
(1986) 03 KL CK 0003
In the High Court Of Kerala
Case No : C. M. A. No. 260 of 1983

P. T. Iduculla and Others

APPELLANT

Vs

Bharat Petroleum Corporation Ltd., Ernakulam

RESPONDENT

Date of Decision : 07-03-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A

Citation : (1986) 23 KLJ 480

Hon'ble Judges : T. Kochu Thommen, J;M.M. Pareed Pillay, J

Bench : Division Bench

Advocate : S. Narayanan Poti, S. Sankara Subban and B.V. Deepak, for the Appellant; P.N.K. Achan, K. Vijayan and N.N. Sugunapalan, for the Respondent

Final Decision : Allowed

Judgement

Kochu Thommen, J.—This appeal arises from the common order in I.. A. Nos., 631 and 635 of 1983. We shall first deal with I. A. No. 635 of 1983 which relates to the alleged contempt committed by defendants 10 to 17 in O. S. No. 3 of 1981 of the Sub Court, Pathanamthitta. That suit was instituted by the respondent, the Bharath Petroleum Corporation Ltd, against defendants 1 to 9, being the legal representatives of the deceased Jacob, and defendants 10 to 17, being the legal representatives of the deceased Thomas. That suit was for obtaining renewal of the lease of the suit property and for consequential reliefs. The suit was dismissed with a direction that the plaintiff should remove its bunk, pump and tank from suit premises within one month from the date of the decree An appeal was filed by the plaintiff in the District Court, Quilon which was numbered on 11-4-1983 as A S No. 49 of 1983 On that day Shri. C. P. Parameswathan Pillai, counsel for the 15th defendant (Shri. Baby Thomas, also known as Unnittan alias Babu) filed vakkalath. The case stood posted to 13-4-1983. A temporary stay of the operation of the direction of the Sub Court was ordered by the District Court in I. A. No. 461 of 1983 on 13-4-1983. That order reads as follows: Further time for counter. Until further order the direction of the lower court to the appellant

will stand stayed. For counter and hearing to 18-6-1983.

On 6-4-1983 defendants 10 to 17 filed execution application contending that, notwithstanding the direction of the court, the plaintiff failed to remove the bunk, pump and tank within the stipulated time. On 11-4-1983 the plaintiff filed objections stating that an appeal had been contemplated On 14-4-1983 the application of defendants 10 to 17 for execution was allowed by the Sub Court. The Amin acted immediately and removed the bunk, pump and tank. He filed a report to that effect in the Sub Court on 16-4-1983. It is on that day, that is, 16 4-1983, that the order of the District Court was communicated to the Sub Court.

2. The plaintiff moved the present 1 As from which the appeal arises I A No. 631 of 1983 is for compensation for loss caused to the plaintiff by reason of the action of defendants 10 to 17 in executing the order of the Sub Court I A No. 635 of 1983 is for punishment of defendants 10 to 17 under Order XXXIX Rule 2A C P. C. for violation of the order of stay issued by the District Court The District Court found defendants 10 to 17 guilty of violation of the court's order and imposed the punishment of attaching the properties of defendants 10 to 17 and committing defendants 10 to 16 to civil prison for a period of two months. The 17th defendant being a woman was not committed to prison. That order has not been executed because of an interim order of stay granted by this Court.

3. The sole question which arises in regard to the alleged contempt is whether or not on the relevant date, that is, 14-4-1983, and on the previous day, defendants 10 to 17 had knowledge of the order of the appellate court granting a stay. The only evidence on the point is the testimony of PW1 who is the Divisional Manager of the plaintiff. He does not say that he saw anyone of the defendants 10 to 17 in court. All that he says is that the plaintiff's counsel in Ernakulam Shri. Sugunapalan had been told by the plaintiff's counsel in Quilon that defendants 10 to 17 were present in court on 13-4-1983. Neither Shri. Sugunapalan nor the plaintiff's counsel in Quilon was examined on this point Nor was counsel for defendants 10 to 17 cited by the plaintiff to examine whether anyone of these defendants was present in court on the relevant day or whether counsel communicated the information to all or anyone of them in time Their counsel Shri. C P. Parameswaran Pillai, who is a very senior member of the bar, could have been cited by the plaintiff for reliable information as to whether there was communication of the order to defendants 10 to 17 in time so as to characterise their action on 14-4-1983 as contempt of court. There is total lack of evidence to show that anyone of defendants 10 to 17 was present in District Court when the order of stay was passed or that information regarding the order had been communicated to anyone of them on or prior to 14-4-1983. As regards the other defendants also there is no evidence whatsoever on this question Nor is there any evidence to indicate that the Sub Court was aware of the stay when it disposed of the execution application.

4. The learned Judge came to the conclusion that defendants 10 to 17 were guilty solely because he assumed that in a matter which had been hotly fought

out in the court below and from which an appeal had been taken by the plaintiff it was most unlikely that the defendants would not have kept themselves informed of the progress of the appeal.

5. It is significant that PW1 himself says that he was not aware of the stay granted by the court on 13-4-1983. He came to know of this only on 16-4-1983. He further says that none on the plaintiff's side informed the learned Sub Judge at Pathanamihitta of the interim order passed by the District Court. In cross-examination, PW1 admits that he did not know when the defendants counsel communicated the information to the defendants. He did not make any enquiry as to whether the defendants knew of the order of stay at the material time. It is indeed surprising that, when PW1 himself did not know that a stay order had been passed and that none on the side of the plaintiff cared to inform the Sub Court of that order, the District Judge should have presumed that the defendants would have heard of the stay. That is an unfounded surmise.

6. Procedure for contempt of court is laid down not in the interest of any particular party, but principally to vindicate the jurisdiction of the court and thus give effect to the orders passed by the court. To attract the relevant provisions to commit for contempt of court, it is imperative that service of notice is clearly and unequivocally proved. The foundation of the charge necessarily depends on the proof of such service, that is, clear and unequivocal proof that the party has had knowledge of the order passed by the court: *Dushanath Prasad (Shaw) v. Krishna Kishore Mukhopadhyay*, 1 L. R (1952) 1 Cal. 21 As stated by the Supreme Court in *Aligarh Municipality v. E T. Mazdoor Union*, A I R 1970 S C 1757,1771:

..... In order to bring home; a charge of contempt of court for disobeying orders of Courts those who assert that the alleged contemnors had knowledge of the order must prove this fact beyond reasonable doubt..... it is of course not necessary to prove formal service of the order by official by routine and knowledge of the exact order aliunde would suffice. In case of doubt, however, benefit ought to go to the person charged. We are far from satisfied that those two appellants are shown to have been aware of the exact terms of the stay order.....

(Emphasis supplied)

The question really is whether the alleged contemner had sufficient notice of the relevant terms of the order. As stated by Thesiger, L J. In *Ex parte Langley*. *Ex parte Smith*. In *re Bishop*, (1879-80) XIII Ch. D. 110 (C. A.):

But the question in each case, and depending upon the particular circumstances of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which had been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond

reasonable doubt.

Lord Denning M. R stated in *Churchman v. Shop Steward's*, (1972) 1 W L R 1098 (C. A);

Seeing that the men were not before the Industrial Court, it was important that the order should be served on them, so that they should know the precise terms of it. It might have been sufficient if the substance of the order had been brought to their notice in some other way, but, in order to support a committal, it would have to be made clear to them what conduct would be a breach of the order, so that they would know what was lawful and what was not, and such notice ought to be proved beyond reasonable doubt.....

This is the high degree of proof that is required to punish for civil contempt by reason of the alleged disobedience of the court's order. In the present case, as seen above, the charge of contempt and the finding thereon by the lower appellate court are totally unfounded and unsustainable.

7. In the circumstances we are satisfied that the order in I. A. No. 635 of 1983 was made without any evidence whatsoever. That finding is accordingly set aside.

8. In this connection we must repeat that there is no evidence whatever to suspect that the learned Sub Judge had any knowledge of the order of stay when he allowed the application for execution or at any other material time. There is no evidence that anyone had informed him of that order prior to 16-4-1983 when it was duly communicated by the District Court. It is most unreasonable to assume that the learned Judge knowingly and deliberately disobeyed the order of the District Court. We say this because we feel we must clear any misunderstanding as to the conduct of the learned Sub Judge. The matter in I. A. No. 631 of 1983, as we stated earlier, relates to the compensation claimed by the plaintiff. The question of compensation by reason of demolition or removal of the bunk, pump and tank can arise only if the ouster of the plaintiff by the defendants is held to be contrary to law. That is precisely the matter which is now pending in appeal before the District Court. The fate of that appeal must necessarily decide the question in I. A. No. 631 of 1983. In the circumstances we are of the view that the court below was wrong in prematurely passing an order in I. A. No. 631 of 1983 thereby prejudging the very issue in the appeal pending before that court. The order in I. A. No. 631 of 1983 is accordingly set aside. The appeal from the common order in I. A. Nos. 631 and 635 of 1983 is allowed in the above terms. In the circumstances of this case, the parties will bear their respective costs.