
(1997) 12 AP CK 0065
In the Andhra Pradesh High Court
Case No : C.C. No. 327 of 1996

Nallamala Venkateswara Rao and Another	APPELLANT
Vs	
P. Prabhakar and Another	RESPONDENT

Date of Decision : 12-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 129, 215
Contempt of Courts Act, 1971 — Section 12, 20

Citation : (1998) 1 ALD 370 : (1997) 6 ALT 718 : (1998) 1 APLJ 72

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : Mr. M.R.K. Choudhary, for the Appellant; Mr. M.V. Ramana Reddy, for Mr. J. Prabhakar, for the Respondent

Judgement

1. In this Contempt Case, petitioners seek a direction to punish the respondents for having disobeyed the direction issued by this Court in CMP Nos.2394 and 6426 of 1994 dated 28-4-1994 as they failed to deposit the amount with interest from 15-3-1993 till the date of deposit, under the Contempt of Courts Act, 1971.
2. Before proceeding to examine the plea set-forth by the petitioners and respondents, few facts are necessary to be traced out for proper appreciation of the case.
3. The respondents are the managing partners of the plaintiff firm M/s Quadri Enterprises in O.S.No.5 of 1993 on the file of the Subordinate Judge, Khammam. The said suit O.S.No.5 of 1993 was filed for a declaration that the plaintiff firm is entitled to hold lease for a period from 21-10-1974 to 20-10-1994 in respect of the lands to an extent of 35.30 guntas in S.No.354 and 391 of Laxmipuram village, Konijerla Mandal, Khammam and also for a declaration that the agreement dated 26-5-1992 between Khaja Khan (partner of plaintiff firm) and the Petitioner No. 1 herein as void and unenforceable. Along with the suit I. A.No.43 of 1993 was also filed under Order 39 Rules 1 and 2 CPC seeking

injunction against the respondents therein who are the petitioners herein, from interfering in any manner with the peaceful mining operations and management of the plaintiff-firm and with the transportation as well as marketing of the materials, pending disposal of the suit.

4. The above I.A.No.43 of 1993 was ordered on 17-1-1994 granting temporary injunction in the following terms:

"In the circumstances, the petitioners Counsel has at the time of arguments offered to furnish bank guarantee for refund of Rs. 1,50,000/- or if the Court calls upon the petitioner-firm to furnish an undertaking to refund the amount of Rs.1,50,000/- it would do so. If an absolute injunction were to be granted in favour of the petitioner, the 1st respondent's interest will be seriously prejudiced because the amount of Rs.1,50,000/- parted with by him would be locked up with the petitioner-firm and at the same time, he cannot carry on mining operations. Therefore, the interests of justice require that the petitioner-firm which had already retained the said amount for more than one year shall be called upon to deposit the amount of Rs. 1,50,000/- with interest at 12% from 15-1-1993 till the date of deposit so that it would be available to the 1st respondent for withdrawal in case of dismissal of this suit without the necessity of filing a suit for recovery of the same giving rise to multiplicity of proceedings.

For the above reasons, I find that the ad-interim injunction granted on 28-1-1993 is liable to be made absolute provided the petitioner deposits, pending disposal of the suit, into the Court within the time granted by the Court, an amount of Rs. 1,50,000/-together with interest at 12% from 15-1-93 till date of deposit on or before 21-2-1994.

In the result, the ad-interim injunction granted on 28-1-1993 restraining the respondents from interfering with the mining operations and management by the petitioner-firm in the petition schedule properly is made absolute subject to the condition of the petitioner depositing into Court on or before 21-2-1994 an amount of Rs. 1,50,000/- together with interest at 12% from 15-1-93 till date of deposit to the credit of the suit. If the petitioner fails to make the deposit as directed above, the interim injunction shall stand vacated on 22-2-1994. It is made clear that till 21-2-94 the ad-interim injunction will be in force. The petition is allowed accordingly. The petitioner and the respondents shall bear their respective costs.""

5. On the above order passed in I. A.No.43 of 1993, the respondents-plaintiffs preferred an appeal in CMA No.231 of 1994 before this Court and obtained stay of all further proceedings in CMP No.2394 of 1994 on 21-2-1994. The operative portion of the order passed by this Court is as under:

"It is further ordered that the deposit amount of Rs. 1,50,000/- with interest at the rate of 12% as ordered in I.A.No.43 of 1993 in O.S.No.5/93 on the file of the Subordinate Judge Court, Khammam, dated 17-1-94 be and hereby is stayed, pending further orders on this petition.""

After the obtaining of interim order by the respondents herein, petitioners herein filed CMP No.6426 of 1994 in CMA No.231 of 1994 seeking to vacate the interim order granted by this Court in CMP No.2394/94 dated 21-2-1994. This Court on hearing both the Counsel vacated the interim order granted in CMP No.2394/94, dated 21-2-1994 by an order dated 28-4-1994 with the following observation:

"Heard Counsel on both sides. In the circumstances of the case, the order dated 21-2-94 in CMP No.2394/94 is vacated. Consequently, the appellant in CMA is directed to deposit Rs. 1,50,000/- (Rupees one lakh fifty thousand only) as directed by the Court below in IA.43/93, dated 17-1-94 to the credit of O.S.No.5/93 on the file of the Subordinate Judge, Khammam by 7-7-1994."

6. Pursuant to the above order, the respondents have only deposited an amount of Rs.75,000/- on 23-6-1994. The respondents, however, filed CMP No.9620/94 in CMA No. 231 /94 seeking extension of time by three months for depositing the balance amount In the affidavit filed therein, one of the respondents has stated in Para 7 as under:

"I submit that we have deposited a sum of Rs.75,000/- before the Hon'ble Court of Subordinate Judge, Khammam I submit that we are ready to pay the amount, but we require some more time."

7. The said CMP came up for consideration on 8-7-1994 and this Court refused to grant three months time as requested by the respondents and directed them to deposit the balance amount with interest as directed by the Subordinate Judge, Khammam, by 17-8-1994, thus granting more than a months time.

8. As the respondents failed to deposit the remaining amount of Rs.75,000/- by 17-8-1994 despite the specific direction by this Court, this contempt case is filed by the petitioners seeking punishment of the respondents for violating and disobeying the orders passed by this Court.

9. On behalf of the petitioners, Sri M.R.K. Chowdary, learned Counsel has submitted that the respondents had obtained a conditional order in I.A.No.43 of 1993 in the lower Court and without complying with that order, have approached this Court and initially succeeded in obtaining stay of the order of the lower Court in I.A.No.43 of 1993. Later on, when a vacate petition is moved by the petitioners herein, the initial order passed by this Court in CMP No. 2394/94 dated 21 -2-94 was vacated by an order dated 28-4-94 in CMP No.642G of 1994 with a direction to the respondents herein to deposit Rs. 1,50,000/- as directed by the lower Court to the credit of O.S.No.5 of 1993 by 7-7-1994. However, the respondents have deposited only an amount of Rs.75,000/- on 23-6-94 and the remaining amount of Rs.75,000/- has not been deposited.

10. Learned Counsel stated that the respondents without complying with the direction granted by this Court, have filed CMP No.9620/94 seeking extension of time for paying the remaining amount of Rs.75,000/-so as to continue with the mining operations upto 20-10-1994. Learned Counsel further stated that having

obtained an order, it is mandatory on the part of the respondents herein to ensure compliance with the order they have obtained and they should have deposited the remaining amount of Rs.75,000/- by 17-8-1994. Having not done so, Counsel states that the respondents have misled the Court and thereby perverted the judicial proceedings amounting to contempt of Court and they are liable to be punished for intentionally and wilfully disobeying the order of this Court.

11. Sri M.R.K. Chowdary, learned Counsel for the petitioners stated that Section 20 of the Contempt of Courts Act, 1971 has no application to the facts of this case as the liability of the respondents is a continuing liability. As long as the deposit is not made, till the payment of the remaining amount of Rs.75,000/- along with interest, the liability of the respondents continues to exist and therefore, Section 20 of the Contempt of Courts Act, 1971 has no application. Even otherwise, Counsel stated that Section 20 cannot make any inroad into the power vested in the High Court under Article 215 of the Constitution of India, The period mentioned in Section 20 cannot be made applicable to a case of contempt of the High Court as the power conferred on the High Court under Article 215 of the Constitution is absolute and unfettered and it cannot be said that the time limit specified in Section 20 would apply and the proceedings of contempt before this Court are barred by limitation. In support of his contentions, learned Counsel has referred to the following decisions reported in *Mayilswami v. State of Kerala*, 1995 (2) ALT (Criminal) 394 (FB), *Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar*, and *In Re: Ajay Kumar Pandey*, .

12. On the contrary, Sri M. V. Ramana Reddy, learned senior Counsel for the respondents has admitted the liability of the respondents, but, however contended that the contempt proceedings have not been filed within a period of one year as envisaged u/s 20 of the Contempt of Courts Act, 1971 and therefore, the contempt case cannot be maintained. The learned senior Counsel has principally laid his emphasis by contending that the respondents have neither pleaded incapability for complying with the orders passed by this Court nor they have pleaded that the order passed by this Court has become unenforceable but only have pleaded that the contempt proceedings have not been filed within a period of one year as laid down u/s 20 of the Act and therefore, on that ground alone, Counsel states that the Contempt Case has to be dismissed. In support of his contentions, learned senior Counsel has taken me to the following decisions reported in the *Advocate-General of A.P. v. A.V. Koteswara Rao* 1984 (1) ALT 69 and in *Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others*, .

13. Sri M. V. Ramana Reddy, learned senior Counsel for the respondents has concentrated all his energies on his principal contention that the petitioners have filed the Contempt Case against the respondents well beyond the one year period from the alleged date of contempt and in view of Section 20 of the Contempt of

Courts Act, 1971, (for short "the Act") the contempt proceedings against the respondents cannot be maintained and have to be invariably set aside. In this connection, learned senior Counsel laid his emphasis on Advocate General of A.P.'s case (supra).

14. In this context, the point that has to be determined is whether the provisions of Section 20 of the Act prescribing a period of limitation for initiation of contempt proceedings applies to the Contempts of the High Court.

15. It is necessary to extract the provisions of Section 20 of the Act, which are as under:

"Section 20: Limitation for actions of contempt :-- No Court shall 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."

16. Sri M.V. Ramana Reddy, learned senior Counsel has admitted, albeit indirectly, the liability of the respondents but only contends that the contempt proceedings cannot be maintained against the respondents as they have not been initiated within a period of one year as envisaged u/s 20 of the Act

17. The Supreme Court in *Pritam Pal's* case (supra) has held thus:

"The power of the Supreme Court and the High Court being the Courts of Record as embodied under Articles 129 and 215 respectively cannot be restricted and trammelled by any ordinary legislation including the provisions of the Contempt of Courts Act. Their inherent power is elastic, unfettered and not subjected to any limit. The power conferred upon the Supreme Court and the High Court, being Courts of Record under Articles 129 and 215 of the Constitution respectively is an inherent power and the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India and therefore, the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules."

A Full Bench of the Kerala High Court in *Mayilswami's* case (supra) held thus:

"Section 20 cannot make any inroad into the power vested in the High Court under Article 215 of the Constitution of India. The period mentioned in Section 20 cannot be made applicable to a case of contempt of the High Court. Article 215 of the Constitution of India gives a supreme position to the High Court compared to the labour Courts. As every High Court has power to determine questions about its own jurisdiction and it has inherent power to punish for its contempt summarily, period of limitation in Section 20 of the Contempt of Courts Act has no application to contempt proceedings initiated in the High Court on its own motion or on complaint regarding contempt of the High Court.

18. It is, therefore, clear from the above judicial pronouncements that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Contempt of Courts Act, 1971. In other words, the power vested under Article 215 in the High Court is independent of the Contempt of Courts Act, 1971 and the same cannot be denuded, restricted or limited. In view of the decision of the Supreme Court in Pritam Pal's case (supra) I am inclined to hold that the period of one year mentioned in Section 20 of the Contempt of Courts Act is not applicable to the contempts of the High Court as the power conferred on the High Court under Article 215 of the Constitution of India is absolute and unfettered and it cannot be restricted and trammelled by any ordinary legislation including the Contempt of Courts Act, 1971. In this view of the matter, the decisions cited by the learned senior Counsel for the respondents would in no way assist the respondents.

19. Now, advertent to the facts of the present case, the respondents, admittedly, have not disputed disobeying the order passed by this Court. Even in the counter filed by them in this contempt case, in a ritualistic and rhetoric manner, the respondents have tendered unconditional apology for not being able to deposit the entire amount as directed by the trial Court and as confirmed by this Court. Probably, the respondents were under the impression that they could take shelter under the provisions of Section 20 of the Contempt of Courts Act and can get away unpunished, though they have deliberately violated the order of this Court. The respondents, are however ignorant of the fact that law stretches its hands to unlimited extent and will not allow anybody to escape with impunity even after committing wilful disobedience of the order of this Court. The tenor of the submissions and the counter filed by the respondents would lead to the inescapable conclusion that the respondents have deliberately, wantonly and intentionally made attempts to avoid complying with the orders of this Court. As discussed earlier, the respondents must have been under the notion that they could get away with impunity even after disobeying the orders of this Court, in view of the provisions u/s 20 of the Contempt of Courts Act, 1971. The contempt committed by the respondents in this case consisted of the act in not depositing the balance amount of Rs.75,000/- with interest from 15-1-1993 to the date of deposit. Therefore, as long as the respondents do not deposit, their liability continues to exist. Even otherwise, the plea of the respondents cannot be accepted having regard to the judicial pronouncements (1995 (2) ALT (CrI.) 394 (FB) and Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, .

20. Having regard to the above discussion and in the light of the facts and circumstances of the case, I am inclined to hold that the Respondents 1 and 2 are guilty of disobeying the orders of this Court and are liable to be punished u/s 12 of the Contempt of Courts Act, 1971. The punishment prescribed u/s 12 of the Act is with simple imprisonment for a term which may extend to six months or with a fine which may extend to Rs.2,000/- or with both.

21. Since the respondents have indicated in their counters that they could not get sufficient time for arranging the remaining amount of Rs.75,000/- together with interest, it would be appropriate to give a reasonable period of three months from today to the respondents for complying with the orders of this Court. If the respondents fail to deposit the remaining amount of Rs.75,000/- along with interest at 12% as directed by the lower Court, within a period of three months from today, the respondents shall undergo simple imprisonment for a period of three months and pay a fine of Rs. 1,000/- each.

22. The contempt case is accordingly ordered.