
(1941) 08 BOM CK 0004
In the Bombay High Court
Case No : O.C.J. Suit No. 646 of 1941

Hargowandas B. Kotak

APPELLANT

Vs

Chimanlal Vadilal Shah

RESPONDENT

Date of Decision : 21-08-1941

Acts Referred:

Citation : (1942) 44 BOMLR 95

Hon'ble Judges : Kania, J

Bench : Single Bench

Judgement

Kania, J.—This is a notice of motion taken out by the applicant (who is defendant No. 2 in the suit) against the respondent, Chimanlal Vadilal Shah, the managing director of Shah Publicity Corporation, Ltd.

2. This suit is filed by the plaintiff against two defendants. Defendant No. 1, who is the daughter of defendant No. 2, is a minor. Plaintiff alleges that he is married to defendant No. 1 and after the alleged marriage the plaintiff and defendant No. 1 lived together at Poona. It is stated in the plaint that defendant No. 2 caused defendant No. 1 to leave the plaintiff, and although he made efforts, defendant No. 1 had not returned to him. The prayers are for a declaration that defendant No. 1 is the lawfully wedded wife of the plaintiff and inter alia for an injunction restraining defendant No. 2 from preventing defendant No. 1 from returning to the plaintiff. After the suit was filed, as defendant No. 1 was a minor, proceedings were taken in chambers to get a guardian ad litem appointed for her. The summons first came before the Prothonotary and after hearing the parties he appointed Mr. Kirtikar, a Court officer, the guardian ad litem. An application was made to the Judge in chambers to re-hear this summons, as permitted by the High Court Rules. After hearing the parties, including the minor, the appointment of Mr. Kirtikar as guardian ad litem was confirmed. That order was made on July 7, 1941.

3. The respondent is the managing director of Shah Publicity Corporation, Ltd., which publishes in the Gujarath language the "Matrubhumi" (daily and weekly

editions) and "Bharat Samachar" among other newspapers. In the publication of the Bharat Samachar of August 4 there appeared on the front page, just below the principal telegrams of the day, a statement to the following effect:

Do not fail to read Matrubhumi of this evening for the romance of the alleged matrimony of Kotak?Menthia which has caused sensation in the Lohana caste.

4. In the publication of Matrubhumi that afternoon there appeared on the front page, just below the principal telegrams, in bold letters the following:

For the Pushpa Menthia marriage story see page 5.

5. On page 5 was published the statements which are contended to be contempt of the Court. An official translation of that statement is put in but that does not give a full impression of the effect of the original publication. The heading is spread over the whole width of the page. Thereafter in smaller bold letters observations in head lines are printed. Then follow statements under separate headings which are also printed in bold type. The statements themselves are printed in different types, some in larger than the rest. Obviously the difference in types is intended to emphasise what is printed in bold letters. Towards the end of that publication occurs the following:

The question of guardianship.

It is stated that the background, on which the question of guardianship has arisen, consists of a story similar to the enterprising romances appearing in movie pictures of the twentieth century.

Considering it necessary to give a legal shape to the whole incident constituting the background, before putting the same before our readers, we have been doing the needful in the matter and only in a day or two, the whole incident, making one forget the thrilling and present-day novels, will be placed at the service of the readers of Matrubhumi.

6. The heading is printed in bold type. The first paragraph is printed also in bold type, but not so bold as the heading; while the last portion is in ordinary type.

7. Having seen this defendant No. 2's attorneys wrote to the editor, printer and publisher of Matrubhumi on August 7 and complained that the aforesaid publication considered with the tone and tenor of the same was a contempt of Court and inter alia called upon them to give an undertaking not to publish in future such libellous, adverse and wrongful account and criticism concerning the application in respect of the said proceedings. The reply sent by the respondent was that the publication did not give an account of the proceedings conducted in chambers as alleged by the applicant's attorneys. The respondent stated that he was ready to give room to any statement the applicant might like to make as explanatory or as a correction in his paper. He denied that the publication was malicious or made with a view to create any sensation, but alleged that it was made only as an interesting news item and for public good. In conclusion he

refused to give any undertaking as asked for by the applicant. The applicant has therefore taken out this rule for contempt.

8. It is argued on behalf of the applicant that the publication of a proceeding in chamber is not permitted without the express leave of the Judge, and inasmuch as the respondent has attempted to do so it amounts to contempt. It is secondly urged that even if this wider proposition is not accepted, inasmuch as the chamber proceedings related to a minor i.e. in the matter of the appointment of a guardian ad litem of a minor defendant, the case is within the exception recognised in law and there is contempt of Court. Even if this was not accepted, in the alternative it is contended, that having regard to the present pending proceedings the words and expressions used in the publication are likely to and may prejudice the fair trial of the suit. On behalf of the respondent it is contended that there is no absolute prohibition against a publication of proceedings in chambers; that these are not proceedings in respect of a ward of Court, which proceedings are limited to guardianship proceedings only; and, lastly, that the publication was not calculated to prejudice the fair trial of the suit. On behalf of the respondent it was strongly urged that even if there was a technical contempt, the Court is not bound to and indeed should not exercise its discretionary summary jurisdiction on a mere application, unless the Court was convinced that the publication would interfere with the ends of justice and prevent a fair trial.

9. On the first point, apart from English cases, we have the decision of our Appeal Court in *Purshottam v. Navmitlal* (1925) 28 Bom. L.R. 148. In that case when chamber proceedings relating to an application of guardianship were published without the leave of the Court, a notice of motion for contempt was taken out inter alia against the newspaper which published the report. The matter came for consideration before Taraporevala J., who in a considered judgment held that the charge of contempt of Court was established. The leading decision of *Scott v. Scott* [1913] A.C. 417 was carefully gone into and the whole argument for the respondents was based on that decision. The learned Judge pointed out that throughout his experience, both as a member of the bar and of the bench, chamber proceedings were never reported in newspapers without the express permission of the Judge and that was a salutary rule. When the matter went in appeal, the Appeal Court confirmed that practice prevailing in the High Court, and Macleod C.J. towards the end of his judgment observed as follows (p. 159):?

In other matters no Judge would be likely to refuse permission without very good reason, nor, on the other hand, is it likely that a newspaper editor would wish to act contrary to a practice which has now been authoritatively notified as existing.

10. If any doubt existed about the practice, that was a distinct notice to all newspapers, so far as this High Court was concerned, that reports of chamber matters were not to be published in newspapers except with the express permission of the Judge concerned. That practice was thus authoritatively

notified as existing. So far as I am aware, since then, no newspaper has at any time ventured to publish any proceedings in chambers without an express permission of the Court. Speaking for myself, I think it is a wholesome practice and should be adhered to. A motion for contempt of Court is a proceeding adopted to prevent the abuse of the privilege of the public to attend the Courts and hear the proceedings which are going on. The extent to which the publication of pending proceedings is likely to influence the minds of parties or witnesses is a question which is likely to differ in different countries according to the state of education and social customs. While I have nothing to say in respect of the English decisions which are stated to go?but which I do not think necessarily go?to the length the respondent asks me to consider as going, I adhere to the view that this practice which has been recognised as based on sound common sense is a result of experience of Judges in this presidency. I am, therefore, of the opinion that the wider proposition viz., that no chamber proceedings should be published in a newspaper without an order of the Court, should be adhered to. I recognise that the administration of justice is a matter of public importance and the fact that it is administered in public and is open to the observation and criticism if necessary of the public is a wholesome rule and should be accepted without any reservation. At the same time the comments or the observations or the publication of proceedings before their termination and the effect thereof on the public mind is a question which, as I have pointed out, is likely to vary in different circumstances and under different local conditions. I am, therefore, not departing from the recognised rule that the administration of justice should be open and public, in holding that the publication of chamber matters in newspapers should not be allowed except with the express permission of the Judge. As pointed out by Macleod C.J. no Judge would be likely to refuse permission without very good reason. It should be recognised that a Judge as such has no interest either in the publication or non-publication of what transpires in Court except for the purpose of guidance or knowledge of the public.

11. Assuming without admitting that the right of newspapers to publish reports of chamber matters is limited only by the exceptions recognised in *Scott v. Scott*, it is clear that those exceptions cover two cases viz., cases relating to wards and lunatics. I would summarise the effect of the judgments in *Scott v. Scott* in respect of these two exceptions in the words of Taraporevala J. in *Purshottam v. Navanitlal*. It is there stated as follows (p. 151):?

...on going through the judgments in *Scott v. Scott* carefully, and more particularly the portion relating to cases of wards and lunatics, there is no doubt in my mind that the various lords meant, by the use of the words "matters relating to wards of Courts or wards" matters in which the interests of a minor whether a ward of the Court or not were sought to be protected by an order of the Court. The matters relating to wards and lunatics are treated as private matters not because they relate to persons who have been declared wards of the Court or to persons who have been adjudicated lunatics by the Court, but because the matters relating to these two classes of cases are in their very

nature domestic matters; they relate to the domestic affairs of the family, and whether the petition is rejected or an order is made making a minor a ward of the Court and appointing a guardian or declaring a natural guardian of the minor, the Court in exercising its jurisdiction therein hears a matter which is of a purely domestic nature, and therefore necessarily not concerning the public.

12. In the course of his judgment in appeal Macleod C.J. observed (p. 157):?

...with regard to matters relating to wards and lunatics and matters in which the publication of certain facts would cause injury to individuals the rule of practice is absolute.

13. It was argued that if the publication of chamber matters was not authorised it might give rise to complications, and the following observations of Fletcher-Moulton L.J. in *Scott v. Scott* [1912] P. 241 (Court of Appeal) were relied upon (p. 271):

Many thousands of summonses in actions are heard in chambers in the course of each year, and during all my experience at the Bar and on the Bench I have never heard it suggested that there is the slightest obligation of secrecy as to what passes in chambers. Everything which there transpires is and always has been spoken of with precisely the same freedom as that which passes in Court.

14. It appears that the learned Lord Justice was not there referring to newspaper reports. I am not concerned in these proceedings with the publication there contemplated. I am dealing only with a case of publication in a newspaper. Publications of the kind mentioned in the above quoted observations may bear two aspects: one, that the occasion of publication otherwise than in newspapers may be between; privileged persons and on privileged occasions, or in the alternative although they amount to technical contempt of Court the Court will not take notice of it because they cannot or do not interfere with the fair trial of the suit. I do not propose to consider that aspect of the case which has not arisen before me and my observations are not to be deemed as applicable to that contingency.

15. In the present case it was argued that the chamber proceedings in question in this matter were not proceedings relating to wards. On behalf of the respondent it was attempted to be limited to petitions for guardianship and nothing more. It was argued that where the question was in respect of the person of the ward, the Court considered that it was a matter between the Court and the individual and the public were not concerned with that question. It was contended that all proceedings or steps which have to be taken in respect of the conduct of a suit are matters of public interest and therefore the proceedings in the matter of the appointment of a guardian ad litem were outside the exceptions. In my opinion this argument is unsound. The rules for the appointment of guardian ad litem are found in the Civil Procedure Code. Those rules provide that notice for the appointment of a guardian ad litem must be given to the minor or the person with whom the minor resided. The rules further

provide that no guardian ad litem appointed by the Court had authority to enter into a compromise without the express permission of the Court and the Court even thereafter had to sanction the particular compromise as for the benefit of the minor. The underlying principle on which those rules are framed is that a minor litigant is entitled to the protection of the Court which is bound to see that the minor's interests are safeguarded and that irrespective of the rights of the adults, the minor's point of view and contentions are put forward without fear or favour. It is for that purpose that in the event of there being a dispute the Court appoints its own officer as guardian for the purposes of the suit. Indeed the term "guardian" indicates without any reservation the fact that in making the appointment the Court is exercising its jurisdiction to take care of the minor who is involved before it in the litigation. This case clearly illustrates that principle. When the chamber summons was argued before me it was strongly urged on behalf of the plaintiff that if defendant No. 2 was appointed the guardian ad litem the minor's written statement will be nothing but the voice of defendant No. 2 and not an independent written statement of the minor. On the other hand it was contended that details of somewhat intimate nature may be difficult to be conveyed by the minor to an outsider and it was therefore desirable that defendant No. 2 should be appointed a guardian ad litem. After hearing the contentions of the parties it was considered that the interest of justice required that a Court officer should be appointed the guardian ad litem and as I have stated the appointment of Mr. Kirtikar was confirmed. This shows; that the decision about who should be the guardian ad litem was based on who would be the proper person to represent and take care of the interest and rights of the minor, rather than what the plaintiff or defendant No. 2 may desire to say or do. Therefore the proceeding relating to the appointment of a guardian ad [item is in my opinion a proceeding relating to a ward of the Court and is within the exceptions recognised in *Scott v, Scott*.

16. Even if a different view were taken, the question arises whether this publication is likely to or may interfere with the pending litigation. On behalf of the respondent it was contended that every report is not necessarily an interference with the progress of the suit, and even if there may be a publication which may not be authorised and may give rise to a technical contempt, the Court should take no steps to punish a party unless it clearly came to the conclusion that the publication was such as was likely to or might interfere with the progress or trial of the suit. See *Plating Company v. Farquharson* (1881) 17 Ch.D. 49 *The Queen v. Payne* [1896] 1 Q.B. 577 *The King v. Dolan* [1907] 2 I.R. 260 and the observations of Cotton L. J. in *Hunt v. Clarke* (1889) 58 L.J. Q.B. 490 which have been accepted and adopted in numerous judgments thereafter. They are as follows (p. 493):?

Now that I apply and adopt as the principle which ought to regulate these applications--that there should be no such application made unless the thing done is of such a nature as to require the arbitrary and summary interference of the Court in order to enable justice to be duly and properly administered without

any interruption or interference, that is what we have to consider, and in my opinion, although as I say there is here that which is technically a contempt, and may be such a contempt as to be of a serious nature, I cannot think there is any such interference or any such fear of any such interference with the due conduct of this action, or any such prejudice to the defendant who is applying here, as to justify the Court in interfering by this summary and arbitrary process. When it is clear and evident on the facts of the case and on the documents ...that such is the case, in my opinion no such application ought to be made....

17. Another principle of law is that although the publication may be defamatory of the parties, it does not necessarily call for the intervention of the Court unless it is likely to interfere with the trial of the suit. These principles are not disputed.

18. On behalf of the respondent Mr. Daphtary conceded that what was stated in the publication was not correct, and in addition to the report it contained comments. It is significant that the reply of the respondent sent to the applicant's attorneys was that the publication did not give an account of the proceedings conducted in chamber although in the penultimate paragraph he stated that the publication was an interesting news item made for public good. I propose to notice only a few points in this publication both with a view to see if it is a fair and honest publication and to find out whether the effect of the publication would be to interfere with the progress of the suit. I have already pointed out the nature of the suit and the principal controversy between the parties.

19. In the head-lines it is mentioned that the guardianship of Hargowandas Kotak, the father of the minor girl, was ultimately rejected. This is untrue. The proceedings were for the appointment of a guardian ad litem and the impression this statement is likely to create is that some application for the guardianship of the minor's person was made and the father was considered unfit for that appointment.

20. It is then stated "Several sensational details submitted." It is clear that in the guardianship proceedings no sensational details were put forth or discussed.

21. It is next stated to be "From our special correspondent." When the applicant's attorneys inquired who was the informant, no reply was sent by the respondent.

22. It then runs:

Recently an incident having come to light from the High Court precincts causing sensation and startle in the entire Lohana community has commenced to be much spoken of by the public.

23. There is no evidence to show that up to the date of that publication there was any sensation or startle caused in the Lohana community. It is not shown how this incident came to light from the High Court precincts. The fact that the proceedings were misrepresented as guardianship proceedings is emphasised by

the second heading in the article viz.: "Question regarding the guardianship of a maiden of a well-known family ". The name of defendant No. 1 is prominently mentioned and it is further stated as follows:

It was stated that it was undesirable to keep the girl under the guardianship of her father and in support of that convincing arguments were advanced by the counsel for Shri Jadavkumar.

24. This whole statement is a clear misrepresentation of what took place. In the next sub-heading it is stated that the father was unable to give the date of the birth of the girl and it caused surprise that an educated gentleman like the father should not be in a position to give the birth date of his daughter. It is now admitted that the father was nowhere in Court and the failure to give information was on the part of the uncle and not the father. Although this became known to the respondent very shortly after this article was published, he has taken no steps to correct it up to now, in any of his subsequent editions. The last portion of the article which I have quoted at the beginning of the judgment is very significant. It shows; that the intention was not merely to publish a report of the proceedings but the paper intended to put in a legal shape the whole incident with the background of a story similar to the enterprising romances appearing in the movie pictures of the twentieth century, and the readers of the papers were notified to be on the look-out in a day or two for an article which would make one forget the thrilling and sensational present day novels. It is obvious therefore that the intention of the paper was not merely to give a correct and unbiased report of the proceedings which had taken place in Court, but to rouse the curiosity of its readers to read sensational romantic details which would cloud romantic novels. In view of these statements it is idle for the respondent to contend that the publication was an item of news. That fact is again belied by the fact that the order on the chamber summons was made on July 7 and this article was published on August 4, in a daily newspaper. Having regard to these facts it seems to me that the motive of the respondent was not to publish this particular article as an item of news but was something different. I am not concerned in this case with the motives of the writer. I am concerned with the effect which this publication is likely to cause. Two inferences are perfectly clear from reading this report. The minor defendant No. 1, on whose behalf it was urged" that she may be reluctant to give details of the facts to an outsider, would shrink further from giving the true information to the guardian ad litem, because she would always be afraid that if the proceedings in the case which took place in chambers were broadcasted with endorsements, additions and strictures, some things which she may disclose may permanently ruin her life. The second effect is what would most likely be caused on the mind of defendant No. 2 who is stated in the article to be a leading member of the community. It is not difficult to believe that a man occupying such position may be driven to settle the suit, although he may have an honest case, because the fight is likely¹ to give out to the whole world details of his family life which, even if true, he may not like to tomtom before the world. If such publications were tolerated, it is most likely to influence defendant No. 2

in compromising the suit or preventing him from honestly fighting the litigation according to his right. In my opinion this is a gross case and the Court should take a strict view of the matter.

25. Even after an explanation was called for, the respondent had insisted that he was in the right and refused to give an undertaking in respect of the future publication which he threatened to make. His affidavit filed on this motion contests the fact that there is a contempt, contends that what he has done is within the law and ends with a halting apology that if he has done anything wrong he is sorry for it. That is the subterfuge of every person who finds himself faced with a contempt motion. I do not think it is right for newspapers to show a partisan spirit in respect of a pending litigation, and as in; my opinion this article appears to be one prepared and published in a partisan spirit, I am unable to consider it as falling within the functions of an honest journalist.

26. I, therefore, order the respondent, Chimanlal Vadilal Shah, the managing director of the Shah Publicity Corporation, Ltd., to pay the fine of Rs. 1,000 and he should pay the applicant's costs of this motion taxed as between attorney and client. Costs to include costs reserved.