

(2005) 12 AHC CK 0062
In the Allahabad High Court
Case No : C.M.W.P. No. 75393 of 2005

Satya Prakash Tiwari alias Kallu and Others	APPELLANT
Vs	
Civil Judge (Junior Division) and Others	RESPONDENT

Date of Decision : 13-12-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2(3), Order 39 Rule 2A

Citation : (2006) 1 AWC 367

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Arun Kumar Tiwari and Arvind Kumar Tiwari, for the Appellant; C.K. Rai, S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed raising the grievance that in spite of the fact that civil court passed an interim injunction in favour of the petitioner in the pending Civil Suit No. 85 of 2003, the respondents are not ensuring the compliance thereof.

2. The facts and circumstances giving rise to this case are that a road is being constructed, and for that purpose, earth is being taken from the petitioner's land. Being aggrieved, he filed a Civil Suit No. 85 of 2003, Satya Prakash and Ors. v. Chairman, Awas Abhiyanta and Ors. Vide order dated 31.5.2005, the civil court, while entertaining the application for interim relief, directed the parties to maintain status quo. The copy of the said order was served upon the District Magistrate to ensure its compliance, but appropriate steps were not taken by him. Being aggrieved, the petitioners filed another application u/s 151, C.P.C. on 27.9.2005 for passing a more effective interim order but the said application is not being disposed of. Hence this petition.

3. Shri Arun Kumar Tiwari, learned Counsel for the petitioners has submitted that once the civil court passed the order for maintaining status quo, it was the

solemn duty of the respondents to ensure the compliance of the said order, and by not passing any order on the representation filed by the petitioners the District Magistrate acted in violation of the order of the civil court. The petitioners therefore filed another application u/s 151, C.P.C. which is still pending consideration. Thus, this Court must direct the respondents to ensure the compliance of the order dated 31.5.2005, passed by the civil court.

4. On the other hand, Shri C. K. Rai, learned standing counsel has vehemently opposed the petition contending that only appropriate remedy for the petitioners is to move an application under Order XXXIX, Rule 2A, C.P.C. and the application u/s 151, C.P.C. is not maintainable. The petition should therefore be dismissed with the liberty to the petitioners to file an application under Order XXXIX, Rule 2A, C.P.C.

5. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

6. Section 151 confers inherent power upon the civil court. It cannot be resorted to, to deal with an application for which there is a statutory provision. Thus, it is only in exceptional circumstances where there is no other remedy available under any statutory provisions, that can be taken to Section 151, C.P.C. Power to grant temporary injunction is under Order XXXIX, Rules 1 and 2, C.P.C. Court cannot therefore exercise the power and grant injunction u/s 151, C.P.C. (Vide Arjun Singh Vs. Mohindra Kumar and Others, ; Nain Singh Vs. Koonwarjee and Others, and State of West Bengal and Others Vs. Karan Singh Binayak and Others,

7. In Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, it has been held as follows :

There is difference of opinion between the High Courts on this point. One view is that a Court cannot issue an order of temporary injunction if the circumstances do not fall within the provisions of Order XXXIX of the Code : Vadapalli Varadacharlu Vs. Khandavilli Narasimha Charlu, N. Govindarajulu Nayudu Vs. Imperial Bank of India, Karuppayya v. Ponnuswami AIR 1933 Mad 500 ; Murugesu Mudali v. Angamuthu Mudali AIR 1938 Mad 190 and Subramanian v. Seetaramma AIR 1949 Mad 104 , the other view is that a Court can issue an interim injunction under circumstances which are not covered by Order XXXIX of the Code, if the Court is of opinion that the interests of justice require the issue of such interim injunction ; Dhaneshwar Nath Tewari Vs. Ghanshyam Dhar Misra, ; Firm Bichchha Ram Babu Ram Vs. Firm Baldeo Sahai Suraj Mal, ; Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney, and Chinese Tannery Owners' Association and Others Vs. Makhan Lal and Others, We are of opinion that the latter view is correct and that the Court have inherent jurisdiction to issue temporary injunction in circumstances which are not covered by the provisions of Order XXXIX, C.P.C., there is no expression in Section 94 which expressly prohibits the issue of temporary injunction in circumstances not covered by

Order XXXIX or by any rule made under the Code. It is well-settled that the provisions of the Code are exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression "if it is so prescribed" is only this that when the rule prescribes the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interests of Justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of Section 94 were not there in the Code, the Court could still issue temporary injunction, but it could do that in the exercise of its inherent Jurisdiction. No party has a right to inherent jurisdiction only when it considers it absolutely necessary for the ends of justice to do so. It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions of Section 49 of the Code have their effect and not in taking away the right of the Court to exercise the inherent power.

8. In *Vareed Jacob Vs. Sosamma Geevarghese and Others*, the Apex Court held that the powers of the Court are inherent and in addition to and complementary to the powers of redressal conferred under C.P.C., but that power cannot be exercised if for the redressal of a particular grievance a particular provision of C.P.C. provides for the remedy, and the Court can also exercise the power u/s 151 if the circumstances so demand to do Justice. While deciding the said case, reliance had been placed on *Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and Others*, and *Jagjit Singh Khanna Vs. Dr. Rakhal Das Mullick and Another*,

9. The powers u/s 151, C.P.C. can be exercised for doing justice in such situations when there is no specific provision, i.e., in respect of consolidation of suits etc. (Vide *Chitivalasa Jute Mills Vs. Jaypee Rewa Cement*, and *Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.*,

10. Thus, the question does arise as to whether the application filed by the petitioners u/s 151, C.P.C. is maintainable, or they should move an application under Order XXXIX, Rule 2A, C.P.C. as the provisions of Section 151. C.P.C. can be taken aid of only in a case where there is no remedy available to the applicant under any provision of the C.P.C.

11. In *Sitaram Vs. Ganesh Das*, the Court held as under :

The purpose of Order XXXIX, Rule 2A, Civil P.C. is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similar to the provisions of Order XXI, Rule 32, Civil P.C. which provide for the execution of a decree for injunction. The mode of execution given in Order XXI, Rule 32 is the same as provided in Rule 2A of Order XXXIX. In either case, for the execution of the order or decree of injunction, attachment of property is to be made and the person who is to be compelled to obey the

injunction can be detained in civil prison. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by disobedience of the order is remedied and the status quo ante is brought into effect. This view finds support from the observations of the Supreme Court in the case of *The State of Bihar Vs. Rani Sonabati Kumari*, while dealing with Order XXXIX, Rule 2(iii), Civil P.C. (without the U. P. Amendment) the Court held that the proceedings are in substance designed to effect enforcement of or to execute the order, and a parallel line was drawn between the provisions of Order XXI, Rule 32 and Order XXXIX, Rule 2(iii), C.P.C. which is similar to Order XXXIX, Rule 2A. This curative function and purpose of Rule 2A of Order XXXIX, Civil P.C. is also evident from the provision in Rule 2A for the lifting of imprisonment, which normally would be when the order has been complied with and the coercion of imprisonment no longer remains necessary. Hence, even if Sitaram had earlier been sent to the civil imprisonment, he would have been released on the tin shed being removed, and it would therefore now serve no purpose to send him to prison. For the same reason, the attachment of property is also no longer needed. The order of the court below has lost its utility and need no longer to be kept alive.

12. In *The State of Bihar Vs. Rani Sonabati Kumari*, the Constitution Bench of the Hon"ble Supreme Court examined the scope of Sub-rule (3) of Rule 2 or Order XXXIX which is analogous to the provisions of Order XXXIX, Rule 2A, C.P.C. and observed that the purpose of such proceedings is only to give effect to the interim order passed by the civil court. The Apex Court held as under :

Though undoubtedly proceedings under Order XXXIX, Rule 2(3) CPC have a punitive aspect as is evident from the contemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by the CPC for the execution of a decree for a permanent injunction. Order XXI, Rule 32 sets out the method by which such decrees could be executed-and Clause (1) enacts- where the party against whom a decree----- for an injunction has been passed, has had an opportunity for obeying the decree and has wilfully failed to obey it, the decree may be enforced, in the case of a decree ----- for an injunction by his detention in the civil prison, or by the attachment of his property or by both. Clauses 2 and 3 of this rule practically reproduce the terms of Clauses 4 and 3 respectively of Order XXXIX, Rule 2, and the provisions leave no room for doubt that Order XXXIX, Rule 2(3) is in essence only the mode for the enforcement or effectuation of an order of injunction.

13. In *Samee Khan Vs. Bindu Khan*, the Hon"ble Supreme Court held that in exercise of the power under Order XXXIX, Rule 2A, C.P.C., the civil court has a power either to order detention of the disobeying party or attachment of his property for disobedience of the order and if the circumstances and facts of the case so demand, both steps can also be resorted to. The Apex Court held as under :

But the position under Rule 2A of Order XXXIX is different. Even if the injunction order was subsequently set aside the disobedience does not get erased. It may be a different matter that the rigour of such disobedience may be toned down if the order is subsequently set aside. For what purpose the property is to be attached in the case of disobedience of the order of injunction? Sub-rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment the Court is empowered to sell the property under attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of one year period. If the disobedience ceases to continue in the meanwhile the attachment also would cease. Thus, even under Order XXXIX, Rule 2A the attachment is a mode to compel the opposite party to obey the order of injunction. But detaining the disobedient party in civil prison is a mode of punishment for his being guilty of such disobedience.

14. In *Baishnab Pradhan and Others Vs. Guru Charan Pradhan*, , the Court has held that plea that Court should not order demolition and confine its powers only to modalities prescribed under Order XXXIX, Rule 2A, C.P.C. is not tenable.

15. Thus, it is evident from the aforesaid authoritative pronouncements that the purpose of Order XXXIX, Rule 2A, C.P.C. is to force the opposite party to obey the order of injunction. In view of the above, in spite of the fact that the Court is meant to do justice and pass any order in exercise of its inherent jurisdiction, it was proper for the petitioners to have filed an application under Order XXXIX, Rule 2A, C.P.C.

16. Even if the civil court passed the effective order on the application filed by the petitioners u/s 151, C.P.C., there is no guarantee that the respondents shall ensure its compliance, and ultimately, the petitioners may have to resort to the proceedings under Order XXXIX, Rule 2A, C.P.C.

17. Be that as it may, as we are of the considered opinion that writ is a discretionary relief and Court may refuse to grant it in an appropriate case, we are not inclined to issue any direction in this case and the petition is dismissed. However, in case petitioners move an application under Order XXXIX, Rule 2A, C.P.C., we request the learned civil court to entertain and dispose of the said application strictly in accordance with law.