
(2003) 05 J&K CK 0028
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 80 of 2002

Nazir Ahmed Mir	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 39 Rule 2A, 151

Citation : AIR 2004 J&K 59 : (2003) 3 JKJ 454

Hon'ble Judges : B. L. Bhat, J

Bench : Single Bench

Advocate : Surinder Kour, for the Appellant; J.P. Singh, for the Respondent

Judgement

B.L. Bhat, J.—This civil revision is directed against the order dated 13.2.2002 recorded by the District Judge, Jammu in File No.

25/Appeal titled as State of J&K v. Nazir Ahmed and Anr.

2. The factual matrix of the case is that the complainant/revisionist came to file suit for permanent prohibitory injunction restraining the

respondents/defendants from interfering in his peaceful possession with respect to Quarter No. 11-J situated at B.C Road, Jammu, admittedly

belonging to the Estates Department, before the District Judge, Jammu on 4.1.2002, who in turn came to transfer the suit file to the court to the

learned City Judge, Jammu. Alongside this petition, the petitioner came to file an application for issuance of ad interim injunction restraining the

respondents from interfering in his peaceful possession of the said Quarter till the decision of the main suit. On 5.1.2002, the learned Sub-Judge,

Jammu came to issue direction against the respondents 1 and 2 not to interfere with the suit property in possession of the complainant till further

orders. This order came to be passed subject to the objections of respondents. It appears that respondents/defendants 1 and 2 despite service and taking copies of the plaint, have chosen to remain absent. It further appears that on 9.1.2002 petitioner/revisionist approached the trial court again with application under Order 39 Rule-2A CPC read with Section 151 CPC complaining that this order came to be violated by the respondent-2, the Estates Officer, who arrived on spot with about 80 police jawans and ejected the petitioner from the said quarter after harassing him as well as his children. His application came to be resisted by the respondents in their objections stating therein that the order of interim injunction was served upon respondents on 9.1.2002 when the petitioner stood evicted on 7.1.2002. However, The learned Sub-Judge Believing the affidavit of the plaintiff, came to pass order dated 15.1.2002 directing the respondents to put the applicant/plaintiff in possession immediately within three days from the service of the order failing which, respondents shall be liable to pay compensation of Rs. 5000/-per day to the applicant/plaintiff till this order is complied with and applicant is put in possession.

3. This order came to be challenged in appeal by the respondents/defendant before the learned District Judge, Jammu who by virtue of order dated 13.02.2002 after going to the merits of this petition of which he ought to have restrained himself, came to set-aside the order and came to remand the case to the trial court with the direction to dispose of the petition in accordance with law after affording the parties an opportunity to lead evidence. This order is impugned in this revision petition.

4. In this motion of revision, the petitioner has assailed the impugned order both on facts and law. Order 39, Rule 2A deals with consequences of disobedience or breach of injunction. It envisages that:

2-A. consequence of disobedience or breach of injunction;

(1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the court granting the injunction or making the order any court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such a person to be detained in the civil prison, for a term not exceeding three months, unless in the

meantime the court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach

continues, the property attached may be sold out of the proceeds, the court may award such compensation as it thinks fit to the injured party and

shall pay the balance, if any, to the party entitled thereto.

5. There cannot be two opinions about the question of law that a party disobeying the order of interim injunction or any order passed against it, can

be punished for contempt when it is proved by evidence that such a party was served with such an order and was explained the contents of the

order. On such a proof, in order to subserve the ends of justice u/s 151 CPC, the court whose order of interim injunction order has been violated,

has ample powers to make an order for the maintenance of status-quo-ante. The fact as to whether the order of injunction issued in case by the

trial court was served upon the party/defendant and the same was explained to him and then the same has been disobeyed by such

party/defendant, are all questions of fact which can be proved by evidence to which the party/defendant who is alleged to have committed breach

of order, have a right to rebut such evidence led by the party complaining breach of order on spot. This being so, order impugned recorded by the

learned District Judge, Jammu dated 13.2.2002 with respect to File No. 25/ Appeal of 18.02.2002 titled as State of J&K and Ors v. Nazir

Ahmed and Anr. does not suffer with any jurisdictional error or has not been passed with any material irregularity.

6. Viewed thus, motion of revision is accordingly rejected. However the parties are left to bear their own costs. The trial court be informed about

the order.