

(1974) 07 AHC CK 0015

In the Allahabad High Court

Case No : Special Appeal No. 688 of 1972, 69 and 77 of 1973, W.P. No. 3243 of 1972, F.A.F.O. No. 251 of 1972 and Civil Rev. No. 875 of 1972

Hari Nandan Agrawal and Another

APPELLANT

Vs

S.N. Pandita and Others

RESPONDENT

Date of Decision : 26-07-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151
Contempt of Courts Act, 1971 — Section 20

Citation : AIR 1975 All 48

Hon'ble Judges : D.S. Mathur, C.J.; N.D. Ojha, J

Bench : Division Bench

Advocate : V.K. Gupta and Shanti Bhushan, for the Appellant; S.N. Varma, for the Respondent

Final Decision : Partly Allowed

Judgement

Mathur, C.J.—This order shall govern Special Appeals Nos. 688 of 1972 and 69 and 77 of 1973 and also the Writ Petition No. 3243 of 1972, F.A.F.O. No. 251 of 1972 and Civil Revision No. 875 of 1972 arising out of the same case.

2. The material facts of the case are that "Jarao Building" situate at Morris Road in the city of Aligarh was in the tenancy of the successive Agents of the State Bank of Aligarh for a long period and the last Agent who occupied the accommodation was S.D. Nayar. The building was purchased by Hari Nandan Agarwal and Smt. Madhu Agarwal (hereinafter to be referred as the applicants) in the month of December, 1971. S.D. Nayar was under orders of transfer and his successor M.L. Sharma arrived in Aligarh to take over charge. The handing over of the charge by the Agent takes many weeks S.D. Nayar permitted M.L. Sharma to occupy two of the rooms of this building. Another room was in the occupation of the son of the previous Agent and a Kothari in the occupation of the driver. Bargad Masih, M.L. Sharma arrived in Aligarh in the middle of January 1972 and the handing over of the charge was complete on the 19th of February, 1972. On

that date, S.D Nayar sent his luggage by truck to Delhi. There exists controversy as to whether the whole of the luggage had been sent or only a part and also whether S.D. Nayar continued to occupy the building after this date. There is, however, no controversy in that S.D. Nayar occupied the building as a tenant upto 19-2-1972 and the other persons, referred to above, were living in a few rooms or a Kothari as licencees with the permission of S.D. Nayar.

3. To avoid repetition and to give facts in the correct perspective it may here be mentioned that in the sale deed executed in favour of the applicants the house was shown to be in the tenancy of the State Bank of India. The case of the petitioners, on the other hand, is that S.D. Nayar was the tenant in his personal capacity. S.D. Nayar and M.L. Sharma have taken a case, one may say, in the alternative. Firstly, that the tenancy was in favour of the State Bank of India, or of the Agent. State Bank of India, by designation and not by name and, secondly, that S.D. Nayar never vacated the accommodation and continues to be its tenant.

4. The applicant's case further is that while vacating the building on 19-2-1972, S.D. Nayar handed over possession to the applicants and they as owners occupied the building other than the two rooms in the occupation of M.L. Sharma and one Kothari in the occupation of Bargad Masih, which they could do due to the fact that they had already moved an application for release of the accommodation in their favour and by that time no order of allotment had been passed by the District Magistrate. The case of M.L. Sharma, on the other hand, is that the applicants had not entered into actual possession on the 19th February, 1972, and it was on the 20th February in his absence that they forcibly and wrongfully occupied the building. That morning M.L. Sharma had gone to Agra to attend a seminar and when he returned in the evening he found the applicants and their family members to be in wrongful occupation of the building. M.L. Sharma thereupon lodged a report with the police making allegation that the applicants and others had committed house trespass. S.D. Nayar was then in Delhi and he was contacted on telephone. He arrived in Aligarh on the 21st of February, when he also lodged a report with the police.

5. On the 21st of February, 1972, the applicants moved an application before the District Magistrate that the building had fallen vacant and they had occupied it. They also instituted a Civil Suit against M.L. Sharma and Bargad Masih for a permanent injunction to restrain them from dispossessing the applicants from the building other than the two rooms and the Kothari, referred to above. They also prayed for possession over these two rooms and Kothari after the ejectment of the two occupants. Their case was that they occupied the rooms and Kothari as licencees and had no right to continue in possession. On the application of the applicants the Civil Court granted an interim injunction restraining the defendants, namely, M.L. Sharma and Bargad Masih, from dispossessing the applicants from the portion of the building in their occupation, i.e., the Jerao Building less the two rooms and a Kothari. The injunction was served on both the defendants by refusal through an advocate Commissioner, who also submitted

his report that the applicants were, in fact, occupying the portion of the building as alleged by them.

6. On 21-2-1972 at about 7 or 8. P. M. the local police visited the building and took into custody the applicants and other ladies, who were released on bail, it is said, on the intervention of an advocate.

7. The applicants' case further is that the injunction order was also communicated to the defendants of the suit and also to the Superintendent of Police, District Magistrate, Additional District Magistrate and Deputy Superintendent of Police (City) by telegrams despatched the same day.

8. The same day at about midnight police party consisting of Bulaka Singh. C.O. City (I), G.K. Shukla, C.O. City (II), A. Koriyan, Assistant Superintendent of Police, S.I.H.P. Dhavan and others visited the house again at 12 or 12.30 A. M. The applicants' case is that their servants were in the house and the police took them into custody, threw away the luggage and thus dispossessed the applicants from the building. M.L. Sharma was in the house at that time. The police force had gone to the house under instructions of the then District Magistrate of Aligarh, Sri S.N. Pandita. The case of the police officers, on the other hand, is that they had under the instructions of the District Magistrate visited the house to ensure that law and order was maintained and in that connection took the above persons into custody. They have been referred to as Goondas, but there is nothing on record about their past conduct and, therefore, they can be regarded as the servants or employees of the applicants. The arrest of these persons is not challenged.

9. On being dispossessed from the building the applicants moved the High Court for taking contempt proceedings against the above persons for having wilfully disobeyed the injunction order granted by the Civil Court. The learned Judge hearing the contempt application did not issue any notice to the District Magistrate, S.N. Pandita, S.D. Nayar, Bargad Masih and Motwani, Development Officer, State Bank of India. This order was challenged in appeal, but unsuccessfully. Special Appeal No. 688 of 1972 has been preferred by the applicants to challenge the implied refusal to take contempt proceedings against the District Magistrate, S.N. Pandita, and the previous Agent S.D. Nayar.

10. The learned Single Judge held that the four police officers, namely, Bulaka Singh, G.K. Shukla, A. Koriyan and H.P. Dhavan and also the then Agent. M.L. Sharma, were guilty of having committed contempt of the subordinate Court. Bulaka Singh and M.L. Sharma were sentenced to a fine of Rs. 500/- each and they were directed to pay Rs. 500/- as costs to the applicants recoverable equally from them. The others were simply given a warning Special Appeal No. 69 of 1973 is by the four police officers and Special Appeal No 77 of 1973 by M.L. Sharma.

11. The temporary injunction was later vacated by the Civil Court on account of the applicants being no longer in possession. The application of the applicants for

restoration of possession was also dismissed. F.A.F.O. No. 251 of 1972 is against the order vacating the interim injunction, while Civil Revision No. 875 of 1972 against the order refusing to restore possession to the applicants. Writ Petition No. 3243 of 1972 is for the issue of a writ of mandamus to direct the respondents to restore possession to the applicants and to decide the release application forthwith. Prayer was also made to direct the respondents not to proceed in an illegal manner and to take action in accordance with law.

12. Before making comments on merits we shall like to make it clear that we are making observations on the basis of the affidavits and material which have been brought on the record. The material produced before us may not be complete and the parties may during the hearing of the civil suit or of the release application bring other material before the court or the authority. Consequently, the observations made in this order should not be regarded as binding on the parties and all the points can be registered and it shall be necessary for the Civil Court or the prescribed Authority to decide the matter afresh taking into consideration all the material which may be brought to its notice. In brief, the observations are being made for the disposal of the present proceedings and not to finally adjudicate on the title and the rights of the parties.

13. It is not in dispute that after the incident of the 21st of February, 1972, the applicants were no longer in possession of the building. To put it differently, they had been dispossessed. Consequently, there is wilful disobedience of the interim injunction. The important question that arises for consideration is whether wilful disobedience on the part of M.L. Sharma can be presumed. The other question shall be whether M.L. Sharma and also the four police officers can be held to have wilfully disobeyed the injunction order and can be punished for civil contempt. Another question which cannot be overlooked while determining the gravity of the offence is who was the tenant of the building and whether the applicants could have occupied the building as owners.

14. It is a matter of regret that a respectable person like S.D. Nayar, who is the Agent of the State Bank of India, has not given correct facts before this Court. His conduct otherwise in avoiding giving evidence on commission cannot be appreciated. It may be that S.D. Nayar and M.L. Sharma changed their ground on legal advice, but still the Court did expect such respectable persons to give true facts and then to take up the legal pleas in the alternative in their defence.

15. Considering that we are not recording a finding which may be binding on the parties in subsequent litigation it is not necessary for us to give full details in respect of the observations that we may make in this order.

16. In the report that M.L. Sharma had lodged with the police on 20th February, 1972 he made no reference to the occupation of S.D. Nayar or to the servant Omi being his servant. A perusal of this report would strongly suggest that after S.D. Nayar left for Delhi with his luggage loaded in a truck the possession was of M.L. Sharma. S.D. Nayar had given to the applicants a sketch of the locality

where his Delhi House is situate. This would not have been done if S.D. Nayar had been threatened or he had not left Aligarh with happy relations with the applicants. It is now, on the other hand, suggested that S.D. Nayar continued in possession of the building. Evidently, M.L. Sharma being the Agent of the State Bank of India was anxious to occupy the building during his stay at Aligarh and when the plea in the alternative was raised S.D. Nayar was prevailed upon to assert that he continued in possession of the building.

17. It is not in dispute that the wife of S.D. Nayar is a Doctor employed in the All India Medical Institute and she had a house in Delhi in which Nayar himself stayed on his transfer to Delhi. After having finally handed over charge on the 19th February and having taken his luggage in a truck there could be no question of his coming back to Aligarh to live in the house. It appears to us that whatever the conduct of S.D. Nayar might have been before leaving Aligarh, he felt that he must come to the help of M.L. Sharma otherwise the bona fide of his conduct may be in question and he took up the plea that a part of the luggage had remained in the building and he still continued to be in occupation thereof. We would have avoided making these observations had they not been material in determining whether there has or has not been wilful disobedience of the injunction order on the part of the successor Agent M.L. Sharma.

18. It is not in dispute that the injunction order was shown to Bulaka Singh, C.O. City, I, when the police party visited the building on the midnight of 21-2-1972. Ordinarily, the injunction order would also have come to the notice of the other police officers. The men of the applicants would not have kept the order a secret and would have without fail relied upon the court's order to continue in possession of the building. The police had taken those persons under arrest. The circumstances of the case as pointed out by the learned Single Judge make it clear that the natural consequence was that the applicants were dispossessed of the building and M.L. Sharma with the help of S.D. Nayar came into possession of the building. This is clearly in disregard of the injunction order of the Civil Court. Consequently, there has been wilful disobedience of this order on the part of the police officers and also M.L. Sharma. In case the police officers had locked the material portion of the building to ensure that neither M.L. Sharma and S.D. Nayar, nor the Applicants could take possession thereof, their action could not be said to be in disregard of the court's order, but what happened in the present case was that, nine persons of the applicants were taken into custody and M.L. Sharma succeeded in getting possession of that portion of the building in respect of which the order of injunction had been issued. We, therefore, agree with the learned Single Judge that M.L. Sharma and also the police officers had wilfully disobeyed the injunction order and thereby committed civil contempt of that court. At this place it may be observed, though at the risk of repetition, that a contrary view could have been taken only if M.L. Sharma had by then indicated at the spot that he had no intention to occupy that portion of the building which was in the possession of the applicants.

19. Even if the contention made on behalf of M.L. Sharma that the police delivered possession to S.D. Nayar is accepted it does not, in our opinion, make any difference. S.D. Nayar, on the own case of M.L. Sharma as taken in his report lodged with the police, had left the house on 19-2-1972 and thereafter it had been occupied by M.L. Sharma. According to M.L. Sharma he had been dispossessed forcibly in his absence. He had made a prayer in his report that he may be put in possession. He was anxious to reoccupy the house for his residence during the period he remained posted at Aligarh. He sent for S.D. Nayar from Delhi to Aligarh. S.D. Nayar had been transferred from Aligarh to Delhi and his wife was already occupying a house at Delhi. He also put up with his wife and had thus neither any occasion nor necessity to take back possession of the disputed house. The circumstances unequivocally indicate that whatever S.D. Nayar did after being called to Aligarh from Delhi was at the instance and for the benefit of M.L. Sharma. In that event M.L. Sharma manoeuvred to take possession through S.D. Nayar and he would still be guilty of breach of the order of injunction.

20. It is true that these persons had disregarded the court's order and thus committed civil contempt, yet the circumstances of the present case are not such as to justify awarding any punishment. When in the sale-deed it was mentioned that the building was in the tenancy of the State Bank of India, the applicants should have realised that the tenancy was not in a personal capacity but was for the State Bank of India or for the Agent of the State Bank and, therefore, there could be no vacancy of the accommodation on one Agent being transferred from the station. The District Magistrate has not been shown to have ever passed any allotment order in respect of this building and the building in view of the recitals in the sale deed prima facie appears to have been in the tenancy of the State Bank of India. The exact date from which it has been in tenancy has not come on the record. In the counter-affidavit of M.L. Sharma this period has been stated to be about 20 or 25 years. In these circumstances normally with the transfer of S.D. Nayar the applicants could not occupy the building in view of the fact that there was even then an Agent of the State Bank. In regard to the case of the applicants that S.D. Nayar had delivered possession to them on 19-2-1972 nothing has been brought to our notice to indicate that M.L. Sharma had been informed about this fact. Under the impression that the tenancy was, in favour of the State Bank of India and not being aware that S.D. Nayar had delivered possession to the applicants M.L. Sharma could reasonably be of the view that on S.D. Nayar's leaving the house, he was entitled as of right to occupy it. The circumstances of the case also indicate that the applicants had taken actual possession of the building during the absence of M.L. Sharma when he had gone to Agra for the day. Had the applicants taken actual possession of the building on the 19th M.L. Sharma would have without fail taken action that very evening, at least before he left for Agra. He would also have not permitted the applicants to easily occupy the building.

21. In these circumstances the courts would not be justified to take such a

serious view of the disregard of the injunction order as they otherwise would have taken. We are of opinion that a simple warning would meet the ends of justice. This disposes of Special Appeals Nos. 69 and 77 of 1973.

22. So far as F.A.F.O. No. 251 of 1972 and Civil Revision No. 875 of 1972 are concerned it may be pointed out that the mere fact that the applicants had been dispossessed after the interim injunction order had been issued would not be enough to treat the chapter in regard to possession over the house as closed. If a person has been dispossessed by wilfully disobeying an order, of injunction the court which issued the order of. Injunction can after considering the circumstances of each case and the conduct of the parties always pass such an order in the ends of justice as would undo the wrong done to the party in whose favour the order of injunction had been issued. The exercise of this inherent power vested in the court is based on the principle that no party can be allowed to take advantage of his own wrong in spite of the order to the contrary passed, by the court: see *The State of Bihar Vs. Usha Devi and Another*, and *Magna v. Rustam* AIR 1963 Raj 3.

23. As already mentioned above, total evidence as to tenancy and the taking of possession by the applicants has not come on the record of the civil suit. It shall be proper to remand the injunction matter for a fresh consideration so that no one may gain as a result of his improper action, neither the applicants nor M.L. Sharma.

24. In view of the above findings no direction can be given in the writ Petition No. 3243 of 1972 except for expediting the release application already moved before the District Magistrate, all the more when the F. A. F. O. and the Civil Revision are being reminded for a fresh hearing after recording evidence of the parties.

25. Coming now to Special Appeal No. 688 of 1972 it would be seen that Section 20 of the Contempt of Courts Act prescribes a limitation for taking cognizance of contempt. This Section 20 provides:--

"No court will initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

This section lays stress upon the initiation of the proceedings by the court and not to proceedings for contempt being taken by a party. Further, Section 20 applies not only to those cases where the court takes action suo motu but also where contempt application is made after obtaining the permission of the Advocate-General. In view of the wording of Section 20 it must be held that no notice can be issued to the alleged contemner after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. In the instant case this period had already expired and, therefore, even if the present was a case for the issue of notice we can no longer issue a notice on the contempt application to the District Magistrate and S.D. Nayar.

26. Special Appeal No. 688 of 1972 has thus no force and is hereby dismissed. Special Appeal No. 69 of 1973 by G.K. Shukla, A. Koriyan and H.P. Dhavan is dismissed, while that by Bulaka Singh is partly allowed and partly dismissed. Bulaka Singh is administered a warning for committing civil contempt of the Civil Court which had issued an interim injunction order. Special Appeal No. 77 of 1973 by M.L. Sharma is partly allowed and partly dismissed. He is held to have committed civil contempt of the subordinate court but is merely given a warning. The fine, if paid by Bulaka Singh and M.L. Sharma shall be refunded to them.

27. Writ Petition No. 3243 of 1972 is partly allowed and partly dismissed. The Rent Control and Eviction Officer, Aligarh, respondent No. 10, is directed to decide the release application within three months unless the responsibility for the delay rests on the applicants. The Court is aware that under the new Act the release application has to be decided by the prescribed Authority. Considering that the prescribed Authority is not a party to the writ petition, no direction can be issued to him, but it is hoped that if the matter is to be decided by the prescribed Authority and not by the Rent Control and Eviction Officer he will consider it proper to comply with the above direction of this Court F.A.F.O No. 251 of 1972 and Civil Revision No. 875 of 1972 are allowed and the orders impugned therein are set aside. It is ordered that the injunction application and the application for restoration of possession shall now be disposed of afresh from the stage of the grant of the interim injunction order. It is further ordered that there shall be no disturbance of possession till the matter has been finally decided by the Court below or by the authority dealing with the release application, whichever is earlier Costs of all the five cases of all the Courts shall be on the parties.