generally till the disposal of the suit. In *RAJENDRAPRASAD R. SINGH v. MUNICIPAL CORPORATION OF BOMBAY* 3, it is observed "Neither Rule 1 nor Rule 2 uses the words "interim or ad interim". They are phrases coined by legal fraternity to indicate the stage at which such orders are passed."

10. But there is distinction between Rule 1 and Rule 2. Whereas Rule 1 covers all classes and categories of suits, Rule 2 applies only to suits for injunction. Thus, application of Rule 2 is limited and is confined to injunction suits (of breach of contract or other injury of any kind) (*Datla China Appalanarasimha Raju Vs. Nadimpalli Seethayamma Garu and Others*,). There is another aspect also. Clause (a) of Rule 1 allows either party (i.e. plaintiff or defendant) to apply for interim injunction; under Rule 2, it is the plaintiff alone who can seek redress against the defendant (*Dilip Kumar V. Ram Saran* (1972 ALL LJ 379)).

11. In *COLGATE PALMOLIVE (INDIA) LTD v. HINDUSTAN LEVER LTD* 4, the Supreme Court indicated certain considerations which ought to weigh with the Court hearing an application or petition for the grant of injunction:

- (i) extent of damages being an adequate remedy;
- (ii) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefore;
- (iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;
- (iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible;
- (v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;
- (vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;
- (vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.

12. But while granting ad-interim injunction there will not be any basis for considering the ingredients of prima facie case, balance of convenience and irreparable injury. In other words these ingredients can be considered when both the parties come up with their respective claims and file or place prima facie evidence in support thereof respectively. At the time of granting ad-interim

injunction it is only to be considered as to whether unless that relief (of ad-interim injunction) is granted the purpose of the corresponding proceeding would be defeated or not.

13. With regards to the scope of Rule 2-A, the proceedings under this Rule are quasi-criminal in nature and have a punitive aspect as is evident from the contemnor being liable to be detained in civil prison. They are in substance designed to effect the enforcement or implementation of the order. This is clearly brought out by their identity with the procedure prescribed by the Code for execution of decree for permanent injunction under Order XXI Rule 32 which sets out method by which such decree can be executed (*The State of Bihar Vs. Rani Sonabati Kumari*,). The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an order of injunction directing the opposite party to do or not to do something and there was disobedience or breach of such order. (*Food Corporation of India Vs. Sukh Deo Prasad*,). The powers under Rule 2-A are required to be exercised with great caution and responsibility. It has, therefore, been held that there should be no element of vindictiveness in punishment. It should commensurate with maintaining the dignity of the Court. (*Urban Improvement Trust and Others Vs. Barkat Khan*,

14. It is referred in *Umarao Singh Daulat Singh Vs. Ramgopal Ramnarayan and Another*, *Shri Subodh Gopal Bose Vs. Dalmia Jain and . Co. Ltd. and Others*, a quotation from Halsbury's Laws of England which reads "An order for an injunction must be implicitly obeyed and every diligence must be exercised to obey it to the letter. Any party enjoined by it who does not obey it to the letter is guilty of committing a willful breach of it unless there is some misapprehension. Where there is difficulty in complying with an injunction, the proper course may be to apply to the court for a suspension. However, in determining whether or not a breach has been committed, regard is paid to the circumstances in which, and the object for which, the injunction was granted." In *STATE OF BIHAR v. SONABATI KUMAR* 5, the Supreme Court observed that where a court was empowered by a statute to issue injunction against any defendant, even if the defendant be the State, the provision would be frustrated and the power rendered ineffective and unmeaning if the machinery for enforcement especially enacted did not extent to everyone against whom the order of injunction was directed.

An injunction in prohibitory form operates from the time it is pronounced, not from the date when the order is drawn up and completed. Consequently the party against whom it is made will be guilty of contempt if he commits a breach of the injunction after he has received notice of it, even though the order has not been drawn up.

(Halsbury's Laws of England 4th Edition Vol. 24, para-1099 p. 607).

15. Coming to the ambit of Order XXI Rule 32 sub-rule (1) thereunder directs

that an order of injunction may be executed by the detention of the person disobeying such order in the civil prison or by attachment of his property or by both subject to sub-rules 2, 3 and 4. The mandate contained in sub-rule (5) of Rule 32 suggests that the Court may in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practical by the decree holder or some other person appointed by the Court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree. There are two distinct provisions i.e., one in Order XXXIX Rules 2-A and the other in Order XXI Rule 32 with regards to the consequential action to be taken in the cases of violation of temporary injunctions and decree of injunction granted respectively. A question may be posed as to whether Order XXI Rule 32 can be applied for the violation of temporary injunctions granted under Order XXXIX Rules 1 and 2 CPC. This necessitates to examine whether the injunction decree referred in Order XXI Rule 32 covers an order of granting interim injunction under the other provision.

16. In *KANWAR SINGH SAINI v. HIGH COURT OF DELHI* 6 the Supreme Court discussed categorically about the distinction between Order XXXIX Rule 2A and Order XXI Rule 32 CPC. It is held:

An application under Order XXXIX Rule 2A lies only where disobedience/breach of injunction granted or order complained of was one that is granted by the Court under Order XXXIX Rules 1 and 2 CPC, which is naturally to enure during the pendency of the suit. However, once a suit is decreed, the interim order, if any, merges into the final order and if the case is ultimately dismissed, the interim order stands nullified automatically. On the other hand in case there is a grievance of non-compliance with the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution Court under Order XXI Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. An application under Order XXXIX Rule 2-A CPC is not maintainable once the suit is decreed. Law does not permit to skip the remedies available under order XXI Rule 32 CPC and resort to the contempt proceedings for the reason that the Court has to exercise its discretion under the Contempt of Courts Act, 1971 when an effective and alternative remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings. There is a complete fallacy in the argument that the provisions of Order XXXIX Rule 2A CPC would also include the case of violation of breach of permanent injunction granted at the time of passing of the decree. It is also observed that in an

undertaking given to the Court during the pendency of the suit on the basis of which the suit itself has been disposed of becomes a part of the decree and breach of such undertaking is to be dealt with in execution proceedings under Order XXI Rule 32 CPC and not by way of contempt proceedings.

17. By virtue of the dictum of the Supreme Court, it is clear that an application under Order XXXIX rule 2A lies only where disobedience/breach of injunction granted or order complained of was one that is granted by the Court under Order XXXIX Rules 1 and 2 CPC, which is naturally to enure during the pendency of the suit. However, once a suit is decreed, the interim order, if any, merges into the final order and if the case is ultimately dismissed, the interim order stands nullified automatically. On the other hand in case there is a grievance of non-compliance with the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution Court under Order XXI Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. An application under Order XXXIX Rule 2-A CPC is not maintainable once the suit is decreed. Thus when the matter relates to the infringement of a decree or decretal order, it is not expedient to invoke and exercise contempt jurisdiction in essence as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. There is a complete fallacy in the argument that the provision of Order XXXIX Rule 2-A CPC would also include the case of violation of breach of permanent injunction granted at the time of passing of the decree.

18. In fact in POLAVARAPU NAGAMANI's case upon which the petitioner herein has placed reliance against the question of granting police aid, it was held that Order XXI Rule 32 was to be invoked when there was violation of an ad-interim injunction or temporary injunction order granted upon considering various decisions.

19. In RAYAPATI AUDEMMA v. POTHINENI NARASIMHAM 7, under similar circumstances, a Division Bench of this Court held:

Order XXXIX Rule 2(3) 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 farther provide for implementation of the order of injunction itself. Order XXXIX 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 provision 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 XXXIX of CPC 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 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 u/s 151, CPC and direct the police authorities to render all aid to the aggrieved party in the implementation of the Court's order. Yet again it was held: If the police authorities are under a legal duty to enforce the law and the public or the citizens are entitled to seek direction under Article 226 of the Constitution for discharge of such duties by the Police Authorities we feel that the civil Courts can also give appropriate directions u/s 151 CPC to render aid to the aggrieved parties for the due and proper implementation of the orders of Court. It cannot be said that in such a case the exercise of the inherent power u/s 151, CPC is devoid of jurisdiction. There is no express provision in the code prohibiting the exercise of such a power and the Court can give appropriate directions at the instance of the aggrieved parties to the police authorities to render its aid for enforcement of the Court's order in a lawful manner. 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 orders u/s 151 C.P.C.

20. In SATYANARAYANA TIWARI v. S.H.O., P.S., SANTHOSH NAGAR 8, while considering the scope of the question of violation of an order of temporary injunction, a Division Bench of this Court had followed and taken the same view. Further with regards to the ambit of Article 226 of the Constitution of India, the Division Bench observed:

Mr. Jagannadha Rao, learned counsel, however, contended that the said decision is an authority for the position that the civil courts can under inherent powers, grant such directions u/s 151 C.P.C. but a writ of mandamus, does not lie. We are unable to agree with this contention. Section 151 CPC reserves the inherent power of the Court. Article 226 of the Constitution goes a step further and vests extraordinary jurisdiction in the High Court of a State to issue not only a writ of mandamus but also appropriate writs, directions or orders for the enforcement of any of the right conferred by part III and for any other purpose. As held by the Supreme Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, any other purpose means the enforcement of any legal right, of course, means any legally enforceable right. Nothing more can be a higher purpose than the enforcement of the orders of the civil court and that of the High Court which confirms or recognises the rights of a party. By any interpretation of the provisions of C. P.C. the power of the High Court under Article 226 of the Constitution of India to enforce its own orders or the orders of the Civil Court cannot be curtailed. As observed by the Supreme Court in *T.C. Basappa Vs. T. Nagappa and Another*, the High Court, in issuing directions, orders and writs under Art. 226 can travel beyond the contents of the writs which are normally issued as writs of habeas corpus, Mandamus, prohibition, quo warranto

and certiorari, provided the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English Law, are not transgressed. The Supreme Court also observed that the very language of Art. 226 makes it clear that in the exercise of power under Article 226, our High Courts need not feel oppressed by the procedural technicalities of the English Writ. The article empowers the High Court to grant appropriate relief and also to modify the form of relief according to the exigencies of each case without being obsessed by the limitation of the prerogative writs.

In *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, the Supreme Court reiterated this principle and went a step further that for doing justice between the parties, the High Court has absolute jurisdiction to issue such directions and orders as it may deem fit to do justice between the parties and enforce the law of the land. The only limitations on the wide powers conferred on the High Court and exercisable by it in the matter of issuing writs are (1) that the power is to be exercised throughout the territories in relation to which it exercises jurisdiction and (2) that the person or authority to whom the writ is issued, is within the territories over which the respective High Court exercise jurisdiction.

21. But in *J. JAGANNATH REDDY v. SMT. L. LAXMI DEVI* 9, a different view was taken on the subject holding that the grant of police aid u/s 151 CPC to the defendant to protect his possession would be arbitrary and it was to be dealt with under Order XXI Rule 32 or under Contempt of Courts Act. Further the entry of the police into the affairs of the parties after the approach of the Civil Court was alien to the civil law. If there was a finding as to the possession of the property and a complaint was made to the effect that some other persons were trying to trespass into the property or committing any offence in that behalf possibly the police would take action in accordance with law.

22. Similar view was taken in *P. SHANKER RAO v. B. SUSHEELA* 10.

23. In fact in *POLAVARAPU NAGAMANI*'s case, the view taken in *J. JAGANNATH REDDY*'s case was accepted and it is observed and held in this context as follows:

If a complaint is made by the party obtaining an order of temporary injunction that the party against whom an injunction order is made has disobeyed, the remedy is an application under Order XXXIX Rule 2A and an application under Order XXI Rule 32(1) is also not barred. Logically, if an allegation that an order of temporary injunction is disobeyed by other party, the remedy is not to grant police protection, it is only an application of Order XXI Rule 32(1) of CPC. Elaborate reason and rationale need not be attempted behind these two provisions made by the Parliament. In all civilized societies, the civil disputes are resolved by adversary adjudicatory process mandated by the law in a civil Court and not by the police.

When a civil Court grants an order of ad interim injunction or ex parte injunction, the complaints by the opposite party can be twofold. It may be complained that

there are attempts by the opposite party to contravene and disobey the order of injunction or alleging threat of violation of injunction.

In a second situation, there may be an allegation by (sic. against) the opposite party that the opposite party has violated the order of injunction either by dispossession, by alteration of nature of the property, by demolition of structures or by positive act or transaction contrary to the order of injunction and/or causing legal injury ignoring the Court order. In the first situation where threat of violation or disobedience is alleged by the party obtaining a prohibitory order, the Court has power to direct the police to prevent such violation and disobedience by providing necessary protection to enforce the order of injunction. Such police protection order when there is threat of disobedience is justifiable u/s 94(e) read with Section 151 of CPC.

In a second situation, as envisioned above, where a complaint is made that the order of injunction granted by the Court restraining or prohibiting the opposite party from interfering with possession, from changing the nature of land, from demolishing or constructing any structure on disputed land or interfering with the enjoyment of the land like cultivation and/or preventing the commission of positive act in breach of injunction order, the civil Court cannot pass police protection order in exercise of powers u/s 94(e) or 151 of CPC. The power of this Court to pass police protection order to prevent the disobedience of injunction order is different from the power of the Court to deal with actual disobedience. IN such cases, the remedy of the aggrieved party is to file execution petition under Order XXI Rule 32 read with Order XXXIX Rule 2A of C PC because as per Section 141 of the Code, all provisions of CP C, the procedure in regard to suit is applicable to all interlocutory proceedings and even an order of temporary injunction is executable. The aggrieved party can also file an application under Order XXXIX Rule 2A of C PC alleging contempt of injunction order of Court and seek imprisonment of the violator or attachment of his property. Which course is to be followed by civil Court depends on the nature of allegations made by the aggrieved in the application made to the Court seeking intervention of the Court. If the procedure is not followed and in every case an application is moved for grant of police protection and the same is granted by the Court, it would render Order XXXIX Rule 2A as well as Order XXI Rule 32 of CPC otiose. The civil Court cannot pass any order ignoring the specific provisions of CPC.

Court directs all the civil Courts in the State of Andhra Pradesh to exercise abundant caution in dealing with interlocutory applications filed by the party obtaining an order of injunction seeking police protection. For the guidance of all the civil Courts, Court holds and lay down as under:

(i) When the allegations are made by the party obtaining an order of injunction, that the said order has been violated, an application seeking police protection would not lie. The aggrieved party has to necessarily file execution petition under Order XXI Rule 32 or an application under Order XXXIX Rule 2A of C PC seeking attachment and/or arrest of the violator for contempt of the Court.

(ii) When a petition is filed seeking police protection, whether or not to exercise of power u/s 94(e) or Section 151 of C PC, the facts alleged or pleaded, an order for police protection cannot be passed in a routine manner.

(iii) If an application is filed by the person obtaining ad interim injunction alleging that there is a threat of breach, disobedience or violation of the order of injunction, subject to proof, the Court has power to order police protection imposing necessary conditions not to interfere with the life and liberty, and rights of the opposite party.

(iv) The standard of proof required in the case of threat of disobedience of injunction or alleged breach, disobedience or violation of an order of injunction should be very high and it should be in between the standard of beyond reasonable doubt and a standard of balance on probabilities.

24. This observation with regards to the application of Order XXI Rule 32 is quite contrary to the observations made in KANWAR SINGH SAINI's case where a clear distinction was made in between the application of that provision and Order XXXIX Rules 1 and 2 CPC. In other words when the word "decree" used in Order XXI Rule 32 is only referable to a decree passed in a suit for permanent injunction after conducting necessary trial, an order passed in an interlocutory application under Order XXXIX Rules 1 and 2 CPC cannot be equated with that word "decree" for the purpose of taking recourse under the former provision when there was violation of the interlocutory order.

25. With regards to the application of Section 141 CPC in respect of interlocutory in catena of decisions it is held by the Supreme Court and various High Courts that substantial rights are to be clearly distinguished from procedural rights. Section 141 CPC only makes the procedure contained in the Code applicable to miscellaneous proceedings as far as it can be made applicable and not all the provisions of the Code (Union of India and Others Vs. N.K. Pvt. Ltd. and Another, Lakhai Vs. Ram Niwas and Others, Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, ; Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, ; Garikapatti Veeraya Vs. N. Subbiah Choudhury, . As the word "decree" used in Order XXI Rule 32 is quite distinguishable from an interlocutory order of interim injunction passed it cannot be said that Section 141 is also extended to that interlocutory order. Hence the view taken in POLAVARAPU NAGAMANI's case cannot be held to be good law and hence is not acceptable. On the other hand the decisions rendered in RAYAPATI AUDEMMA's case and SATYANARAYANA TIWARI's case are in consonance with the decision rendered by the Supreme Court in KANWAR SINGH SAINI's case with regards to the application of Order XXI Rule 32 which therefore are to be taken as correct law.

26. Consequently there is no specific provision to deal with the question of implementing an order of interim injunction in case it is violated. Order XXXIX Rule 2A deals with punishment by attachment of the property or by detention in

civil prison of the person who committed breach. It does not provide for the implementation of order of injunction. It is only a provision which provides penalty for the disobedience of the order. As laid down in RAYAPATI AUDEMMA's case, in such a case there being no express provision in the Code for the enforcement of the order, it is not only proper but also necessary that the Court should render all aid to the aggrieved party to derive full benefits of the order. Though the order of injunction under Order XXXIX of CPC 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 the obstruction to the enforcement of the order or to the exercise of the right which he derives under the order of Court. But when the same person brings to the notice of the Court that the enforcement of the order is sought to be prevented or obstructed, the Court should exercise its inherent power u/s 151 CPC and direct the police authorities to render all aid to the aggrieved party in the implementation of the Court's order. If the police authorities are under a legal duty to enforce the law and the public or the citizens are entitled to seek direction under Article 226 of the Constitution for the discharge of such duties by the Police Authorities the civil Courts can also give appropriate directions u/s 151 CPC to render aid to the aggrieved parties for the due and proper implementation of the orders of Court. It cannot be said that in such a case the exercise of the inherent power u/s 151, CPC is devoid of jurisdiction. There is no express provision in the code prohibiting the exercise of such a power and the Court can give appropriate directions at the instance of the aggrieved parties to the police authorities to render its aid for enforcement of the Court's order in a lawful manner. 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 orders u/s 151 CPC.

27. Further as laid down in SATYANARAYANA TIWARI's case, Section 151 CPC reserves the inherent power of the Court. Article 226 of the Constitution goes a step further and vests extraordinary jurisdiction in the High Court of a State to issue not only a writ of Mandamus but also appropriate writs, directions or orders for the enforcement of any of the right conferred by Part III and for any other purpose. Nothing more can be a higher purpose than the enforcement of the orders of the civil Court and that of the high Court which confirms or recognizes the rights of a party. By any interpretation of the provisions of CPC the power of the High Court under Article 226 of the Constitution of India to enforce its own orders or the orders of the Civil Court cannot be curtailed. The Court in issuing directions, orders and writs under Article 226 can travel beyond the contents of the writs which are normally issued as writs of habeas corpus, Mandamus, prohibition, quo warranto and certiorari, provided the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English Law are not transgressed. The only limitations on the wide powers conferred on the wide powers conferred on the High Court and

exercisable by it in the matter of issuing writs are (1) that the power is to be exercised throughout the territories in relation to which it exercises jurisdiction and (2) that the person or authority to whom the writ is issued, is within the territories over which the respective High Court exercise jurisdiction.

28. However, whereas great caution is to be taken for granting ex parte ad-interim injunction equal measures are to be taken while granting police aid to enforce that order. Under the guise of an order of ad-interim injunction and also the corresponding police aid granted there may be a possibility of vacating from the property in the litigation a person who is in actual possession of the property as of right. Therefore, whenever such order of granting police aid is resisted it is advisable to hear both the parties to the litigation and dispose of the petition filed for interim injunction pending disposal of the main proceedings itself. Further some times question of identity of the property in dispute arises. Thereby unless there is clear identity of the property in dispute mere granting of Police aid would not be suffice. In such case, an Advocate Commissioner is to be appointed necessarily to localize the property and only subject to the localization of the properties, necessary Police aid can be granted or both the Police aid and localization of the property can be granted simultaneously to do what is needed. In the result, subject to the observations made, the Civil Revision Petition is dismissed. Miscellaneous petitions pending, if any, shall stand closed. No costs.