

(2005) 05 RAJ CK 0082

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4068 of 2005

Om Prakash Jaipuria and Others

APPELLANT

Vs

Jaipur Nagar Nigam and Others

RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 1 RCR(Civil) 286 : (2005) 4 RLW 3029 : (2006) 1 WLC 92

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : Ravi Chiraniya, for the Appellant;

Final Decision : Dismissed

Judgement

Gyan Sudha Misra, J.—The petitioners herein have filed this writ petition for a direction to the respondent No. 1 - Jaipur Nagar Nigam to comply with the order of status quo passed in Civil Suit No. 58/05 in favour of the petitioners by the Additional Civil Judge (Junior Division) cum Judicial Magistrate Ist Class No. 4, Jaipur City, Jaipur. The order of status quo appears to have been passed on an application for temporary injunction filed by the plaintiff-petitioners. The petitioners herein have urged that inspite of the order of status quo having been passed in their favour by the Civil Court, Respondent No. 2 has been proceeding with the illegal construction activities including constructions of a room on the disputed premises.

2. A perusal of the facts of the case enumerated by the petitioners disclose that the petitioners had filed a civil suit before the Court of Additional Civil Judge (Junior Division) cum Judicial Magistrate Ist Class Court No. 4, Jaipur City, Jaipur for permanent injunction and for demolition of the construction carried by the respondent No. 2 for which they had also filed an application for grant of temporary injunction in the Civil Suit. After issuance of notice to the defendant-respondent No. 2 on this application, the Additional Civil Judge (Junior Division) cum Judicial Magistrate Ist Class Court No. 4, Jaipur City, Jaipur finally passed an

order and directed the parties to maintain status quo over the disputed land and property in question, but it has been alleged that the respondent No. 2 in spite of the order of status quo passed in the suit, continued with the construction work in total defiance of the order of status quo passed by the Court and hence this writ petition has been filed for a direction to the respondents to abide by the order of injunction passed in favour of the petitioner.

3. It is sufficiently clear from the aforesaid facts that the petitioners are already pursuing their remedy before a Court of competent jurisdiction seeking an order of injunction which has been granted in their favour. If that order of injunction is violated by any authority including the respondents-herein, the remedy does not lie by way of filing a writ petition under Articles 226 & 227 of the Constitution as the High Court cannot be treated as an executing Court for implementation of the order passed by the Civil Court. The petitioners and their counsel have to bear in mind the doctrine of election of remedy and once the petitioner has chosen to move the Civil Court and rightly so, as the dispute involves questions of fact and an order of injunction in the nature of status quo also having been passed in favour of the petitioner, violation of order will entail the consequence before the same forum and a writ petition cannot be entertained against violation or for implementation of such order under the High Court's writ jurisdiction as it is an original jurisdiction of the High Court which does not entertain an appeal against an order passed in a civil suit or could act as an executing court for execution and implementation of such orders. The CPC is an exhaustive act including substantive and procedural laws for trial of civil suits and adequate remedy is also provided therein, in case an order passed by a Court of competent jurisdiction is violated by any party or is not given effect to. It has to be noted that a writ petition is entertained only when a party is not left with an alternative and efficacious remedy to air his grievance and it is for this very purpose that a mandatory clause has to be included in the writ petition indicating that the petitioner has no other alternative and efficacious remedy than to file a writ petition which declaration is not an empty ritual. When a litigant files a writ petition, it is expected of the counsel to advise him that a writ petition can be entertained only if the party has no other remedy left either under the CPC or the Criminal Procedure Code and when the concerned party in the fitness of things has already moved a Civil Court for the relief sought, he has to pursue all the remedies including consequential remedies before the same forum and he cannot be permitted to multiply the litigation before several forums since the settled legal position does not permit several forums for pursuing a legal remedy and more so when the litigation is already subjudice before a particular forum as in the instant matter where the civil suit is pending trial before the Court of Additional Civil Judge (Junior Division) & Judicial Magistrate Ist Class, Jaipur City.

4. The argument advanced that the petitioners had no other alternative remedy than to approach the High Court as the order of injunction is being violated by the respondents, is not fit to be entertained as the petitioners were already having an adequate, alternative and efficacious remedy before the appellate

forum if the trial Court failed to ensure implementation of its own order.

5. I therefore find in substance in this writ petition and hence it stands dismissed with liberty to the petitioners to approach the appropriate forum for redressal of their grievance.