
(2011) 01 RAJ CK 0110
In the Rajasthan High Court
Case No : Civil Contempt Petition No. 290 of 2009

Mahi Ram	Vs	APPELLANT
Rajana Saraf		RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2011) 2 RLW 1243

Hon'ble Judges : Arun Mishra, C.J.;Prakash Tatia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, C.J.—This contempt petition arises out of an interlocutory order dated 7.3.2009 passed by learned Civil Judge (Jr. Div.) Hanumangarh while deciding an application filed under Order 39 Rule 1 and 2 CPC in a pending suit. The injunction has been granted in favour of Sharvan -the Plaintiff to the effect that till the disposal of the suit the Defendants are restrained from implementing the orders dated 30.7.2008 and 4.2.2009 passed by the Defendant No. 2 and there shall be no change in the water course of chak No. 5FTP of Stone No. 220/243 of Killa No. 1 to 10. The Petitioner alleged that by passing of the aforesaid order, the contemnor - Ranjana Saraf - the Civil Judge (Jr. Div.) Hanumangarh has committed violation of the interim order dated 11.12.2001 passed in SBCWP No. 3204/2000. The interim order passed by this Court on 11.12.2001 is to the following effect:

Heard.

Admit. Issue notice.

Mr. S.C. Mehta accepts notice on behalf of Respondent No. 1 & 2. Issue notice to Respondent No. 3. In the meanwhile, the Respondent No. 2 will ensure supply of water to the Petitioner, whatever may be the water course.

2. In the SBCWP No. 3204/2000 this Court has passed the aforesaid interim order in the backdrop of the fact that Petitioner has challenged the orders dated 6.12.1994 (Annex.5), 16.6.1995 (Annex.7), 21.1.1999 (Annex.10) and order dated 27.10.1999 (Annex.11). These orders were passed by the Divisional Irrigation Officer, Hanumangarh and the Superintending Engineer, Irrigation Circle, Hanumangarh with respect to providing the facility of irrigation. It was held by the aforesaid impugned orders that it was not possible to provide the facility of irrigation from 5FTP. It was held by the authorities that the irrigation facilities can be obtained by the Petitioner from 7CDR. Said orders were assailed and the Petitioner wanted to obtain the water from 5FTP, which he was not getting at the time when the petition was filed and he was getting the water from 7CDR. His land was also in that chak. The order passed by this Court again made subject matter of SBCCP No. 262/2008, which was dismissed vide order dated 28.1.2009, which fact has not been disclosed in the present contempt petition by the Petitioner while dragging the Judicial Officer in the contempt proceedings. The contempt petition No. 262/2008 was dismissed by this Court after hearing counsel for the Petitioner. After the interim order was passed by this Court, two orders were passed in the matter of irrigation by the concerned authorities. The order dated 30.7.2008 was passed by the Executive Engineer providing temporary facility of irrigation and another order was passed in the appeal preferred by Sharvan on 18.8.2008 by the Superintending Engineer. The case was remanded by the Superintending Engineer, thereafter, fresh order was passed by the Executive Engineer on 4.2.2009 directing to provide the temporary facility of irrigation from 5FTP. After the order dated 4.2.2009, the Plaintiff Sharvan preferred the civil suit before the trial court for declaration and permanent injunction. It was averred by the Plaintiff in the plaint that Defendant Mahi Ram was getting irrigation from 7CDR, which was the order passed earlier by the concerned authorities and the prayer of the Defendant No. 3 Mahi Ram for obtaining water from 5FTP was disallowed. The order which has now been passed on 18.8.2008 was wholly illegal. Attention was attracted to the facts about the illegality of obtaining the irrigation facility by the Defendant from 5FTP under the guise of the interim order passed by this Court in SBCWP No. 3204/2000. the aforesaid order was passed by the Executive Engineer, which was not permissible. In the said writ petition Plaintiff Sharvan, Nathu Ram and Hari Ram have not been made parties. The Executive Engineer had no right to transfer the area of Defendants Nos. 3 and 4 to the Plaintiffs chak 5FTP. Various other technical grounds have been raised to assail the order of the Executive Engineer permitting irrigation facility out of chak No. 5FTP.

3. The trial court after considering the interim order passed by this Court in SBCWP No. 3204/2000 and after hearing the parties in which the Petitioner of SBCWP No. 3204/2000 is also a party, passed the injunction order restraining the Defendants from implementing the orders dated 30.7.2008 and 4.2.2009 passed by the Defendant No. 2 and it was also ordered that there shall be no change in the water course of chak No. 5FTP of Stone No. 220/243 of Killa No. 1 to 10.

4. By virtue of present contempt petition, it is submitted that interim order passed by this Court directing the Respondent No. 2 to ensure supply of water to the Petitioner, whatever may be the water course, has been violated. Thus, the concerned Civil Judge be punished for violating the order passed by this Court and the order passed may be quashed.

5. Learned Counsel for the Petitioner Sh. Ramandeep Singh Sidhu submitted at length that serious contempt has been committed by the trial judge of the interim order passed by this Court. The Petitioner had been deprived of the irrigation facilities since long. Ultimately, by the interim order passed by this Court, the irrigation facility was provided out of 5FTP, which order has also been stayed by the Civil Judge. In case, there was any grievance with the order passed by this Court, the Plaintiff should have approached this Court as against the order passed by the Executive Engineer, though the Plaintiff was not a party in the writ petition, but he could have filed appropriate application in the pending writ petition. Taking a remedy of filing a civil suit could not be said to be an appropriate remedy. It was in order to flout the order passed by this Court.

6. Learned Counsel for the contemnor S/Sh. PS Bhati and BS Sandhu submitted that the interim order passed by this Court has been considered. This Court never meant by the interim order that the final relief, which was prayed by the Petitioner in the writ petition be granted by the interlocutory order. This Court's anxiety was only to provide the facility of water, which the Petitioner was getting from 7CDR. He was not getting the water from 5FTP. The interim order passed by this Court has been mis-utilized by the present Petitioner for obtaining the final relief prayed in the writ petition, which has not been granted by this Court. Earlier, the Orders were passed by the Executive Engineer and Superintending Engineer to the effect that it was not possible to provide the irrigation facility out of 5FTP. The Petitioner was required to obtain it from 7CDR only. Thus under the garb of order passed by this Court, it was even not permissible to the Executive Engineer to pass an order in derogation to the final orders, which were passed earlier and to provide water facility by way of temporary arrangement out of 5FTP, a relief which was ultimately declined in final orders by the said authorities, which orders have not yet been quashed in SBCWP No. 3204/2000. Thus, it is not a case of violation of the interlocutory order passed by this Court, rather interlocutory order has been tried to be mis-utilized by the Petitioner. He has not been able to make out any case of violation of the orders passed by this Court. However, unconditional apology has also been tendered alongwith the explanation which was filed earlier, which may be accepted in view of the facts.

7. After hearing learned Counsel for the parties, we are of the considered opinion that the interlocutory order passed by this Court never meant that the water course has to be provided out of 5FTP. In fact that was the final relief prayed by the Petitioner in the petition in prayer Clause (3) and the prayer which was made before the concerned authorities for taking the irrigation facilities out of chak 5FTP stood rejected by the concerned authorities. It was held that his land was in

irrigation facility of chak 7CDR and it was not possible to give him water from chak 5FTP. The effect of those orders was not stayed by this Court and the said orders have been assailed by the Petitioner in the pending writ petition No. 3204/2000. Merely the observation made in the interim order by this Court that irrigation facility be made available to the Petitioner from whatever course, could not have been taken to the extent that relief has been granted by this Court finally by way of temporary measures. Had it been intendment of order, this Court would have issued specific direction to provide the water facility out of 5FTP, which is not the intention of the order, on the other hand, the intention of the order appears to be that the Petitioner has to obtain the water from the existing course, which was obviously from 7CDR, which was also found to be appropriate one by the irrigation authorities i.e., the Executive Engineer and Superintending Engineer. It appears that the Petitioner under the guise of the interim order passed by this Court obtained the order from the Executive Engineer of providing water facility to him from 5FTP, which stood declined to him aggrieved by which he had filed petition. The subsequent order passed by the Executive Engineer furnished independent cause of action, which relief was not granted earlier in the orders which were passed. Thus, this kind of relief of taking water by 5FTP, prima facie could not have been granted on temporary basis by the Executive Engineer under the garb of the interim order passed by this Court. It would have been appropriate for the concerned authorities to abide by the final orders, which were passed by them earlier and were subject matter of SBCWP No. 3204/2000 and particularly, the effect of those orders was not stayed by this Court. However, the order was passed by the Executive Engineer by way of temporary arrangement was contrary to the final orders, which were passed earlier by the same authorities and what could not be obtained by the present Petitioner earlier, was granted by way of temporary arrangement, which obviously was not the intention of this Court while passing the interim order as main prayer in writ petition - prayer Clause (3) has to be yet adjudicated upon. Prayer for transferring land to different chak also stood rejected which has not been stayed by this Court. The grant of facility from 5FTP tantamounts to transfer of land to different chak.

8. When the temporary arrangement order was passed by the Executive Engineer on 4.2.2009 obviously it was open to the effected party i.e., Sharvan to take recourse to appropriate legal remedy. Since he was not a party to the writ petition No. 3204/2000 filed by the present Petitioner, he has preferred the civil suit and filed the application for interim injunction. Since the order passed by this Court has been considered by the learned trial judge and it has been referred and appropriately considered, we find that no contempt has been committed by the trial judge while granting the injunction as the order passed by the trial judge is in tune with the orders, which were passed by the irrigation authorities which are subject matter of challenge in SBCWP No. 3204/2000 in which the aforesaid orders dated 6.12.1994 (Annex.5), 16.6.1995 (Annex.7), 21.1.99 (Annex.10) and order dated 27.10.1999 (Annex.11) have been assailed. In these

orders passed by the irrigation authorities it was clearly found that it was not possible to grant water facility to the Petitioner from 5FTP and as such his prayer was declined. Since that prayer has not been specifically granted by this Court nor it was intended by the interim order passed by this Court we find that Civil Judge was justified in passing the order of interim injunction. It cannot be said that the trial judge was not alive of the factual situation. The trial judge was fully alive of the legality of action taken subsequently and it was open to examine legality of action taken under the garb of order of this Court. Learned Counsel for the applicant relied upon the decision of the Apex Court in Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, , T.M.A. Pai Foundation and others, etc. Vs. State of Karnataka and others, Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit, Superintendent of Central Excise and Others Vs. Somabhai Ranchhodhichai Patel, Prithawi Nath Ram Vs. State of Jharkhand and Others, and decision of Madras High Court in (2006) 1 MLJ 75. The essence of the aforesaid decisions is that the order should be complied with. However, in the facts of the instant case as discussed above, we find that the order passed by this Court has not been flouted by granting injunction as the result which culminated into passing of the orders by the Executive Engineer was not contemplated in the interim order passed by this Court. Thus, we find that no contempt has been committed by the trial judge. Since, on account of the conduct of the Petitioner, the trial judge was called number of times before this Court to explain the situation and as is apparent that the order passed by this Court has been mis-utilized by the Petitioner, therefore, this contempt petition deserves to be dismissed with cost of Rs. 5,000/- to be paid to the Respondent.

9. Hence, this contempt petition is dismissed with cost of Rs. 5,000/- to be paid to the Respondent.