

**(2002) 05 OHC CK 0023**  
**In the Orissa High Court**  
**Case No : Civil Revision No. 71 of 2002**

Jaigun Nisa Bibi and Others

APPELLANT

Vs

Sk. Badiruddin Zahed

RESPONDENT

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**Date of Decision :** 09-05-2002

**Acts Referred:**

**Citation :** (2002) 3 CivCC 513 : (2002) 94 CLT 325 : (2002) 2 OLR 12 : (2003) 2 RCR(Civil) 32

**Hon'ble Judges :** P.K. Tripathy, J

**Bench :** Single Bench

**Advocate :** B.K. Mohanty, R. Mohanty, P.K. Bhuyan, S.K. Patnaik, S.K. Sethi, for the Appellant; P. Ch. Mohanty, R.K. Mohanty, D.K. Mohanty, P.K. Samantray, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.K. Tripathy, J.—Heard.

2. An order under Order 39, Rule 2-A, CPC passed by the Civil Judge (Sr. Division), 2nd Court, Cuttack on 19.11.1998 in Misc. Case No. 14 of 1995, recording the finding that revision-petitioners are guilty of violating the order of injunction passed the order for attachment of their property and for their detention in civil prison for 7 days. That was unsuccessfully challenged by the petitioner in Misc. Appeal No. 121 of 1998. That was disposed of by the First Addl. District Judge, Cuttack as per the impugned judgment dated 14.12.2001. Against that the present civil revision has been filed.

3. The detail facts mentioned in the pleadings of the parties is not necessary to be noted here. The relevant facts which are necessary to note here are that on 11.11.1994 ad interim ex parte order of injunction was passed against the present petitioner with notice to them to appear on 3.1.1995. They entered appearance on 3.1.1995 and took time to file show cause but as alleged, on 29.1.1995 they violated the order of injunction and plucked cocoanuts from the

trees standing on the suit land and caught fishes from the pond situated in the suit land. When the opposite party brought motion for violation of the order of injunction, petitioner contested the same by denying to the allegation simplicitor. At the stage of inquiry opposite party adduced evidence of two witnesses including the opposite party examined as P.W. No. 1 in proof of the allegation of catching fishes and plucking of cocoanuts in the alleged manner on 29.11,1995. Rebuttal evidence from the side of the petitioner was adduced by examining the petitioner No. 2 as the solitary witness. In his evidence he took the plea of absence from the occurrence village on 29.1.1995 and stated that on that date he had come to Cuttack to attend the Bank in his official capacity and absence of petitioner Nos. 1 and 3 by stating that they had gone to Jajpur. Evidence in that respect was found not creditworthy. Besides that the trial Court found that 29.1.1995 was a Sunday, i.e. a holiday. Keeping in view the evidence on record, learned Civil Judge (Sr. Division) found the allegation of violation of the order of injunction proved and accordingly directed that the properties of the revision-petitioners be attached and each of them be detained in civil prison for seven days. Learned Addl. District Judge on a fresh consideration of the entire fact, evidence and position of law, concurred with the Court below on factual finding as well as the punishment imposed.

4. Learned counsel for the petitioner relying on the case of Smt. Purnima Bhanja Deo and Ors. v. Smt. Bishnupriya Senapati and Ors. 84 (1997) CLT 783 argues that the evidence on record does not clinchingly prove the allegation of catching fishes and plucking of cocoanuts and therefore the relevant findings by the trial court and the concurrent findings of the appellate Court are bad both in fact and law. In that process he reads the evidence of all the three witnesses. After hearing the same, this Court finds that appreciation of evidence by the Courts below is neither illegal nor perverse. Therefore, factual assessment of the evidence made by the Courts below is not to be interfered with by this Court while exercising the revisional jurisdiction. Accordingly, this Court does not interfere with the findings on facts relating to the proof of breach of order of injunction by the petitioner.

5. Learned counsel for the petitioner further argues that while imposing the penalty for the breach of order of status quo, learned Civil Judge has not taken care of the provisions in Rule 2-A inasmuch as he has not stated as to for what length of time the property shall remain under attachment and what is the extent of that property. He also argues that the order for civil imprisonment for seven days is in excess to the complained act alleged against the petitioner when the suit is for partition. He argued that in view of the ratio in the case of Bichitrananda Swain and Others Vs. Jatakrushna Swain, an order of attachment of a particular extent of property for a specific period is sufficient to take care of the situation and therefore imposing of the sentence of civil imprisonment should not have been passed. Learned counsel for the respondents on the other hand strenuously urged that the conduct of the petitioner in violating the order of injunction is sufficient to show no sympathy in the matter of imposing the

penalty. He, however, agrees that the order for attachment of property, as argued by the petitioners is vague.

6. The provision in Order 34, Rule 2-A, CPC reads as hereunder:

"Order XXXIV, Rule 2-A. Consequence of disobedience or breach of injunction :  
(1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court "granting the injunction or making the order or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this Rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto."

7. The penalty imposed by the trial Court reads as hereunder:

"The opp. Parties are hereby found guilty of disobedience of status quo order of this Court. The properties of the O.Ps. be attached and they also be detained in Civil prison for seven days."

It is clearly readable from the above quoted law and underlined portion from the impugned order that the order of attachment of the property as one of the penalties is not in accordance with the provision of law. Extent of property and duration for which it should remain under attachment and extent of restriction for using or dealing with such properties by the person guilty of breach of order of injunction must be made clearly specific and no ambiguity or vagueness should be there. Apart from that, such penalty should be proportionate to the gravity of the act complained. Applying judicial discretion in that respect is the salutary principle.

8. Taking into consideration the entire allegations, nature of dispute between the parties and the standard of evidence adduced from both the parties, this Court finds that imposition of the penalty of civil imprisonment is in fact in excess to the stray allegation of breach of injunction found to have been committed by the petitioner. Therefore, while making an observation that no order of detention in civil imprisonment shall be passed against any of the petitioner, this Court directs the Civil Judge to pass appropriate order about the extent of property and the period for which that shall remain under attachment and in what manner. In that respect if so advised, a list of properties be furnished by the opposite party within two weeks after the Summer Vacation and thereafter appropriate order be passed within a further period of two weeks. Parties are to suo motu appear in the Court below and they shall not be entitled to fresh or further notice.

The Civil Revision is accordingly allowed in part by modifying the penalty and the matter is remanded for the purpose and in the manner as indicated above.