

(2002) 01 KAR CK 0023

In the Karnataka High Court

Case No : Civil Revision Petition No. 882 of 2001

S. Purushotham

APPELLANT

Vs

Rev William Mossess and Others

RESPONDENT

Date of Decision : 02-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A

Citation : (2002) ILR (Kar) 976 : (2002) 2 KarLJ 220 : (2002) 1 KCCR 84 SN

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, for the Appellant; Padmanabha Mahale G.R. Gurumath, M.V. Sheshachala, K. Krishnaswamy and M.J. Yogendra Vikram, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Chinnappa, J.—Heard Sri Jayakumar S. Patil, the learned Counsel for the petitioner; Sri G.R. Gurumath for respondent 4; Sri M.V. Sheshachala for respondent 5; Sri K. Krishnaswamy for respondent 6 and Sri Padmanabha Mahale, Senior Counsel for Sri M.J. Yogendra Vikram, Advocate for respondent 7.

2. After hearing the arguments and also on perusal of the impugned order, the only question that arises for consideration is as to whether the order passed by the lower Appellate Court rejecting I.A. No. III filed under Order 39, Rules 1 and 2 of the CPC for temporary injunction calls for interference.

3. The brief facts of the case which are necessary for the disposal of the case which are not in dispute are that the petitioner herein filed O.S. No. 16 of 1999 on the file of the Vacation Judge which was subsequently renumbered as 252 of 1999 on the file of the Civil Judge (Junior Division), Bellary, for permanent injunction restraining the respondents from discharging the duties of Bishop along with an application under Order 39, Rules 1 and 2 of the CPC. On 12-5-1999, the learned Trial Judge was pleased to direct the parties to maintain

status quo. On 22-6-1999 in spite of the order to maintain status quo the 5th respondent was selected by the Syndicate in Chennai as the Bishop of the property. Therefore, the plaintiff/petitioner filed I.A. No. II under Order 39, Rule 2-A to punish the respondents for violation of the interim order. The respondents filed objections and the Court also held an enquiry and passed an order on 12-4-2000 the operative portion of which reads thus:

"The application filed by the plaintiff is hereby allowed without costs.

The unconditional apology tendered by the defendants is hereby accepted by warning them not to disobey or disrespect the orders passed by this Court. If in the event of such disobedience, they will be punished without any such lenience".

Being aggrieved by that order, the petitioner preferred M.A. No. 14 of 2000. The petitioners also filed I.A. No. III under Order 39, Rules 1 and 2 read with Section 151 of the CPC for grant of temporary injunction restraining the respondent from undertaking any proceedings of Bishop, pending disposal of the case. After hearing both the parties, the Principal Civil Judge (Senior Division), Bellary, rejected this I.A. holding that the I.A. No. III filed by the appellant was not maintainable and consequently the ex parte order of temporary injunction dated 18-5-2000 was vacated. As against that order, the petitioner preferred this petition.

4. The learned Counsel for the petitioner has vehemently argued that the Court is not without jurisdiction to grant temporary injunction in favour of the petitioner while considering the miscellaneous appeal filed against the order accepting the unconditional apology offered by the 5th respondent as the Court ought to have purged the 5th respondent to the position he was placed on the date of the order granting status quo. The finding of the Court that on the other hand an appeal was filed by the petitioner wherein such relief cannot be granted, calls for interference. He also further submitted that merely offering an unconditional apology is not itself sufficient. The Court ought to have taken serious view of the matter directing the respondent not to function as a Bishop in view of the order passed by the Court below. Even otherwise also, the Court while invoking Section 151 of the CPC could have granted injunction as sought for.

5. As against this, the learned Counsel appearing for the 5th respondent submitted at the very outset that there is no violation of the order of the Court in view of the fact that the status quo order passed on 12-5-1999 was not continued from 14-6-1999 to 21-6-1999 and from 21-6-1999 to 16-11-1999 and it was not extended day-to-day. From 16-11-1999 till the date this Court passed the stay order, it was not in force. Therefore, the question of granting temporary injunction is still pending before the Trial Court. The petitioner assailed the order of the Court in not punishing the respondent for violation of status quo order which was pending before the lower Appellate Court. Under these circumstances, it was not open to the petitioner to make an application under Order 39, Rules 1

and 2 of the CPC instead of pursuing the application I.A. No. I pending consideration before the Trial Court. Therefore, he submitted that the order passed by the lower Appellate Court does not call for interference.

6. While answering this argument, the learned Counsel for the petitioner however submitted that merely allowing the respondents to continue as a Bishop in contravention of the orders passed by the Courts is not in the interest of justice and on the other hand, the respondents are abusing the process of the Court which has to be prevented by proper order and the Court is not prevented from passing necessary orders in the interest of justice.

7. From these facts, it is clear that the I.A. No. I filed by the petitioner is still pending consideration. Only as an interim measure, status quo order was passed. As rightly pointed out by the learned Counsellor the respondent 5 the question before the lower Appellate Court is only in regard to the finding of the Court holding that the 5th respondent has committed contempt and accepting the unconditional apology and failing to impose any punishment; is pending before the lower Appellate Court Thus the main appeal itself does not contemplate for any interim order On the other hand, the Trial Court is seized of the matter in regard to the question of temporary injunction. Therefore, as rightly pointed out by him, the lower Appellate Court has rightly rejected the application.

8. The argument of the learned Counsel for the petitioner is that in the petitioner is not perjured of the position where he was placed as or the date of passing the status quo order, it would be indirectly permitting him to commit the contempt and therefore, the Court below ought to have granted the injunction. It is needless to say that nothing prevented the petitioner from pursuing I.A. No. I which is still pending before the Trial Court. There is no prohibition for the Trial Court to consider I.A. No. I and pass necessary orders in accordance with law and as pointed out by the Counsel for the 5th respondent, that application is still pending consideration and is not disposed of. In view of this, the lower Appellate Court has rightly rejected the application.

9. However, the learned Counsel for the petitioner placed reliance on a judgment rendered by the Supreme Court in *M.B. Sanghi v. High Court of Punjab and Haryana and Ors.* In that judgment, the Court has considered the offering of apology in a contempt proceedings wherein it is held thus:

"An apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. The apology that was tendered by the appellant before the High Court was to be taken into consideration in the event of the High Court finding the appellant guilty of having committed contempt of Court. Moreover, in the present case it has been found that this was not the first occasion but on an earlier occasion also proceedings for contempt of Court had been initiated against the appellant for his disparaging remarks against a Judge and in those

proceedings the rule issued against him was discharged on his tendering unqualified apology before the High Court. Keeping in view the said circumstance, the High Court has found that the appellant was addicted to using contemptuous language and making scurrilous attacks on Judges".

The Supreme Court has held that, that was not the case in which the apology by the appellant could be accepted.

In Samee Khan v. Bindu Khan, their Lordships of the Supreme Court while considering the scope and purport of Order 21, Rule 32 of the CPC in regard to the offence committed under Order 39, Rule 2-A of the CPC held that even when attachment of the immovable properties of the contemnor, he can be detained in civil prison.

In Mulkh Raj v. State of Punjab, their Lordships have held that apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shorn of penitence. If apology is offered at a time when the contemnor finds that the Court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward.

In Tayabbkai M. Bagasarwalla and Anr. v. Hind Rubber Industries Private Limited, their Lordships have held that the disobedience of order of injunction passed in a suit even if the Court ultimately were to hold that it has no jurisdiction to try the suit itself, even then the defendants can be punished for violation of the said interim orders.

Similarly in Pravin C. Shah v. K.A. Mohd. All and Anr., their Lordships have held:

"Thus a mere statement made by a contemnor before Court that he apologizes is hardly enough to amount to purging himself of the contempt. The Court must be satisfied of the genuineness of the apology. If the Court is so satisfied and on its basis accepts the apology as genuine the Court has to make an order holding that the contemnor has purged himself of the contempt. Till such an order is passed by the Court the delinquent Advocate would continue to be under the spell of the interdict contained in Rule 11 of the Rules"

From the above judgments, it is abundantly clear as to under what circumstances the Court can punish the contemnor and what are the necessary things that have to be taken into consideration by the Court while going into the question of contempt. At this stage, it may be mentioned that the Miscellaneous Appeal No. 14 of 2000 preferred as against the order of the Trial Court is still pending consideration. As indicated above, this Court is concerned only with the order passed regarding non-maintainability of I.A. No. III. The decisions cited at the Bar cannot be used now at this stage. Therefore, the petitioner will have to make out a case before the lower Appellate Court while arguing on the main Appeal No. 14 of 2000. In view of the fact that only the question of imposing punishment to the respondent is pending before the lower Appellate Court, granting injunction restraining him from discharging the duties of a Bishop

cannot be gone into by the lower Appellate Court, more so as the temporary injunction filed under Order 39; Rules 1 and 2 of the CPC is still pending before the Trial Court.

10. If the lower Appellate Court were to continue the status quo order which was disrupted even during the pendency of the appeal and the status quo order was granted by this Court as detailed above but the respondents cannot be denied as the Trial Court will have to consider as to whether the petitioners are entitled for temporary injunction as sought for in I.A. No. I is pending consideration therein. All the records and documents are available before the Trial Court and it is for the Trial Court to consider the application under Order 39, Rules 1 and 2 of the CPC. If the status quo order was continued uninterruptedly even when the matter was pending before the lower Appellate Court, the argument of the learned Counsel for the petitioner that the respondent should be placed at the position where they were when the suit came to be filed, etc., would hold good. But in this case, it is not so. On the other hand, the status quo order was not continued for a considerably long time. The learned Counsel for the respondents submitted that the selection had taken place when the status quo order was not in force. These are the facts to be considered on the materials placed by both the parties before the Trial Court. However, the question of awarding punishment in regard to the disobedience of the order of the Court is independent of the injunction order which has to be considered by the Trial Court. Under these circumstances, in the interest of justice to provide full opportunity to both the parties, it is just and proper that the Trial Court should consider the application for granting injunction, irrespective of the fact that the appeal is pending before the lower Appellate Court.

11. Similarly, the lower Appellate Court should go into the question involved in the appeal not being fettered by any observations made by this Court in this order. Therefore, it was open to the petitioner to pursue I.A. No. I pending before the Trial Court instead of making an application under Order 39, Rules 1 and 2 numbered as I.A. No. III in the Appellate Court.

For the foregoing reasons, notwithstanding the fact that the lower Appellate Court is empowered to pass such an order as it deems necessary invoking Section 151 of the CPC, in this case taking into consideration the peculiar circumstances as explained above, I hold that the order passed by the lower Appellate Court which is impugned in this petition does not call for interference. Accordingly, this petition has to be dismissed.

With this observation, the petition is dismissed. However, all the questions raised in this petition are left open for the petitioner either to urge before the lower Appellate Court in regard to imposition of punishment or to contend at the time of arguing I.A. No. 1 pending before the Trial Court. The Trial Court also is directed to dispose of the I.A. as expeditiously as possible, preferably within two months from this date.