

(2023) 09 CHH CK 0033
In the Chhattisgarh High Court
Case No : MCC No. 71 Of 2023

Ramchandra Rath

APPELLANT

Vs

P. Reddeyya

RESPONDENT

Date of Decision : 15-09-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 2A, Order 21 Rule 32
Contempt of Court Act, 1971 — Section 2(b)

Citation : (2023) 09 CHH CK 0033

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Manoj Paranjpe, B.P. Sharma

Judgement

1. This MCC has been filed by the applicant under Order 39 Rule 2(A) of the C.P.C. for willful disobedience of the order dated 08.02.2022 passed by this Court in SA No. 205 of 2021 (P. Reddeyya Vs. Ramchandra Rath) wherein the respondent has given an undertaking that he will vacate the suit premises within six months. Since the respondent has not complied with his undertaking, therefore, the present MCC has been filed. This Court while hearing the Second Appeal No. 205 of 2021 between the parties, has passed the following order on 08.02.2022 :-

"In pursuance of the directed passed by this Court Mr. P. Reddeyya, tenant and Mr. Rachandra Rath, land-lord are connected through Video conference and made their submission. After discussing for some time Mr. P. Reddeyya would submit that he will vacate the possession within six months though Mr. Ramchandra Rath would submit that it is a larger time given to him.

Considering the age of Mr. Reddeyya who is aged about 84 years it would be appropriate that Mr. Reddeyya would vacate the possession within six months from today itself.

List this case on 08.04.2022."

2. The record of the case would demonstrate that the plaintiff-Ramchandra Rath has filed a civil suit before the learned Civil Judge Class-I, Jagdalpur which was registered as Civil Suit No. 1-A/2005 for vacant possession of the suit property House Sheet No. 35, Plot No. 07/08, Nazul Sheet No. 50A, Plot No. 62 area 900 out of 1800 sq.ft. situated at Rajendra Nagar Ward Purani Bhatti Road Jagdalpur, remaining rent and for mesne profits from defendant- P. Reddeyya.

3. For the sake of convenience, the parties shall be referred to in terms of their status in Civil Suit No. 1-A/2005 which was filed for vacant possession, remaining rent and for mesne profits.

4. The defendant was tenant of the plaintiff and a rent agreement was executed between them and according to the same, the plaintiff has given suit property on rent for Rs. 500/- per month which was enhanced to Rs. 800/- from year 2000. The plaintiff requested the defendant to vacate the suit premises, but he has not vacated the suit house, therefore, he has filed a civil suit for vacant possession, remaining rent and for mesne profits. Learned trial Court after appreciating the evidence and material placed on record has decreed the suit and directed the defendant to vacate the suit premises and also to give remaining rent of Rs. 19,200/- to the plaintiff. Against that judgment and decree passed by the learned trial Court, the defendant has preferred first appeal before the learned District Judge, Bilaspur bearing Civil Appeal No. 11A/2008 which was dismissed vide judgment dated 29.04.2009. Against that he has preferred an appeal bearing S.A. No. 260/2009 before this Court which was allowed by the Coordinate Bench of this Court vide judgment and decree dated 05.03.2021 and remanded the matter to the court below to decide the matter in accordance with law and thereafter the appeal was again heard by learned District Judge, Jagdalpur who vide judgment dated 15.07.2021, dismissed the appeal. Against that, the defendant has preferred an appeal bearing S.A. No. 205/2021, which has not yet been admitted by this Court wherein this Court has passed the order on 08.02.2022 as stated above, which has not been complied with, hence, this MCC for initiating proceedings against the defendants has been filed.

5. Learned counsel for the applicant would submit that since the defendant has given undertaking which he has not fulfilled, therefore, he has committed the breach of undertaking, as such, contempt proceedings may be drawn against him. He would further submit that the undertaking given before this Court will amount to breach of injunction passed by this Court and the same issue has come up for consideration before Hon'ble the Supreme Court in case of Welset Engineers & another Vs. Vikas Auto Industries & others reported in (2015) 10 SCC 609 and before High Court of Rajasthan in case of Govind Kaur Vs. Hardeo reported in 1981 LawSuit (Raj) 208. On above factual and legal submission, he would submit that the proceedings under Order 39 Rule 2(A) of C.P.C. is very much maintainable.

6. On the other hand, learned counsel for the respondent/defendant raised objection about the maintainability of the proceedings as this Court has passed

modified the order on 04.08.2022 and would draw attention of this Court towards Annexure C/9 and would submit that the appeal is fixed for admission, therefore, the alleged undertaking given on 08.02.2022 stood withdrawn and has lost its significance and would submit that the proceeding under Order 39 Rule 2(A) of C.P.C. is not maintainable. He would draw attention of this Court towards the judgment passed by Hon'ble the Supreme Court in case of Kanwar Singh Saini Vs. High Court of Delhi reported in (2012) 4 SCC 307. He would further submit that in case there is a grievance of non-compliance of the terms of the decree passed in the civil suit, the remedy available to the aggrieved persons is to approach the executing court under Order 21 Rule 32 C.P.C. which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses. Hence, he would pray for dismissal of the proceedings under Order 39 Rule 2(A) of the C.P.C. To substantiate the submission, he would draw attention of this Court towards the judgment rendered by Hon'ble the Supreme Court in case of NV Investments Holdings LLC Vs. Future Retail Limited & others, reported in (2022) 1 SCC 209.

7. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.

8. From perusal of order dated 08.02.2022, it is quite vivid that in the second appeal, the defendant had submitted before this Court that he will vacate the possession within six months and his undertaking is withdrawn in view of subsequent order-sheet on 04.08.2022, is incorrect submission as from perusal of the order dated 04.08.2022 (Annexure C/9), it is quite vivid that the appellant was granted sufficient time to vacate the possession, but he has not vacated the suit house. The record of the case would demonstrate that the defendant has given undertaking before this Court which has not been specifically withdrawn. Since the defendant has given consent and there is no provision for withdrawal of the consent unless the Court permits them to withdraw the same, coupled with facts that there is no order by this Court to withdraw the consent given by the defendant, therefore, the submission made by learned counsel for the respondent that the undertaking has been withdrawn which cannot be accepted accordingly, the same is rejected.

9. The willful breach of undertaking given to the Court amounts to contempt of Court under Section 2(b) of the Contempt of Court Act, 1971 (for short "the Act, 1971") as held by Hon'ble the Supreme Court in case of Suman Chadha & another Vs. Central Bank of India reported in 2021 SCC OnLine SC 564 wherein it has been held at paragraph 16 as under:-

"16. It is true that this Court has held in a series of decisions that the wilful breach of the undertaking given to the Court amounts to contempt of Court under Section 2(b) of the Act. But the Court has always seen (i) the nature of the undertaking made; (ii) the benefit if any, reaped by the party giving the undertaking; and (iii) whether the filing of the undertaking was with a view to play fraud upon the court or to hoodwink the opposite party. The distinction

between an order passed on consent terms and an order passed solely on the basis of an undertaking given to court and the distinction between a person playing fraud on the court thereby obstructing the course of justice and a person playing fraud on one of the parties, was brought out by this Court in Babu Ram Gupta vs. Sudhir Bhasin¹⁰, in the following 10 (1980) 3 SCC 47 words:-

"...Indeed, if we were to hold that non-compliance of a compromise decree or consent order amounts to contempt of court, the provisions of the Code of Civil Procedure relating to execution of decrees may not be resorted to at all. In fact, the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemner by making a false representation to the court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practised by the person concerned not on the court but on one of the parties. Thus, the offence committed by the person concerned is qua the party not qua the court, and, therefore, the very foundation for proceeding for contempt of court is completely absent in such cases."

10. Again Hon'ble the Supreme Court in case of Balwantbhai Somabhai Bhandari Vs. Hiralal Somabhai Contractor (Deceased), rep. by Lrs. & others reported in 2023 SCC OnLine SC 1139 has held that an assurance in the form of an undertaking given by the counsel/advocate on behalf of his client to the court, the wilful breach or disobedience of the same would amount to civil contempt as defined under Section 2(b) of the Act, 1971. Hon'ble the Supreme Court held at paragraph 116 as under:-

"116. We may summarise our final conclusion as under:

(i) We hold that an assurance in the form of an undertaking given by a counsel / advocate on behalf of his client to the court; the wilful breach or disobedience of the same would amount to "civil contempt" as defined under Section 2(b) of the Act 1971.

(ii) There exists a distinction between an undertaking given to a party to the lis and the undertaking given to a court. The undertaking given to a court attracts the provisions of the Act 1971 whereas an undertaking given to a party to the lis by way of an agreement of settlement or otherwise would not attract the provisions of the Act 1971. In the facts of the present case, we hold that the undertaking was given to the High Court and the breach or disobedience would definitely attract the provisions of the Act 1971.

(iii) Although the transfer of the suit property pendente lite may not be termed as void ab initio yet when the court is looking into such transfers in contempt proceedings the court can definitely declare such transactions to be void in order to maintain the majesty of law. Apart from punishing the contemnor, for his contumacious conduct, the majesty of law may demand that appropriate

directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. This may include issue of directions either for reversal of the transactions by declaring such transactions to be void or passing appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or any one claiming under him.

(iv) The beneficiaries of any contumacious transaction have no right or locus to be heard in the contempt proceedings on the ground that they are bona fide purchasers of the property for value without notice and therefore, are necessary parties. Contempt is between the court and the contemnor and no third party can involve itself into the same.

(v) The apology tendered should not be accepted as a matter of course and the court is not bound to accept the same. The apology may be unconditional, unqualified and bona fide, still if the conduct is serious, which has caused damage to the dignity of the institution, the same should not be accepted. There ought not to be a tendency by courts, to show compassion when disobedience of an undertaking or an order is with impunity and with total consciousness."

11. In the light of above-stated legal position, it is quite vivid that the present MCC for breach of injunction is maintainable as willful breach of undertaking given to the Court falls within the ambit of breach of injunction.

12. Accordingly, the objection raised by the defendant is rejected and the MCC be listed for further hearing.