
(1958) 09 CAL CK 0031
In the Calcutta High Court
Case No : Criminal Misc. Case 79 of 1958

Dasarathy Banerjee

APPELLANT

Vs

Kripal Singh and Others

RESPONDENT

Date of Decision : 11-09-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 82, 82(2)

Citation : AIR 1960 Cal 454 : (1960) CriLJ 903

Hon'ble Judges : S.K. Sen, J;J.P. Mitter, J

Bench : Division Bench

Advocate : Nalin Chandra Banerjee, Bimal Chatterjee and Tarun Banerjee, for the Appellant;Bhabesh N. Bose, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Mitter, J.—This is an application for contempt against the three respondents who are respectively, the General Manager, Chief Personal Officer and Divisional Superintendent of Eastern Railway having its Head Office at 17, Netaji Subhas Road. Calcutta. It is said that the respondents and each of them were guilty of a contempt of court, in that there was, on the part of each, a deliberate disobedience of a mandatory injunction issued against the General Manager, Eastern Railway, directing him to with-draw forthwith an order of suspension upon the petitioner. This injunction was passed by a learned Munsif in T.S. 989 of 1955. Instituted by the petitioner against the General Manager, Eastern Railway, and the Union of India. The various claims of the petitioner were allowed by a decree dated the 5th of May, 1958. The text of the decree has been set out in paragraph 4 of the petition.

2. Mr. Nalin Chandra Banerjee appearing on behalf of the petitioner has contended that the special direction embodied in the decree requiring the General Manager to lift the ban of suspension was deliberately disobeyed. Mr. Banerjee has also contended that although the Union of India as well as respondent No. 1 preferred an appeal against the said decree there was no stay

of the operation of the decree or of any of the special directions embodied in that decree, and that the refusal to obey the divers directions contained in the decree constituted a gross contempt of Court. Mr. Banerjee has, lastly, contended that the offence has been aggravated by the fact that the respondents have not apologized for the contempt alleged.

3. In our view, the provisions of Sec. 82 of the CPC constitute a complete answer to the charge of contempt. Section 82 of the Code is in the following terms:

"82(1) Where the decree is against the Secretary of State for India in Council or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report." We find that by the decree concerned. 30th of June was specified to be the date within which the decree was to be satisfied, Apparently, the decree was not satisfied within the time. Thereafter, in accordance with the provisions of Sub-section (1) of Section 82, the Court made a report on the 29th July, 1958. It is said that the said report did not reach respondent No. 1 until the 11th August, 1958. In any event, a further period of three months has got to be computed from the date of the report which in this case was 29th July, 1958. There is, therefore, time until the 29th October, 1958, within which to satisfy the decree. Under Sub-section (2) of Section 82, execution is not to be issued until the decree remains unsatisfied for a period of three months computed from the date of the report. In our view, there was no duty upon the respondents to carry out the directions embodied in the decree until the period mentioned in Section 82 had elapsed. That being so, there has not yet been any contempt of Court in not giving effect to the mandatory injunction passed by the learned Munsif.

4. In support of his contention, Mr. Banerjee has referred us to *Taradas Dutt and Another Vs. Administrative Officer of the Corporation of Calcutta and Another*, AIR 1945 147 (Privy Council) and *Narain Singh Vs. S. Hardayal Singh Harika*, Executive Officer, Municipal Committee, Patiala, . The learned Advocate has also referred us to Section 3 of the Contempt of Courts Act. In our view, neither these decisions nor the provisions of Section 3 of the Contempt of Courts Act have any bearing upon the point raised by Mr. Banerjee. His contention is that the learned Munsif's direction to forthwith withdraw the ban of suspension is not subject to the provisions of Section 82 of the CPC and that the time specified in the section cannot affect the question of a contumacious disregard of an order of injunction passed by a Civil Court. In view of the express provisions of Section 82, we must hold that there can be no question of any contempt until the procedure laid down in that section has been exhausted. That being so, we must hold that there has been no contempt of Court on the part of any of the respondents.

5. This application is accordingly, dismissed and the relative Rule discharged.

Sen, J.

6. I agree.