

(1935) 02 PAT CK 0025
In the Patna High Court
Case No : Civil Revn. No. 537 of 1934

Hakim Muhammad Naziruddin and others	APPELLANT
Vs	
Raja Ram and another	RESPONDENT

Date of Decision : 28-02-1935

Acts Referred:

Citation : (1935) 02 PAT CK 0025

Final Decision : Dismissed

Judgement

Dhavle, J.—This is a revisional application against an order of a Munsif of Monghyr committing the petitioners to the civil prison for a period of three weeks for breach of an injunction under O. 39, R. 1, restraining them as defendants in a suit on the file of the Munsif from burying dead bodies in the disputed land during the pendency of the suit. The order of the lower Court was upheld on appeal. The only point raised before the Munsif and the Court of appeal below was that the petitioners were not guilty of the breach complained of by the other side. This point is no longer open, and Mr. Syed Ali Khan has quite properly confined his argument to a question of law. He has argued that though the injunction was issued by the trial Court in the present case under O. 39, R. 1, the order of commitment was passed under Cl. 3, R.2, O.39 and that this clause only applies to breaches of injunctions issued under R. 2. The contention seems to be supported by the decision of Dalal, J., in Balbhaddar v. Balla, 1930 All 387 = 127 I C 577 which Mr. Syed Ali Khan has cited in support. But the Report of the case does not by any means make it clear how far the question of the applicability of Cl. 3 to injunctions passed under R. 1 arose before the learned Judge. It is however clear that the learned Judge was of opinion that there was some inadvertence with reference to the provision of a penalty for breach of an injunction under R. 1, O. 39, and that though It is likely that the provisions of R. 2, Cl. 3, O. 39, were intended to be applied to the breach of an injunction under R. 1 also, as Cl. 3 is included in R. 2, it would follow that the provisions of that clause will not apply to R. 1. It was not brought to the notice of the learned Judge, who was sitting singly, that there was a decision to the contrary by a

Bench, of two Judges of the same High Court. This decision is *Ram Prasad Singh v. Benares Bank, Ltd.* 1919 All 20 = 58 I C 600 = 42 All 98 where the learned Judges were satisfied that the words "in case of disobedience" in Cl. 3 of R. 2 were wide enough, to cover breaches of injunctions issued under O. 39. R- 1, for which breaches no penalty is elsewhere provided. Mr. Syed Ali Khan points out that that was a case of breach of an injunction issued by a Judge of the Allahabad High Court itself, and that reference was made in that decision to the unquestionable jurisdiction of that Court to punish contempts of its own orders. *Ram Prasad Singh v. Benares Bank, Ltd.* 1919 All 20 = 58 I C 600 = 42 All 98 was however followed in *Adaikhale Thevan v. Imperial Bank, Madura Branch*, 1926 Mad 574 = 95 I C 196 which Cl. 3, R. 2 was applied to the breach of an injunction not coming within R. 2. The drafting of the rule was characterized as somewhat inartistic (the learned Judges of the Allahabad High Court had used the word "clumsy"), but the Madras High Court considered that there was no doubt that Cl. 3 applies to disobedience generally of an injunction granted by the Court. These rulings do not appear to have been brought to the notice of Dalai, J. In these circumstances, I am not prepared, with all respect, to adopt Dalai, J's view or to dissent from the other rulings referred to.

2. The application is dismissed with costs. Hearing fee, one gold mohur.