

(2023) 10 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : COPC No. 279 Of 2023

Ramesh

APPELLANT

Vs

Sudesh Mokta

RESPONDENT

Date of Decision : 11-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 215
Contempt Of Courts Act, 1971 — Section 2(b)

Citation : (2023) 10 SHI CK 0048

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Nishant Khidtta, Rahul Gathania

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. Petitioner has alleged disobedience and non-compliance, of the order/judgment dated 31.08.2023, passed by a co-ordinate bench of this Court in CWP No. 5949 of 2023, by the respondent and has prayed to punish the respondent under the Contempt of Court Act.

2. The order/judgment passed in CWP No. 5949 of 2023, reads as under:-

"Precisely the grouse of the petitioner as has been highlighted in the petition and further canvassed by Mr. Nishant Khidtta, learned counsel for the petitioner, is that 3, 00,000 litres of water is proposed to be discharged by respondent No.3 through the land of the petitioner, as a result of which, there is imminent danger to the life and property of the petitioner.

2. Mr. Rahul Gathania, learned counsel representing respondent No.3, on instructions, states that as of today there is no proposal to discharge water as has been alleged by the petitioner, but as and when same is discharged, same shall not be discharged through the land of the petitioner. He states that

otherwise as per proposal, water is to be discharged through Nallah comprised in Khasra No.396, which is Gair Mumkin. He states that while discharging water it would be ensured that no damage is caused to the private property of the petitioner.

3. In view of aforesaid fair stand as well as undertaking given by counsel representing respondent No.3, nothing remains to be adjudicated in the present petition and accordingly, same is disposed of with liberty reserved to the petitioner to file appropriate proceedings in appropriate court of law, if he still remains aggrieved. Pending applications, if any, also stand of.”

3. It is alleged by the petitioner that despite the undertaking given by the respondent as noticed in the above mentioned order/judgment, the respondent discharged the water through the land of the petitioner and caused damage thereto. The allegation of the petitioner is that on one hand the respondent had successfully avoided an adverse by giving an undertaking, on the other, the water was discharged not only on the same day but on the next day also.

4. Respondent on the other hand has denied the allegation. It has been submitted that the Horticultural Produce and Marketing Corporation (HPMC) is in the process of construction of Fruit Processing Plant at place known as Parala. The construction of plant is nearing completion. There is a ‘Gair Mumkin Nallah’ in Khasra No. 396 through which the entire rain water alongwith drain water flows from different sources naturally. The HPMC has no intention to discharge water from its Fruit Processing Plant to any private land in the area. The plant, in fact, has an arrangement to manage its surplus water through specially designed Soak Pits, Modern ETP Tanks and utilization of treated water for irrigation purposes for which agreements have been executed with third parties. The plant also has its own water storage tanks.

5. I have heard learned counsel for the parties and have also gone through the record of the case carefully.

6. Noticeably, the petitioner has filed the instant petition on the very next day of passing of the order in CWP No. 5949 of 2023, which is alleged to have been violated by the respondent.

7. No doubt, there was a clear assurance from respondent No.3 in CWP No. 5949 of 2023 that the water, if required to be discharged, would be discharged through ‘nallah’ comprised in Khasra No. 396 and while discharging water, it would be ensured that no damage was caused to the private property of the petitioner.

8. It is well settled that an undertaking or assurance given to the Court in judicial proceedings, if not adhere to or given just to commit deceit, may amount to the Contempt of the Court. To attract the mischief of contempt it must be shown that the undertaking was given to the court with an intent to fulfil the same in letter and spirit.

9. In Suman Chadha Vs. Central Bank of India (2021) SCC Online SC 564, it has

been observed as under:-

"16. It is true that this Court has held in a series of decisions that the willful 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 Bhasin* , 10 (1980) 3 SCC 47 in the following words: "...Indeed, if we were to hold that noncompliance 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. There also cannot be any dispute on the proposition propounded by learned counsel for petitioner that when the Court accepts an undertaking given by one of the parties and passes an order based on such undertaking, the order in substance amounts to an injunction restraining that party from acting in breach thereof and if any breach of such undertaking is made, will amount to violation of order of the Court and misconduct amounting to contempt. Reference can be made to *Noorali Babul Thanewala Vs. K.M.M. Shetty and Ors.*, (1990) 1 SCC 259, in which, it has been observed as under:-

"11. When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an under- taking given to the Court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a court by a person

in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt. The remedy in such circumstances may be in the form of a direction to the contemnor to purge the contempt or a sentence imprisonment or fine or all of them. On the facts and circumstances of this case in the light of our finding that there was a breach of the undertaking we think that mere imposition of imprisonment or fine will not meet the ends of justice. There will have to be an order to purge the contempt by directing the first respondent-contemnor to deliver vacant possession immediately and issuing necessary further and consequential directions for enforcing the same."

11. The question, that has arisen in the instant case is whether the undertaking was given to the Court on behalf of the respondent with an intent to commit deceit and whether the undertaking has, in fact, been violated ?

12. Petitioner has placed reliance on certain photographs to allege that the water was discharged on 31. 08.2023 and 01.09.2023 by the HPMC in defiance to its own undertaking, but in my considered view the allegation levelled against respondent cannot be said to have been proved by mere production of such documents for there is no proof that the discharge of water, if any, by respondent had entered the property of the petitioner much less had caused any damage to it. The photographs are evident of mere discharge of water through a hose but neither the identity of land where such discharge was made has been established nor the petitioner has placed any material on record to prove any damage to his property.

13. Learned counsel for the petitioner has made a submission in alternative that directions should be issued to the respondent to stop the breach of the undertaking. He has placed reliance on the provisions of Article 215 of the Constitution of India, to assert that this Court being Court of record can pass such order. Learned counsel for the petitioner has made reference to a judgment passed by a Division Bench of Hon'ble High Court of Judicature Andhra-Pradesh at Hyderabad in case Kanedena Veeraiah and Others Vs. Narra Venkateswarlu and Others, wherein it has been held that the powers of High Court, as Court of record are wide enough to give appropriate directions to close the breach.

14. Again, there cannot be any dispute on the proposition canvassed by learned counsel for the petitioner. However, its application depends on facts of each case. As observed earlier, in the instant case, petitioner has not been able to prove the violation of undertaking given to the Court. The allegation levelled by the petitioner has not been admitted by respondent. In such circumstances, even the direction as sought by the petitioner against respondent will not be justified and warranted, more particularly, when the petitioner has already instituted a civil suit against HPMC on the same subject and cause of action seeking appropriate relief.

15. While exercising contempt jurisdiction a duty is cast upon this Court to

remain careful and cautious and not to exercise the drastic power without use of greatest of care and caution. Reference can be made to Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and Others & Ors Vs. M. George Ravishekaran & Ors., (2014) 3 SCC 373, it has been observed as under:-

"19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the bar, namely, Jhareswar Prasad Paul and Another vs. Tarak Nath Ganguly and Others[3], V.M.Manohar Prasad vs. N. Ratnam Raju and Another[4], Bihar Finance Service House Construction Cooperative Society Ltd. vs. Gautam Goswami and Others[5] and Union of India and Others vs. Subedar Devassy PV[6]."

16. On analysis of the peculiar facts of the case at the touch stone of well settled legal principles, no case of contempt is made out.

17. In result, I find no merit in this petition and the same is dismissed.

18. The instant petition is, accordingly, disposed of, so also the pending miscellaneous application(s), if any.