

(2004) 03 PAT CK 0042
In the Patna High Court
Case No : MJC No. 3177 of 1997

Bihar State Digambar Jain Tirth Kshetra Committee and
Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-03-2004

Acts Referred:

Citation : (2004) 03 PAT CK 0042

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed u/s 10 of the Contempt of Courts Act for initiating a proceeding for contempt as also for punishment of opposite party Nos. 2 to 5 for disobedience of the decree dated 18.8.1930 passed by the Subordinate Judge-11, Patna in Title-Suit No. 64 of 1926.

2. Shorn of unnecessary details facts giving rise to the present application are that on an action brought by Digambar Jains i.e. Title Suit No. 64 of 1926, Subordinate Judge-II, Patna granted decree dated 18.8.1930 in the following words :--

"Issue No. II. On the findings arrived at in connection with other issues the plaintiffs are entitled to a declaration that the Digambar Jain have a free and unrestricted right of worship according to their own mode in the Jalmandir and Samavasaran Mandil without any interference whatsoever by any Swetambar Jain. They are further entitled to an order for the removal of the Swetambari image from the Jalmandir and also to perpetual injunction to the effect that no adorned image should ever be permanently installed within the Jalmandir temple. The plaintiffs are also entitled to a declaration that they have right of user of the roads on survey plots No. 1742 and 1733 and if the defendants fail to keep the road in state of proper repair the plaintiffs will be entitled to repair the roads. The plaintiffs are also entitled to have the entrance door of Jalmandir opened for the purpose of worship at such time as Digambar pilgrims may desire

subject of course to the due management for the preservation and protection of the temple and the articles contained therein. It is not necessary in this suit to grant any declaration asked for in sub-para 8-A, 8-B to paragraph 39 as no occasion for these declarations have arisen. It may however be noted here that it has been admitted in the written statement that should any occasion arise for the renovation of the charan of Mahavir Swami, renovation will be done by charans of the existing character. As to (8b) there is no permanent metal covering either on the charans or around it. They are ail removable articles and no evidence was adduced by either side as to give P. 67 any indication of any apprehension of permanent covering being placed upon or around the charan of Mahavir Swami within the Jalmandir."

(Underlining mine)

3. The decree holder i.e., Digambar Jains filed Execution Case No. 135 of 1931 for execution of decree of injunction by removal of idols from Jal Mandir and the executing court by its order dated 13.8.1932 directed the judgment debtor-defendants not to take the image to Jal Mandir except on the 15th day of the month of Kartik. Matter travelled to this Court in appeal and revision filed by Shwetambars and this Court directed that the Shwetambars may instal their idols from the 15th day of Kartik to the sun rise of 16th day of Kartik. Ultimately the matter travelled to the Privy Council at the instance of the Shwetambars and by order dated 15.11.1935 the Privy Council held that Shwetambars were free to install their idols during the period of their worship in the Jal Mandir as the decree of the trial Court of perpetual injunction was only against permanent installation of idols and not for temporary installation.

4. According to the petitioner after the decision by the Privy Council permanent installation of the idols were removed from the Jal Mandir and used to be brought in the Mandir at the time of worship as directed by the Privy Council. Petitioners have averred that till February, 1997 the judgment and decree of the trial Court as modified by the Privy Council was followed by the Shwetambars and both the Shwetambars and the Digambars worshiped without any interference or obstruction in compliance of the decree of the Court. Allegation of the petitioners is that thereafter the Shwetambars had changed the original shape of the Charan by applying Lapan and carving flowers. In this regard Digambars and Shwetambars entered into correspondence and according to the petitioners the carving of flowers between the Charan was a breach of the decree of injunction passed by the court. According to the petitioners changes made in the Charan, changed its original shape and look and also carving of flower between the Charan and behind the said spot are in breach of the decree of injunction passed by the trial court. This according to the petitioners had put obstacle in the unrestricted right of worship of the Charan by Digambars.

5. It is the stand of the petitioners that relief of restoring the original feature and characteristic of the Charans cannot be granted under the provision of the CPC and hence petitioners have no remedy than to file an application u/s 10 of the

Contempt of Courts Act for punishment of the opposite party.

6. Show cause has been filed on behalf of opposite party Nos. 2 to 5 and their plea is that the issue in the present contempt petition i.e. renovation of Charans or changes of its characteristic is in no way covered by the said judgment and, decree and according to them same was in regard to a totally different issue of removal of idol/image from the Jal Mandir. In any view of the matter they contend that remedy of a contempt petition is not an appropriate remedy for the relief claimed.

7. Mr. Keshav Srivastava, Senior Advocate appearing on behalf of the petitioners submits that relief of restoring the original features and characteristic of the Charan cannot be granted under Order XXI, Rule 32(i) of the CPC (for short the Code) and as such the petitioner can resort to the remedy of a contempt application. He further points out that the provisions of Order XXXI, Rule 5 of the Code shall also be not applicable as the said rule is in relation to the mandatory injunction whereas in the present case allegation of the petitioners is of breach and disobedience of a prohibitory injunction. Mr. Srivastava highlights that the provision of Order XXXIX, Rule 2-A of the Code is also not available to the petitioners as the same covers the orders passed in a pending suit.

8. Natural corollary, according to Mr. Srivastava, therefore is that the petitioners have no remedy available under the Code and as such the contempt proceeding is an appropriate proceeding. In support of the submission, Mr. Srivastava has placed reliance on a judgment of the Allahabad High Court in the case of Ram Prakash and Bros. and Others Vs. Nagar Mahapalika and Others, and my attention has been drawn to the following passage from the said judgment:--

"In view of these authorities the material question to be considered is whether on the facts of the present case the alternative remedy under Rule 2-A is efficacious. The question of efficacy is to be considered with reference to the purpose of the provision. As held by their Lordships of the Supreme Court in the case of The State of Bihar Vs. Rani Sonabati Kumari, , proceedings under Order XXXIX, Rule 2(3), CPC (equivalent to Rule 2-A) are in substance designed to effect the enforcement of the Order. Can this enforcement be achieved in present case? In order to achieve enforcement of the injunction order, the petitioner will have to be put back in possession of the land over which the stall had been put. This was possible if the land had undisputedly belonged to the Nagar Mahapalika. On this there is serious controversy between the parties. According to the petitioner the land belonged to the proprietors of the Newal Kishore Estate from whom he had taken the same on rent. This appears to be the case of the proprietors of the Estate also. If the land belonged to the proprietors of the Newal Kishore Estate, the consequence of removal of the petitioner's stall is that the said proprietors have re-entered into possession of the land and that even the Mahapalika has been rendered incapable of enforcing the injunction order and restoring the position that obtained immediately prior to the removal of the petitioner's stall. In Ramalingam's case (supra) the Madras High Court insisted

upon the alternative remedy under Order XXXIX, Rule 2(3) where the situation was strictly inter partes; third party's rights were not involved. In the present case on account of the involvement of the rights of the proprietors of the Newal Kishore Estate who were not impleaded in the suit, the remedy under Rule 2-A cannot be said to be efficacious. Action under the Contempt of Courts Act cannot therefore be refused on the ground of the existence of alternative remedy."

(Underlining mine)

9. Mr. Roy Shivaji Nath, Senior Advocate appearing on behalf of opposite party Nos. 2 to 5 submits that the petitioner's very assumption that they have no remedy except the present one, is erroneous in law. He points out that Order XXI, Rule 32 had provided for a detailed mechanism for action in case of breach of an order of an injunction/In support of his submission he has placed reliance on a judgment of the Allahabad High Court in the case of Smt. Indu Tewari Vs. Ram Bahadur Chaudhari and Others, , and my attention has been drawn to paragraph 7 of the judgment which reads as follows :--

"7. As already stated, in the instant petition, the petitioner had an effective alternative remedy of enforcing the decree passed in her favour by putting the same in execution under Order XXI, Rule 32, Civil Procedure Code. It is, therefore, not a fit case in which this Court should exercise its jurisdiction under the Contempt of Courts Act."

10. It is well settled that if the disobedience of the order can be adequately dealt with by the court which passed the order, then the High Court will not exercise its discretion to proceed for contempt for the disobedience of the order of the subordinate court. However, when the remedy is not provided for, High Court shall not fold its hand and allow the injustice to continue. It may act ex debito justitiae to do justice. But the question is as to whether petitioners have remedy before the court which has passed the decree. In my opinion, petitioners have unnecessarily put cloud on their right. In my opinion the very assumption of the petitioners that they have no remedy under the Code is absolutely misconceived. Order XXI, Rule 32(5) and the illustration to the said rule clearly provides, for an efficacious remedy, same reads as follows :

"32(5). Decree for specific performance for restitution of conjugal rights, or for an injunction--

xxx xxx xxx

xxx xxx xxx

"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."

Illustration

"A, a person of little substance erects a building which renders uninhabitable a family mansion belonging to B, A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution proceedings."

11. From a plain reading of the aforesaid provision, it is evident that where a decree for injunction is not obeyed the court in addition to the action provided in the said order direct that the act required to be done by the decree holder or some person appointed by the court at the cost of the judgment debtor. The illustration provides for a situation in which the decree can be executed in case of judgment debtor declines to obey the decree. Here the allegation of the petitioners is that in breach of the order of injunction the Shwetambers had changed the original shape of the Charan by applying Lapan, and carving flower between the Charan and behind the said spot. In my opinion nothing prevents the petitioners from bringing an action as contemplated under Order XXI, Rule 32(5) of the Code and the same is an efficacious remedy.

12. Now coming to the decision of the Allahabad High Court in the case of Ram Prakash and Bros., (supra) I am of the opinion that the same is clearly distinguishable. In the said case, the order of injunction was passed under Order XXXIX of the Code which was confirmed in appeal by the High Court. Further the remedy under the Code was found to be inefficacious on the ground of involvement of third party interest and in such contingency the High Court held that it was competent to proceed under the Contempts of Court Act and punish for contempt, which is not the situation here.

13. having found that petitioners have efficacious remedy under Order XXI, Rule 32(5) of the Code, in view of the settled legal position that if the disobedience of the order can be adequately dealt with by the court which has passed the order, I refrain from proceeding against the opposite party for contempt of court. The view which I have taken finds support from the judgment of the Allahabad High Court in the case of Smt. Indu Tiwari, (supra).

14. Any observation made by me is for the purpose of disposal of this application and shall not be construed to mean that the subordinate court had passed the decree of the nature pleaded by the petitioners or opposite party had disobeyed any order of injunction. In case any party resorts to the remedy available in law, the court in seisin of the case shall adjudicate the same in accordance with law without being influenced by any observation made in this order.

15. Accordingly, I dismiss this application with the observation aforesaid. No cost.