

(1984) 02 CAL CK 0025
In the Calcutta High Court

Lakshmi Narayan Dutta

APPELLANT

Vs

Smt. Mira Rani Dey and Others

RESPONDENT

Date of Decision : 01-02-1984

Acts Referred:

Citation : (1984) CriLJ 1033

Hon'ble Judges : Monjula Bose, J

Bench : Single Bench

Judgement

Monjula Bose, J.—Having heard the respective contentions of the parties this Court is satisfied that there has been deliberate violation of its order passed on 23rd June, 1983 which order is more specifically set out in para 18 of the petition for contempt. The relevant part of the said order reads:

So far as new construction is concerned there will be status quo as of today. The proposed, construction will not be let out in the meantime.

2. The service of the said order on the respondents Nos. 1 and 2 is admitted. It is also admitted that the respondent No. 3 is the husband of respondent No. 2. From the pleadings it appears that the case of the respondents Nos. 1, 2 and 3 has been that there has been no violation of the Court's order inasmuch as all works to the building had been completed prior to the application initiated by the petitioner and on which application the said order referred to was passed. The second defence of the respondents from the pleadings appears to be that the report of Mr. Utpal Roy who was appointed Special Officer to visit the premises to ascertain if any violation of the order dated 23rd June, 1983 had taken place, is a false and fraudulent document inasmuch as the Special Officer did not inspect the building in question on the 5th July, 1983 on which date the report was made. The case of the respondents has been that the report was false, fabricated and manufactured document obtained under the direct influence of the petitioner and as such the basis of the report of Sri Utpal Roy dated 5th July, 1983 was denied and in fact an application taken out for the report to be set aside. What is significant to note is that under orders of the Court the Special Officer was

directed to visit the premises once again, to take possession of the building materials lying at the site and to store the same. Pursuant to this order passed, on 23rd July, 1983 the Special Officer revisited the premises on 29th July, 1983 and found that construction works had been continued even after his last visit to the premises on the 5th July, 1983 and all plastering works on the 3rd floor were made complete and a new wall constructed on both sides of the staircase of the roof. In the first report of the Special Officer the Special Officer had noted that stocks of stone chips were placed on the roof and that sand, and cement was stacked on the third floor wherein construction works were being carried out by one rajmistry named Sudarshan who was assisted by one majdoor named Rati, He also noted that some other persons were working within the room on the third floor. The report of the Special Officer categorically states that he had found, plastering with sand and cement going on at the time "f his visit by the rajmistry with the help of the majdoor and he recorded that the mixture of sand and cement with water was found at the landing of the third floor, all of which facts established beyond doubt that works were being carried on at the suit premises altering the status quo directed contrary to the order of this Court. I do not accept the contention of the learned Advocate for the respondents who inter alia contended that the order of 23rd June, 1983 which is alleged to be violated did not prevent plastering works from being carried on on the third floor and merely prohibited constructions being made thereat. The decision cited by him namely Sadhu Singh S. Mulla Singh Vs. District Board, Gurdaspur and Another, is of no assistance as that was a case where the interpretation of the word "building" and "re-building" was considered in the light of the scheme of the Punjab Rent Legislation nor is the decision reported in Dulal Chandra Bhar and Others Vs. Sukumar Banerjee and Others, also of any assistance. It cannot be contended that the order passed, by this Court on the 23rd June, 1983, is an order of a contingent character which could not be adhered to nor (was it) submitted, that the order is not clear and/or specific. In any event it is not the case of the respondents that they did not understand the order of 23rd June, 1983. Nor did they challenge the same as being ambiguous and/or vague. It is pertinent to note that the case of the respondent throughout had been that there was no violation of the order inasmuch as the entire construction work at the site had been completed prior to the institution of the plaintiff's suit and prior to obtaining the order of 23rd June, 1983. To substantiate the case of the respondents in fact certain documents, namely, the order of the Assessment Department of the Corporation of Calcutta dated 11th June, 1983 and the Notice of the Calcutta Corporation for Unauthorised construction dated 24.6.1983 signed by the District Building Surveyor on the 8th July 1983 were made over to Court to show that the entire construction works were completed prior to the institution of the proceedings by the plaintiff. The Notice of the Assessment Department dated 12.9.1983 increasing the annual value of the premises to Rs. 35,964/- was also made over to Court. These documents in so far as the Assessment Notice is concerned do not support the respondents' case inasmuch as the Notice of 11th June, 1983 categorically states that "portions of the

premises were still under construction" as late as on 11th June, 1983. Moreover the Notices for Unauthorised Construction do not indicate that the entire third floor was completed and; merely indicate deviations from the plan submitted, which had been unauthorisedly constructed without sanction of the Corporation, in fact it is significant that no certificate of completion of works was relied upon, which would have been available, if the case of the respondents that the entire building works were completed to the knowledge of the Corporation was true and reliable. Be that as it may, it is apparent that by the order dated 23rd June, 1983 the Court expressly directed that so far as new constructions were concerned there would be status quo as of that day and the defence that plastering of walls and/or putting up of "new walls" on both sides of the staircase as recorded in the minutes of the Special Officer who visited the suit premises on 29th July, 1983 are not violat-ion of the order is unacceptable. The said facts clearly indicate that the order of this Court was violated with impunity and with knowledge of the same. In so far as the respondent No. 3 is concerned, it is nowhere said in the affidavit-in-opposition that he did not understand the import of the order.

3. Admittedly the respondent No. 3 is the husband of respondent No. 2 and it is impossible to believe that although his wife admits to have been served with the order he had no knowledge thereof as alleged by him in paragraph 38 of the affidavit-in-opposition. The first report is correlated with the second report, which reports I find to be accurate minutes recording the visits of the Special Officer to the suit premises. This Court thus cannot but come to the conclusion that its order has been wilfully and deliberately violated. Arguments by Mr, Arun Prokash Chatterjee, the learned lawyer for the respondents that the Court should not take cognisance of the second report inasmuch as the same is not the subject matter of the contempt rule has no foundation as the same being minutes of the Special Officer can be correlated to one another and it is established beyond doubt from the two reports that the order of Court has been deliberately violated. I also reject the contention of the learned Advocate for the respondent that the acts complained of are not contumacious as they were done in the belief that the same could be done, and the order merely prevented construction of works in respect of which status quo was directed to be maintained. This last submission moreover destroys the case of the respondent that no works were done at all and that all works effected to the building had been prior to the institution of the proceedings by the plaintiff as contended. The apologies tendered on behalf of the respondent are thus of no avail as the same was done half-heartedly at the last moment, with the hope that the contemnors be excused of any acts of violation, if found guilty of the acts complained. These are the facts of this unfortunate litigation, where this Court has found its order to have been deliberately violated.

4. I accept the contention of Mr. Protap Chatterjee, the learned Advocate for the petitioner that the order passed is clear and specific which was clearly understood by the respondents and inasmuch as none of them came forward with a case that they did not understand the order and it must be found that

there was contumacious disregard to the order passed. The contentions of Mr. Protap Chatterjee learned advocate for the petitioner are more sound and are required to be accepted. The respondents have not only attempted to shield themselves by alleging that no construction works were made to further impress upon the Court that the status quo order had not been violated which is contradicted by both the minutes of the Special Officer which have been made part of the proceedings and; which belie their case that no works were undertaken at the suit premises.

5. It seems that the trend of today is more to disregard the orders of Court than to comply with the same with the belief that apologies tendered at the time of hearing will condone all acts of the contemnor. The time has come when it must be made clear to the litigant public and all, that when a direction is given and orders are made, the Court's orders are required to be carried out to their fullest extent and any wilful disregard to the same will not be tolerated by a Court of law and severe consequence will follow if orders are found to; have been violated.

6. The Rule nisi is made absolute. This Court doth hold that the respondents Sm. Mirarani Dey, Sm. Nilima Dey and Sri Pranballav Dey all residing -at premises No. 1/2C, Fordyce Lane, Calcutta 14 within the jurisdiction contemnors herein are guilty of contempt of this Court for wilful violation of the order dated 23.6.1983 by carrying on works of construction on the 3rd floor of the premises and thereby changing the status quo existing as on 23rd June, 1983, and it is ordered that a warrant do issue out of and under the seal of this Court directed to the Sheriff of Calcutta and the Superintendent, Presidency jail commending the said Sheriff to arrest the respondent No. 3 where he may be found within the local limits of the jurisdiction of this Court and to convey him to the said jail where the said Superintendent shall receive him and detain him in the civil prison to suffer simple imprisonment for a period, of three months from the date of apprehension. There will be an order in terms of prayers (c), (d) and (f) and costs of this application. This is without prejudice to the right of the petitioner to take any other appropriate steps in law including the rights if any, made in prayer (e). The contemnor viz. respondent No. 3 is to be punished with simple imprisonment for a term of three months and a fine of Rupees 1000/-. The contemnors Nos. 1 and 2 will be fined a sum of Rs. 2000/- each.

7. Mr. Utpal Roy, the Special Officer will visit the premises in the course of this week with notice to the Advocate on record for both the parties and will file a report as to the condition of the 3rd floor as it exists on the date of his visit. If he finds any new construction or any other changes have been done to the premises since his last visit to the premises, will record the same. If any change is found the same will be photographed at the costs of both the parties. Mr. Utpal Ray should be paid a further remuneration of 60 G.Ms. to be paid by the four parties equally.

8. The order regarding the punishment and, fine is stayed till Feb 10, 1984, for the rest of the order directing the Special Officer to visit the premises and to file

a report is not stayed. The fine will be paid to the petitioner's Advocate on record by the 15th February, 1984 and he will in terms forward the same to Abhayananda Maharaj, Belur for the works of the Ram Krishna Mission.

9. All parties including the Sheriff, the petitioner, Advocate on record to act on a signed copy of the minutes.