

(1973) 08 BOM CK 0005

In the Bombay High Court

Case No : Civil Application No. 1526 of 1973 in Miscellaneous Civil Application
No. 80 of 1971

Major S.L. Bhasin

APPELLANT

Vs

Lt. Col. Rucy D. Colabawala

RESPONDENT

Date of Decision : 09-08-1973

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 15, 17, 22

Citation : (1974) 76 BOMLR 422 : (1974) MhLj 686 : (1974) MhLj 684

Hon'ble Judges : Vaidya, J;Dudhia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Vaidya, J.—The petitioner in Miscellaneous Civil Application No. 80 of 1971 has filed the above application praying- that a proclamation against respondent No. 1, Lt. Col. Rucy D. Colabawala u/s 87 of the Criminal Procedure Code be issued and that attachment of all his moveable and Immovable properties be made u/s 88 of the Criminal Procedure Code.

2. The material facts may be briefly stated as follows: Petitioner Major S.L. Bhasin had filed an Appeal from Order No. 130 of 1971 against the order of the Bombay City Civil Court on the Notice of Motion in Suit No. 1202 of 1971 and Civil Application No. 1983 of 1971. On September 2, 1971 Mr. Justice Nain passed the following- order in the Appeal after hearing¹ the counsel for both the parties :--

Pending the hearing and final disposal of the suit the defendants through their Advocate (defendant No. 2 is present in Court) undertake to this Court not to transfer, alienate or part with the possession of the vessel M.S.V. "Sagar Maher".

In view of the above undertaking the appeal is not pressed. C.C. in suit. The defendants state that the engine of the above vessel is in their possession and

the undertaking applies to the engine also.

Hearing of the suit expedited.

The petitioner claims to be one of the owners and partners of Messrs. Coli Brothers Bhasin Mariners and the above mechanized sailing vessel is alleged to be one of the partnership assets in which the petitioner invested Rs. 40,850. Suit No. 1202 of 1971 pending in the Bombay City Civil Court was filed for dissolution of the partnership alleging that by flagrant breach of the order passed by Mr. Justice Nain and in violation of the undertaking given by the respondents the respondents removed the engine of the suit vessel outside the jurisdiction of this Court to Mangalore and Calicut. The petitioner has filed Miscellaneous Civil Application No. 80 of 1971 on November 27, 1971 in this Court praying that the respondents be punished for contempt of this Court under the Contempt of Courts Act.

3. The petition was admitted and Rule was granted on November 29, 1971. Although the respondents have appeared through their advocate, who is also one of the party-respondents in the petition, respondent No. 1 never cared to remain present in Court. In the Miscellaneous Civil Application a bailable warrant was ordered to be issued against respondent No. 1 on April 10, 1973. A fresh non-bailable warrant returnable on June 11, 1973 was issued on April 24, 1973 as respondent No. 1 did not care to remain present in Court. Thereafter the petitioner filed Civil Application No. 1526 of 1973 praying for issue of proclamation against respondent No. 1 under the provisions of Section 87 of the Criminal Procedure Code and for attachment of the moveable and Immoveable properties of respondent No. 1 and his respective share in them under the provisions of Section 88 of the Criminal Procedure Code. This Application was admitted and Rule was ordered to be heard on August 9, 1973. On June 14, 1973 the petitioner was also directed to get notice of the application published in "The Times of India" and "Bombay Samachar" before July 9, 1973. The petitioner has produced the publication of the notice in "The Times of India" dated July 8, 1973 and "Bombay samachar" dated June 23, 1973. Respondent No. 1 has not eared to appear in spite of this publication of the notice in the press.

4. Mr. Katki, who continues to appear for respondents Nos. 1 and 2, contended that a proclamation against respondent No. 1 and of attachment could not be made under the Criminal Procedure Code in view of the decision of the Supreme Court in Sukhdev Singh v. Teja Singh AIR [1954] S.C. 186. That decision has no application to the facts of the present case because Bose J., who delivered the judgment in that case, pointed out that that was an unusual application for a transfer of certain contempt proceedings from Pepsu High Court to any other High Court. As the law then stood the Supreme Court held that even the Supreme Court had no jurisdiction to transfer the proceedings having regard to the powers of the High Courts to punish for contempt under Article 215 of the Constitution.

5. It is true that in the course of the judgment, the Supreme Court has observed that the power of a High Court to institute proceedings for contempt and punish where necessary is a, special jurisdiction which is inherent in all Courts of Record and Section 1(2) of the Criminal Procedure Code expressly excludes special jurisdictions from its scope. The Supreme Court has also observed (p. 188) :

...But however that may be, Sir Barnes Peacock made it clear that the words "any other law" in Section 5 of the Criminal Procedure Code do not cover contempt of a kind punishable summarily by the three chartered High Courts.

The Supreme Court did not decide that no provision of the Criminal Procedure Code could be adopted by the High Court where the contemner fails to remain present at the hearing of the contempt proceedings. On the contrary, the Supreme Court has also observed in that very case that (p. 190) :

We hold, therefore, that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own, procedure....

As the High Court has power to adopt its own procedure, it is free to adopt the procedure laid down in Sections 87 and 88 of the Criminal Procedure Code where the contemner remains absent from Court notwithstanding the service of notice as in the present case.

6. Mr. Katki further argued that under the Contempt of Courts Act, 1971, Section 17(5) lays down that the Court may, if it is satisfied that the person charged u/s 15 is likely to abscond or keep out of way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable and, therefore, this Court cannot adopt any other procedure and Section 15 applies only to criminal contempt as defined in the Contempt of Courts Act, 1971. This contention must be rejected firstly because the present case is governed not by the Contempt of Courts Act, 1971, but by the old Contempt of Courts Act, 1952 and secondly because even the Contempt of Courts Act, 1971 lays down in Section 22 that the provisions of the Act shall be "in addition and not be in derogation of provisions of any other law relating to Contempt of Courts". Mr. Katki's contention is, therefore, without any substance.

7. Mr. Katki could not dispute that this Court had power under Article 215 of the Constitution of India to punish for contempt of itself. But he argued that that article did not confer on this Court the power to issue process for securing the presence of the contemner. If this Court had power to punish, it must have all powers incidental and consequential to that power. It must, therefore, include the power, where necessary, to issue a proclamation for appearance and attachment. Civil Application No. 1526 of 1973 is, therefore, allowed. A proclamation against respondent No. 1 shall be issued in accordance with the provisions of Section 87 of the Criminal Procedure Code read with Article 215 of the Constitution of India and Section 3(7) of the Contempt of Courts Act, 1952 read with Section 88 of the Criminal Procedure Code. Attachment of all the

moveable and Immovable properties of respondent No. 1 shall also be issued in respect of properties, the particulars whereof shall be furnished by the petitioner by filing a proper affidavit with an undertaking to compensate any person who may suffer any harmful consequence as a result of such attachment. Rule absolute. Costs, costs in the Miscellaneous Civil Application. As respondent No. 1 has not cared to appear in Court, it is not necessary to furnish the copy of this affidavit to him or to his advocate who stated that he will not be able to make respondent No. 1 remain present in Court.