
(2000) 07 AP CK 0097
In the Andhra Pradesh High Court
Case No : CC No. 391 of 1996

Sabirabi

APPELLANT

Vs

B. Obula Reddy and others

RESPONDENT

Date of Decision : 12-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2
Constitution of India, 1950 — Article 129, 215
Contempt of Courts Act, 1971 — Section 10, 12, 15, 20, 22
Contempt of Courts Rules, 1980 — Rule 24

Citation : (2001) 1 ALD 5 : (2001) CriLJ 1285

Hon'ble Judges : N.Y. Hanumanthappa, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : Mr. S.R. Ashok for Mr. C. Vinitha Reddy, for the Appellant; Mr. M.V. Ramana Reddy for Mr. G. Dasaratharama Reddy, for the Respondent

Judgement

N.Y. Hanumanthappa, J.

1. Heard both sides on maintainability of the contempt application. A few facts which are necessary to answer the conditions raised are as follows:

Aggrieved by the common order passed in IA Nos.158 of 1991 and 78 of 1994 in OS No.44 of 1991 by learned Subordinate Judge, Penukonda, the complainant herein filed CMA No.1053 of 1994 and this Court passed the order against respondents 1 and 2 on 29-9-1994 setting aside the impugned order subject to the condition that no pucca construction shall be raised on the suit schedule land till the disposal of the applications by the lower Court. On 1-3-1996, other respondents namely respondents 3 to 6, who are relatives of respondents 1 and 2, unmindful of the presence of the order of this Court, started construction of the building. When the complainant lodged before the concerned police, no action was taken. Hence, the complainant filed this contempt case before this Court on 21-3-1996 under Sections 10 and 12 of Contempt of Courts Act. The respondents 1 and 2 appeared before this Court through their Advocate and filed

counter-affidavit in which they denied the act of contempt and also proceeding with the construction. However, respondents 3 to 6 proceeded with the construction. Hence, the complainant was compelled to bring them on record in CA No.852 of 1996 on which notice was ordered and also directed the parties to maintain status quo on 18-9-1996. Though notice was ordered, the same could not be served on respondents 3 to 6. The allegation is that the impleading respondents were fully aware of the said notice and also the status quo order passed by this Court especially when they are living together with respondents 1 and 2. Ultimately, notices were served on 19-9-1997. R4 filed counter on 9-3-1998 and R3 and R5 filed counter on 16-3-1998. The stand taken by them is one of total denial of the act of contempt. The implead petition is ordered.

2. To support the contention that contempt case has to be initiated within one year from the date of the order, mere ordering of notice does not amount to initiation of contempt proceedings, Mr. M.V. Ramana Reddy, learned senior Counsel appearing for respondents-contemners, placed reliance on the following decisions. The Advocate-General of A.P. v. A. V. Koteswara Rao 1984 (1) ALT 69; S.J.G.M. High School Vs. The Director of School Education Government of Andhra Pradesh and Others, ; Advocate-General v. Dr. A. Copal 1996 (2) ALD 303 and Om Prakash Jaiswal Vs. D.K. Mittal and Another [OVERRULED], . According to him, the contempt application filed by the complainant is barred by time as the order was made on 29-9-1994 whereas the contempt petition was filed on 29-9-1996. The second contention is that the act of contempt complained of is the order of injunction granted by this Court, and if there is any disobedience to the said order, the proper remedy is under Order 39, Rule 2-A of Civil Procedure Code. He submitted that the inherent powers of this Court under Article 215 of Constitution of India cannot be invoked. On the other hand, whether there is contempt or not, has to be decided only after leading evidence in the proper Forum under Order 39, Rule 2-A of Civil Procedure Code. To support this contention. Sri M.V. Ramana Reddy placed reliance on Rule 24 of the Contempt of Courts Rules. Apart from the stand of denial, Mr. M. V. Ramana Reddy- learned senior Counsel appearing for the respondents-contemnors, took a plea that the contempt petition is not maintainable for the reason that the same is barred by limitation. Further, even if it is assumed that contempt petition is maintainable, still this Court cannot entertain the same as the complainant has got an alternative remedy under Order 39, Rule 2-A of Civil Procedure Code. Thus contending, he sought the contempt petition be dismissed.

3. Mr. S.R. Ashok, learned senior Counsel appearing for the complainant contended that all the contentions raised by M. V. Ramana Reddy on facts have no application. According to him, the act complained of starts from 1-3-1996 and the contempt petition was filed on 21-3-1996. Thus, the contempt case filed by his clients is well within time if the Courts take the date of alleged contempt. Further, the impleading respondents have deliberately avoided receiving the notices. Hence, they cannot be permitted to raise the plea of limitation. In support of this contention, he relied on the decision in T. Deen Dayal Vs. High

Court of Andhra Pradesh, . Regarding the point that the contempt proceedings can be initiated against the third parties, he submitted that when the contempt act complained of is non-compliance of the order of this Court, it is only this Court and not the Subordinate Courts, which has got the power to punish such contemnors irrespective of the fact whether or not they are parties to the proceedings. He also contended that initiation of the contempt proceedings starts from the date of issuing of notice even in the absence of admitting such contempt case. According to the learned senior Counsel for the complainant, the act complained of is in respect of this Court's order and as such, there is no need to approach the subordinate Court under Order 39, Rule 2-A of CPC. This Court being a Court of record under Article 215 of the Constitution of India and the act complained of relates to this Court's order, contempt case initiated under Sections 10 and 12 of Contempt of Courts Act is maintainable. For this proposition and the scope of Article 215, he relied on the decision in *Pritam Pal v. High Court of Madhya Pradesh, Jabalpur* AIR 1992 SC 902. Lastly, he contended that though the complainant could have invoked the power under Order 39, Rule 2-A of Civil Procedure Code. But not invoking the same will not vitiate the proceedings under Sections 10 and 12 of Contempt of Courts Act. Thus contending, he sought the contempt petition be admitted.

4. Reliance placed by both sides in support of their contentions, much stress need not be placed, since the following decisions namely decision in *Pritam Pal's* case (supra), and the Full Bench decision of this Court decision in *Ushodaya Enterprises Ltd. Vs. Commissioner of Commercial Taxes, A.P., Hyderabad*, , are sufficient to answer the contentions raised in the case.

5. In *Pritam Pal v. High Court of Madhya Pradesh* (supra), the Supreme Court held as follows:

"Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemner to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List HI of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by Legislation by appropriate Legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act, 1971 the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be "Court of Record" under Articles 129 and 215 of the Constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any Legislation short of Constitutional amendment. In fact, Section 22 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to Contempt of Courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215

cannot be curtailed by anything in the Act of 1971. The above position of law has been well settled by this Court in Sukhdev Singh Sodhi Vs. The Chief Justice and Judges of The Pepsu High Court, holding thus:

"In any case, so far as contempt of a High Court itself is concerned, as distinct from one of a subordinate Court, the Constitution vests these rights in every High Court, so no Act of a Legislature could take away that jurisdiction and confer it afresh by virtue of its own authority".

"From the above judicial pronouncements of this Court, it is manifestly clear that the power of the Supreme Court and the High Court being the Courts of Record as embodied under Articles 129 and 215 respectively cannot be restricted and trammelled by any ordinary Legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit."

6. The Full Bench decision of this Court in Ushodaya Enterprises Limited v. Commissioner of Commercial Taxes (supra) held as follows:

"In a case of conflict arising from the decisions of co-equal Benches of the Supreme Court, the High Court is free to disregard the decision which is based on an obvious mistake of fact or the one which purports to follow the ratio of an earlier decision though such ratio is found to be non-existent. The High Court can legitimately decline to follow such decision and follow the earlier decision which is backed by reasoning - whether it is acceptable to the High Court or not, and which is free from any such apparent flaw. Court is unable to persuade itself subscribe to the view that the later decision should be automatically followed despite the fact that it rests on a conclusion based on an erroneous impression that an earlier decision took a particular view which in fact it has not taken. By doing so, Court is neither questioning the hierarchical superiority of the Supreme Court nor the higher wisdom of the Hon'ble Judges of the Supreme Court. Court is preferring one decision to the other both rendered by Division Benches, for obvious reasons so as to avoid an incongruity leading to travesty of justice".

7. The Supreme Court in Om Prakash Jaiswal v. D.K. Mittal (supra) held that contempt proceedings can be said to be initiated not merely on receipt of the petition for taking contempt action and not on issuing of notice to show-cause why action should not be taken, but when notice is issued to show-cause why contemnor should not be punished.

8. After hearing both sides, we gave our careful thought to the various decisions relied on by both the Counsel. We are of the view that the limitation for initiation of contempt case starts from the date of knowledge of alleged violation of the order of the competent Court. The initiation of contempt proceedings includes issuing of notice by this Court calling upon the contemnors to show-cause why the contemnor shall not be punished. From this, it has to be presumed that the Court has taken cognizance of the contempt though it might not have admitted the contempt case.

9. The question of Subordinate Court recording the evidence of the parties arises when it is alleged that the order of the Subordinate Court is disobeyed and not otherwise. In the case on hand, the alleged violation is in respect of this Court's order, as such only this Court is competent to take cognizance and punish the contemnors by exercising its powers under Sections 10 and 12 of the Contempt of Courts. Such an act is valid. Apart from that, this Court being a Court of Record, in view of Article 215 of Constitution of India, the technicalities which Mr. M.V. Ramana Reddy, learned senior Counsel for respondent-contemnors, pointed out deserve to be ignored. In order to see that substantial justice is done and dignity of the Court is protected, this Court either on complaint or suo motu, can take cognizance of the contempt and punish the contemnors. This view is supported by the observations made by the Supreme Court in Pritam Pal's case (supra), which are extracted herein.

10. In none of the decisions cited at the Bar there was occasion to consider the decision in Pritam Pal's case (supra), as that decision was not cited before their Lordships. Even when considering the facts involved in Om Prakash Jaiswal v. D.K. Mittal (supra), the decision in Pritam Pal's case was not brought to the notice of the Hon'ble Court.

11. Where the order of this Court has been disobeyed and the contempt proceedings initiated, which requires evidence for adjudication, in such a case this Court can proceed to record evidence on its own or direct the Court below to record the evidence and send its report and thereafter to take action in the matter. Merely because the contempt proceedings are not initiated under Order 39, Rule 2-A of Civil Procedure Code, it does not bar initiation of the contempt proceedings under Sections 10 and 12 of the Contempt of Courts Act.

12. If a third party has committed the act of contempt in a proceeding pending before this Court, proceedings can be initiated against such a party and deal him in accordance with law, by bringing him on record by way of impleading.

13. For all the above reasons, neither the contempt case is time barred nor is it not maintainable. Hence, the objections taken by Mr. M.V. Ramana Reddy, learned senior Counsel appearing for respondents- contemnors, as to the maintainability of the contempt petition are overruled.

14. All the four points raised for consideration are answered in favour of complainant.

15. Post this contempt petition for further orders during last week of August, 2000.