
(1980) 03 MP CK 0021

In the Madhya Pradesh High Court

Case No : Civil Revision No. 783 of 1979

Eric Camp

APPELLANT

Vs

Christ Church Council, Morar and another

RESPONDENT

Date of Decision : 11-03-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2(3), 151

Citation : (1981) J LJ 209

Hon'ble Judges : H.G. Mishra, J

Bench : Single Bench

Advocate : M.A. Shah, for the Appellant; A.K. Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

H.G. Mishra, J.—This is a revision by plaintiff-applicant against order dated 31-8-1979 whereby order passed by trial Court on 11-10-1977 rejecting his application under Order 39, Rule 2 (3) of the CPC for taking action in disobedience against the defendant-non-applicant No. 2 for breach of ex-parte interim injunction dated 11-10-1977 was dismissed.

2. Facts material for decision of the revision are as under:

That the plaintiff-applicant on 11-10-1976 instituted a suit for declaration that order of his dismissal from service dated 13-9-1976 passed by Secretary of the defendant--Council is null and void. The plaintiff further prayed for an order restraining the defendant from removing the plaintiff from service without due enquiry on cause of action detailed in the plaint. In the suit, the plaintiff submitted an application for issuance of an interim injunction under Order 39, Rules 1 and 2 and section 151, CPC for restraining the defendants from removing the plaintiff from service either with effect from 15-10-1976 or from any other date and to permit him to do his work as before and continue to give him the amenities which he was already enjoying. After hearing the plaintiff, the trial

Court by order dated 11-10-1976, ordered issuance of ex parte interim injunction to the effect that: (a) the defendant should not remove the plaintiff from service on 15-10-1976 or thereafter; (b) that the plaintiff should be permitted to do his work as before and (c) that the defendant should go on giving the plaintiff those amenities which he was enjoying. A show cause notice was issued to the defendants to show cause as to why the injunction prayed for by the plaintiff should not be confirmed. After putting in their appearance, the defendants opposed the grant of interim injunction and on merits of the suit took objection with regard to its maintainability and competency of the Court to entertain the suit. The plaintiff submitted an application under Order 39, Rule 2 (3), Civil Procedure Code. Complaining that the defendant-non-applicant No. 2 has disobeyed the interim injunction, inasmuch as he is not permitting him (the plaintiff) to do his work on the post of Church Bearer and has passed an order dated 24-10-1976, preventing him from doing any duty for the church. This application was opposed by the defendant-non-applicant No. 2 A.I. George, inter alia on the ground that the grant of interim injunction was without jurisdiction and that the defendant is not guilty of any disobedience either. This ex parte interim injunction continued till 15-7-1977 when the trial Court heard objections raised by the defendant about maintainability of the suit and jurisdiction of the Courts to take cognizance thereof. After hearing parties, by its judgment dated 15-7-1977, the trial Court dismissed the suit by holding that civil Courts have no jurisdiction to entertain the suit, because, in essence, it is for a specific performance of contract relating to personal services. Aggrieved by this judgment and decree, the plaintiff preferred appeal (Civil Appeal No. 149-A of 1977). During pendency of the appeal, plaintiff submitted an application for amendment of plaint to claim in the alternative damages consequential to his illegal dismissal from service. This amendment was allowed and the case was remanded to the trial Court for trial of the suit in the light of the aforesaid amendment. However, the claim of the plaintiff in respect of declaration that he should be deemed to continue in his service, remained dismissed. Aggrieved by this order, the defendants preferred an appeal (M.A. (II) No. 48/78) which was partly allowed by this Court by order dated 28-8-78, inasmuch as amendment pertaining to the plaintiff being regarded as Government servant and the defendant-council being regarded as Government body was disallowed. The remaining part of the order allowing amendment was maintained. Thus, decree regarding dismissal of the claim of the plaintiff regarding declaration that on account of alleged invalidity of the order of his removal from service he should be deemed to be in service of the defendant-council, attained finality. The lis is now pending only for the purpose of entitlement of the plaintiff to damages in consequence of his alleged illegal removal.

3. The application for disobedience of the ex parte interim injunction submitted by the plaintiff was taken up by the trial Court for consideration and after hearing arguments, it was rejected by the trial Court on 11-10-1977. Aggrieved by this order, plaintiff preferred an appeal which has been rejected by the impugned

order. Hence this revision.

4. In this revision, Shri M.A. Shah, learned counsel for revision-applicant contended that the impugned order is without jurisdiction and on his own admission the defendant-respondent is liable to be proceeded against for disobedience of the interim injunction. Shri A.K. Shrivastava, learned counsel for the defendant non-applicant, argued in support of the impugned order. Having heard the learned counsel for the parties, I have come to the conclusion that the revision deserves to be dismissed.

5. The main relief claimed by the plaintiff-applicant in the suit as instituted was in essence for specific performance of the contract of service. The plaintiff being not within the protected category of employees, the Court" had no jurisdiction to grant the aforesaid relief. This is what was held in para 6 by the trial Court by its judgment dated 15th July, 1977. This judgment has attained finality on the point. Thus, the Court had no jurisdiction over the subject-matter of the suit as instituted, the relief prayed for being within the prohibition enacted by section 14(b) of the Specific Relief Act, 1963.

6. The ex-parte interim injunction granted by the trial Court on 11-10-1976 virtually amounted to granting the same relief which was claimed by the plaintiff in the suit. Accordingly, if the Court had no jurisdiction to grant decree for the same relief, as held by it in para. 6 of its judgment dated 15-10-1977, it has also to be regarded that the trial Court had no jurisdiction to issue interim injunction for that very purpose. If a Court has no jurisdiction over the matter involved its injunction will be treated as null and void. A void judgment or order is in legal effect no judgment or order. It is non est. "By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone." (See Row's Law of Injunctions, Vol. I, 4th Edition 1976 at page 125). Reliance was placed by Shri A.K. Shrivastava, learned counsel for the defendant-non-applicants on Subhadra Koer and others v. Dhajadhari Goswami 14 IC 380 wherein Mookerjee and Carnduff JJ. have laid down the law on the point thus:

Before proceedings can be taken on account of disobedience of an injunction issued by a Court, it must be ascertained that the Court had jurisdiction over the subject matter in controversy. If the Court had no jurisdiction over the matter, or if it exceeds its powers by granting an injunction in matters beyond its jurisdiction, the injunction must be treated as absolutely void, and the person who disobeys it cannot be punished.

7. Mr. Shah tried to press into service of the applicant the ratio of Umaosingh v. Ramgopal AIR 1961 MP 9, Ganesh Ram v. Roopsingh 1961 J LJ 46 and State of Bihar Vs. Rani Sonabati Kumari, . I am afraid, the ratio of these cases is tangentially off the point. In none of these cases, the question posed by this revision fell for consideration. The Court in those cases was required to decide cases of disobedience of injunction which the Court had otherwise jurisdiction to

grant but which were later on discharged. Accordingly, it was held that disobedience of interim injunction once granted has to be obeyed during the period of its continuance and the person acting in its breach and/or its disobedience can be proceeded against on the ground of its violation during the period in which it was in operation. Accordingly, ratio of the aforesaid cases has different field to operate. This Court is aware of duty to uphold the dignity of the Court and maintain due respect for the administration of justice. But, at the same time, it is the duty of the Court to see that an element of vindictiveness must be avoided as held in Ganesh Ram's case (Supra) by Shivdayal, J. (as he then was). Law cannot be permitted to be turned into a weapon of oppression and/or getting punishment inflicted upon the opponent.

8. In this case, the trial Court as well as the appellate Court have desisted from exercising the power to punish the disobedience predominantly, on the considerations that an order which is without jurisdiction is non est and wrath of the law should not be on a party who appears to have acted in breach thereof. This Court also does not see any compelling reason to direct initiation of proceedings against the non-applicant No. 2. However, it is expected that a party should avoid acting in a manner which may even appear derogatory to the dignity of the Court.

9. In view of the aforesaid discussion, the revision fails and is hereby dismissed. I make no order as to costs in view of the nature of the controversy involved in the case.