

(1955) 09 AHC CK 0030
In the Allahabad High Court
Case No : Contempt Misc. Case No. 30 of 1952

Ch. Shyam Sunder

APPELLANT

Vs

Daw Dayal Khanna

RESPONDENT

Date of Decision : 14-09-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 2(14), 36
Contempt of Courts Act, 1971 — Section 1

Citation : AIR 1956 All 79 : (1955) 25 AWR 582

Hon'ble Judges : Desai, J;Asthana, J

Bench : Division Bench

Advocate : Lalji Sinha, Shambhu Prasad and A.K. Kirty, for the Appellant;
Saxena, for the Respondent

Final Decision : Disposed Of

Judgement

Desai J.

1. I this case we by our order of 21-7-1954 dismissed the application and directed the applicant to pay the opposite-party his costs assessed at Rs. 300/-. A formal order was prepared by the Registrar and in the memorandum of costs Rs. 300/- were shown as recoverable by the opposite party from the applicant. The Registrar then sent a copy of the formal order to the District Magistrate for compliance.

The District Magistrate could not recover the sum of Rs. 300/- from the applicant, who objected to its payment to him on the ground that he had no jurisdiction to realise it. It appears that the District Magistrate had without any orders from this Court issued a warrant for recovery of the amount. Then the question arose how the amount is to be recovered from the applicant. We heard the parties and also the learned Government Advocate.

2. Contempt proceedings are neither civil nor criminal but sui generis. A High Court punishes contempt of Court as a Court of record in exercise of its inherent

jurisdiction and the procedure that it adopts is governed neither by the CPC nor by the Criminal Procedure. Subject to the limit imposed by the Contempt of Courts Act on the punishment that can be inflicted by it, it can adopt any procedure and pass any order that it thinks fit.

See "Sukhdas Singh v. Judges of the Pepsu High Cour AIR 1954 SC 186 (A) and "The State Vs. Padma Kant Malviya and Another, . Since the procedure is not governed by either Code, the order passed is not one passed under either Code and cannot be enforced as a sentence of fine by applying the provisions of the Code of Criminal Procedure or as a decree or an order by applying the provisions of the Code of Civil Procedure.

We respectfully differ from the opinion expressed by Kania J. in Kilachand Devchand and Co. Vs. Ajodhyaprasad Sukhanand, and approved by Majumdar J. in Sree Sree Iswar Radhakanta Jew and Others Vs. Kshetra Ghosh Alias Sukumar Ghosh and Others , that an order punishing a person for contempt of Court is an order within the meaning of Section 2(14), Civil P.C. and capable of being executed as such by virtue of Section 36, Civil P.C.

The opinion was expressed by both the Seamed Judges by way of obiter, because the contempt proceedings were pending when they expressed it and, therefore, the question whether an order finally disposing of contempt proceedings is an order within the meaning of Section 2(14), Civil P.C. did not actually arise. What had happened in each of the cases was that when the alleged contemner appeared before the High Court, he pleaded that he could not be punished for contempt because the order of punishment could not be enforced against him, he being a resident of another State.

This plea was repelled by each learned Judge with the reply that the order punishing him would be an order within the meaning of Section 2(14) and could be enforced u/s 36, Civil P.C. Kania J. did not discuss the law, did not cite any authorities and simply made the observation that it would be an order within the meaning of Section 214. Majumdar J. simply approved of Kania J.'s observation; he did not make any observation of his own on the point.

Section 2(14) defines the word "order" to mean the formal expression of any decision of a civil Court which is not a decree. The word is used in the Code not to mean any order or decision as understood by a layman; it is used to mean what is popularly known to the legal public as a formal order. The word is used in contra-distinction to decree and must be distinguished from "judgment which is separately defined in the Code to mean a statement of reasons. The order that is usually passed in contempt proceedings is a judgment and not an order as defined in the Code.

The order that was actually passed in this case was a judgment; it was not in any sense a formal expression of a decision by us. Under the CPC a judgment of a civil Court is followed up by a decree or an order which can be put into execution; a judgment in contempt proceedings is not required to be followed

up by a decree or an order.

Even if a High Court does prepare a decree or an order in pursuance of the judgment, since it cannot be said to have been prepared by a civil Court (the High Court having acted as a Court of record in contempt proceedings), and since the Code of Civil Procedure does not govern the matter at all, the definition contained in Section 2(14) of it cannot be applied to it and it cannot be held to be an order within the meanings of Sections 2(14) and 36 of the Code.

It is obvious that a decision in a proceeding not governed by the Code cannot amount to an order within the meaning of the Code.

3. The conclusion that we arrive at from the above discussion is that an order awarding costs to one party against the order in contempt proceedings cannot be enforced under either of the Codes. There is no other provision under which it can be enforced. Yet it must be enforced for the obvious reason that it would have been futile to pass it if there existed no means of enforcing it. It cannot be, and was not, doubted before us that a High Court has jurisdiction to award costs to one party against the other in contempt proceedings. This is a part of its inherent jurisdiction to punish a person for contempt. Since it has jurisdiction to pass it and since it must be enforced, there must exist a power and means to enforce it. In the absence of any statutory provision for its enforcement it must be enforced as a part of the inherent jurisdiction to pass it.

The power to enforce it must be deemed to have been implied in the power to pass it. Therefore, a High Court has inherent jurisdiction to enforce it. There are no limits to its power to enforce it; it can be enforced in any manner it deems proper. It can itself recover the costs or can authorize anybody, a District Magistrate, a Collector, a Munsif, a District Judge or anybody else to attach and sell property of the person from whom the costs have to be recovered, if he does not pay them on his demand.

A District Magistrate, a Collector, a Munsif, a District Judge etc. have powers conferred upon them by the Codes of Civil and Criminal Procedure and other statutes, but they do not include the power to attach and sell property of a person in order to recover costs awarded against him in contempt proceedings. But when a High Court authorizes them to attach and sell property, they become invested with the power to do so.

4. In the view that we take we have the support of *Emperor Vs. S.M. Wahid Ullah Ahrari*, in which a Bench of this Court held that the inherent jurisdiction of a High Court extends not only to the passing of an order of costs but also to enforcing it.

5. We hold that we have inherent jurisdiction to recover costs from the applicant in any manner we think proper. We consider that it will be best to authorize the District Magistrate to attach and sell the applicant's property unless he pays up the costs.

6. Accordingly we hereby authorize the District Magistrate, Moradabad, to recover Rs. 300/- from the applicant, if necessary by attaching and selling his movable property. If property has to be attached or attached and sold, the expenses incurred in attaching or selling it are also hereby directed to be recovered from the applicant in the same manner as the amount of Rs. 300/-.