

(2002) 08 KAR CK 0059
In the Karnataka High Court
Case No : CCC (Criminal) No. 2 of 2002

Nandhini Deluxe Restaurant		APPELLANT
	Vs	
Nandhini and Another		RESPONDENT

Date of Decision : 20-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Contempt of Courts Act, 1971 — Section 11, 12
Copyright Act, 1957 — Section 62
Trade and Merchandise Marks Act, 1958 — Section 105

Citation : (2008) 36 PTC 634

Hon'ble Judges : M.S. Rajendra Prasad, J;H.N. Narayan, J

Bench : Division Bench

Advocate : Harikrishna S. Holla, for the Complainant, for the Appellant;
Tarakaram, for G. Narayana Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. The complainant has initiated contempt proceedings against the Respondent No. 1 Under Sections 11 and 12 of the Contempt of Courts Act, 1971 r/w Article 215 of the Constitution of India. It is alleged that the complainant filed a suit in OS No. 3827/2001 before the Additional City Civil Judge, Bangalore under the provisions of Section 62 of Copy Right Act, 1957 r/w Section 105 of Trade and Merchandise Marks Act, 1958 against the Respondent for permanent injunction restraining the Defendant from infringing Copy Right in respect of "NANDHINI" and also sought for an order of injunction restraining the Defendant in the said suit, in any manner passing off complainant's well established Trade Mark and Trading Style "NANDHINI". In the said suit, the Court has passed an Interim order of injunction. A copy of the order of the Trial Court is served on the Respondent through registered post. An affidavit was filed by the complainant before the Court, However, the Respondent/Defendant refused to receive the said notice. The Respondent No. 1 thereafter appeared before the Court through an Advocate and filed an application for vacating the order of injunction. It is alleged

that inspite of the order of injunction granted by the Court, the Respondent continued to use Trade Mark and Trading Style "NANDHINI" and, therefore, made an application before the Court to initiate proceedings under Order XXXIX Rule 2(A) of Code of Civil Procedure. The Respondent No. 1 suppressed above facts and filed OS No. 240/01 before the District Munsiff at Hosur and obtained an order of injunction restraining the complainant from taking any coercive action and preventing him from carrying on business by using trading style "NANDHINI". It is in these circumstances, the complainant has initiated contempt proceedings against Respondent.

2. This contempt petition was presented on 5.1.02 and the Office has raised an objection that consent of the Advocate general has to be obtained. When the matter was listed for orders on 12.02.02, a submission was made by the Learned Counsel for the complainant that an application for consent has been filed before the learned Advocate General and as soon as the reply either granting or refusing sanction is received, the complainant's Advocate would file a memo. The matter was listed again on 13.03.02 and the Office had made a note that the complainant has produced the consent of the Advocate General in writing. It is thereafter that this Court took cognizance and ordered issue of notice to the Respondent. The Respondent has filed his statement. He has also filed additional statement before this Court on 15.07.02 raising the plea of maintainability of the petition in view of the receipt judgment of the Hon'ble Supreme Court in the case of State of Kerala Vs. M.S. Mani and Others, . Thereafter, the matter came to be listed for hearing the submissions of the Counsels regarding maintainability. Hence, we heard the Counsels on both sides and perused the records.

3. The contempt proceedings is initiated on the ground that ground that the Respondent herein suppressed certain material fact and filed a suit in the District Munsiff Court, Hosur in Krishnagiri Tq, Tamilnadu, even though there was an order of injunction granted against him by the City Civil Court, Bangalore upon the prayer made by the complainant in the earlier suit. The provisions of Section 15 of the Contempt of Courts Act has laid down the procedure for initiating any such proceedings. It is admittedly not a proceeding under Article 215 of the Constitution of India as contempt is not committed in the face of the Court. It is a contempt, according to the complainant, of the Court below. The Hon'ble Supreme Court in the case of State of Kerala v. M.S. Mani and Ors. held at para No. 4 in the judgment, as follows:

4. A perusal of Clauses (a) and (b) of Sub-section (1) of Section 15 makes it clear that in the case of criminal contempt the Supreme Court or the High Court may take action on its own motion or on a motion made by the Advocate-General or a motion of any person with the consent in writing of the Advocate-General. There is no controversy that the contempt alleged is within the meaning of criminal contempt under Clause (c) of Section 2 of the Act. From Clause (b) of Sub-section (1) of Section 15 it is manifest that a motion made by any person

other than the Advocate-General must be with the prior consent in writing of the Advocate-General. An analogous provision is to be found in Section 7 of the English Contempt of Courts Act, 1981.

The law laid down in the said judgement at para No. 6 reads as follows:

6. The requirement of consent of the Advocate--General/Attorney General/Solicitor General where any person other than the said law Officers makes motion in the case of a criminal contempt in a High Court or Supreme Court, as the case may be, is not a mere formality; It has a salutary purpose. The said law officers being the highest law officers at the level of the State/Centre and also the officers of the Courts are vitally interested in the purity of the administration of justice and in preserving the dignity of the Courts. They are expected to examine whether the averments in the proposed motion of a criminal contempt are made vindicating public interest or personal vendetta and accord or decline consent postulated in the said provision. Further, cases found to be vexatious, malicious or motivated by personal vendetta and not in public interest will get filtered at that level. If a motion of criminal contempt in the High Court/Supreme Court is not accompanied by the written consent of the aforementioned law officers, the very purpose of the requirement of prior consent will be frustrated. For a valid motion compliance with the requirements of Section 15 of the Act is mandatory. A motion u/s 15 not in conformity with the provisions of Section 15 is not maintainable.

Insofar as obtaining of consent of the Advocate General after the motion is made, the Apex Court in the said case at Para 7 held as follows:

7. Here, the contempt petition was filed on 17.5.1999 and the consent of the learned Attorney-General was obtained on 11.5.2000. It is however submitted by the Learned Counsel for the Petitioner that now Section 15 has been complied with. We are unable to accede to this contention. The fact remains that the motion to take action against the Respondents u/s 15 was not made with the consent of the learned Attorney-General or Solicitor General and, therefore, is incompetent. Subsequent obtaining of the consent, in our view, does not cure the initial defect so as to convert the incompetent motion into a maintainable petition.

In this case also, the motion was made before the Court on 12.02.02 on which date, the complainant had admittedly not obtained the consent of the Advocate-General in writing and the very submission made by the complainant's Counsel disclose that the Advocate-General gave his consent thereafter. It is true that this Court took cognizance of the alleged contempt on 13.03.02 and ordered issue of notice to the Respondent. But the latest judgement of the Hon'ble Supreme Court was not brought to the notice of this Court on the said date. The Apex Court in the case cited supra, has referred to a series of earlier judgements of the Apex Court while laying down the law on this question. Therefore, as rightly contended by Sri Tarakaram, learned Senior Counsel, subsequent obtaining of

the consent does not cure the initial defect so as to convert the incompetent motion into a maintainable petition. We have no alternative, but to discharge the contempt notice and dismiss the contempt petition.

In the result, this contempt petition is dismissed. However, the complainant is at liberty to take appropriate action, if so advised, in accordance with law.