
(1990) 02 BOM CK 0049

In the Bombay High Court

Case No : Contempt Appeal No. 5 of 1988 in Contempt Petition No. 88 of 1987

Shakuntala Sahadevram Tiwari (Smt.) and Another APPELLANT
Vs

Hemchand M. Singhania RESPONDENT

Date of Decision : 28-02-1990

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 2

Citation : (1990) 3 BomCR 82

Hon'ble Judges : C. Mookerjee, C.J.; T.D. Sugla, J

Bench : Division Bench

Advocate : K.J. Abhyankar and Suresh Gole, for the Appellant; N.A. Mudnaney, G.M. Jain and K.R. Prabhu, for the Respondent

Final Decision : Dismissed

Judgement

T.D. Sugla, J.—The appellant were the respondents in Writ Petition No. 5391 of 1985 in this Court and defendants in the suit for eviction filed against them by the plaintiff for their eviction, the petitioner in the writ petition and respondent herein. For the sake of convenience the appellants and the respondent will hereafter be described as the defendant and plaintiff respectively.

2. The case has a chequered history. The plaintiff is the landlord of the suit premises. He filed R.A.E. Suit No. 1326/3557 of 1979 in the Court of Small Causes at Bombay for possession of the suit premises against defendant-tenants. Ex-parte decree for possession was passed by the trial Court on January 20, 1981. This decree was executed on June 11, 1981.

Subsequently a miscellaneous applications was filed by the defendants for restoration of the suit. By an order dated August 11, 1981, the notice was made absolute and the suit was restored.

Thereafter the plaintiff filed appeal bearing No. 530 of 1981 in the Appellate Bench of the Small Causes Court at Bombay which was dismissed on July 6, 1982. Subsequent thereto the plaintiff took out Miscellaneous Notice No. 755 of

1982 in the aforesaid appeal and by consent the suit was ordered to be placed before the trial Court for hearing and final disposal. By a judgment and order dated November 11, 1982, the trial Court again passed a decree for eviction in favour of the plaintiff and against the defendants.

The defendant's appeal there against being Appeal No. 667 of 1982 was, however, allowed by the Appellate Bench of the Small Causes Court by the judgment and order dated September 20, 1985, but that was done on the ground of limitation only, and consequently the plaintiff's suit was dismissed.

3. Against the aforesaid judgment and order dated September 20, 1985 passed in appeal by the Appellate Bench of the Small Causes Court at Bombay, both plaintiff and defendants filed separate writ petitions bearing Nos. 5391 and 5515 of 1985. It is not necessary to refer in detail as to what happened during the pendency of the two writ petitions before this Court. Suffice it to say that Writ Petition No. 5391 of 1985 filed by the plaintiff was eventually allowed and Writ Petition No. 5515 of 1985 by the defendants was dismissed. The relevant judgment and order of this Court is dated November 28, 1986.

4. It is pertinent to mention that in Writ Petition No. 5391 of 1985, the defendants has filed an affidavit on January 14, 1986 and given an undertaking as follows:

"In the event if this Hon'ble Court passes an order in eviction against me confirming the decree passed by the trial Court in RAE Suit No. 1326/4557 of 1979, I shall hand over vacant and peaceful possession of the suit premises to the petitioner within two months from the date of the decision and I hereby give an undertaking to this Hon'ble Court to that effect. My said undertaking is given subject to any stay being obtained from the Supreme Court of India in any proceedings which may be preferred by me in the event of the decision being given against me by this Hon'ble Court."

At the time of disposal of the aforesaid two writ petitions confirming decree for eviction against the defendants, a conditional stay of the operation of the judgement was granted for four weeks on defendants giving an undertaking to the Court by means of affidavits dated December 1, 1986 and December 11, 1986 to the effect that they were in possession of the suit premises and that they shall in the mean time, not part with the possession and/or create any third party interest in the suit premises.

5. SLP was filed by the defendants in the Supreme Court against the judgement of this Court in the writ petitions stated above. By its order dated December 18, 1986, the Supreme Court directed as under :

"List the matter on 9-1-87. Meanwhile, the Counsel for the respondent undertakes not to excites the decree passed in his favour."

The appeal was Numbered as 116-117 of 1987 and was eventually dismissed on May 6, 1987.

By his letter dated May 11, 1987, the plaintiff called upon the defendants to hand over vacant possession of the suit premises. Copy of the said letter was also served on the advocate of the defendants Shri A. K. Goel. Sometimes thereafter a telegram was sent to defendant No. 1 to the effect:-

"Three windows with frames of suit premises have been illegally removed recently. You have committed contempt of Court. You have also committed contempt of Court by failing to give possession of the suit premises. Comply forthwith."

A Letter dated June, 8 1987 incorporating the telegraphic communication was also served upon the advocate of the defendants.

6. As the possession of the suit premises was not handed over to the plaintiff by the defendants, the plaintiff filed Contempt Petition No. 88 of 1987 in this Court on June 15, 1987. Notice was served on the defendant's advocate on June 19, 1987. The contempt petition was on board on June 22, 1987 when it was admitted and notice was issued to the defendants. It appears that for quite some time attempts to serve notices were unsuccessful. Eventually on August 7, 1987 both the defendants were served by substituted service and through bailiff. Their advocate was also served by registered post through Court. On August 10, 1987, their advocate Shri Goel entered appearance.

The defence taken was that under a subsequent agreement dated June 18, 1987, the plaintiff had accepted a sum of Rs. 1,25,000/- from Shri Dinesh, one of the sons of defendant No. 1, and had restored the tenancy of the suit premises in his name. There was, thus, no contempt committed by the defendants in not handing over vacant possession of the suit premises to the plaintiff. The affidavits were filed by the defendants, their advocate Shri Kulkarni and their two sons Shri Dinesh and Shri Mahesh. An affidavit sworn by Shri Chaurasia, a witness to the said agreement was also filed in support of the defence. All these persons were examined and cross-examined.

The learned Single Judge has discussed the evidence at great length in his impugned judgment. For reasons given in the judgment, he held that the statement that there was a settlement between the defendants and the plaintiff which culminated in the agreement dated June 18, 1987 whereunder they paid a sum of Rs. 1,25,000/- to the plaintiff who restored the tenancy in favour of their son Dinesh could not be accepted as a true statement of fact. He concluded that there was no justification what soever in the defendants not vacating the premises within two months of this Court's decision in the aforesaid two writ petitions against them. In any event, atleast on or after March 9, 1987 defendants had wilfully and deliberately failed to honour the undertaking given by them to this Court which they flouted and thereby committed contempt of Court. As regards the sentence, however, the learned Judge took a lenient view. In his opinion, the main defendant was defendant No. 1. She was an illiterate lady residing most of the time at Varanashi. He imposed a fine of Rs. 1,000/-

only.

7. Aggrieved by the impugned judgment the defendants have come up in appeal. Besides contending that the learned Single Judge failed to appreciate the evidence correctly, the main arguments advanced are : (i) the contempt petition was premature on the day it was filed; (ii) despite the knowledge of the defence taken by the defendants, the plaintiff had not impleaded Shri Dinesh Tripathi alias Tiwari as a party in the contempt proceedings and as such it would be open to Shri Dinesh Tripathi to challenge the order for eviction against him; (iii) the plaintiff had not taken steps to execute the decree for procession as yet and was, by filling the contempt petition, trying to misuse the process of law to vindicates his civil rights and (iv) if the impugned judgment was allowed to stand, the remedy available to Shri Dinesh Tripathi as regards challenging the decree for eviction against him was meaningless as the executing lower Court was not likely to consider his objections without being prejudiced due to adverse findings in the impugned judgment. To support his contentions Shri Abhyankar, the learned Counsel for the defendants, took the Court through the entire evidence and the impugned judgement in support of his contentions.

The plaintiff filed cross-objections. Shri Mudneney, the alerned Counsel for the plaintiff, not only supported the impugned judgment but also urged that the learned Single Judge should have awarded substantive sentence of Imprisonment instead of merely imposing a fine of Rs 1,000/-. It was his case that the learned Judge should have directed the defendants to deliver the vacant possession of the suit premises to the plaintiff as per their undertakings. But for the undertakings given, the defendants were obliged to and would have handed over the possessions of the suit premises to the plaintiff during the pendency of the two writ petitions themselves. Violation of undertaking amounted to clear contempt of the Court and the defendants should not have been let off so lightly.

8. In our opinion, the contempt petition was not premature on the day it was filed. It was certainly not so when this Court proceeded with it and the learned Single Judge punished the defendants for contempt. The writ petition was disposed of on November 28, 1986 confirming the decree passed by the trial Court ordering eviction against the defendants. In view of the undertakings given by the defendants dated January 14, 1986, and further undertakings dated December 1, 1986 and December 11, 1986, the defendants were bound not to alienate, transfer, part with possession and/or create any third party Interest or deal with the suit premises in any manner adverse to the interest of the landlord and to hand over the vacant possession of the suit premises on or before January 27, 1987, i.e., within two months of the date of this Court's judgment against them.

It is true that by its order dated December 18, 1986, the Supreme Court listed the SLP filed by the defendants for admission on January 9, 1987 recording an undertaking given by the Counsel for the plaintiff to the effect that plaintiff would not execute the decree in the meanwhile, though SLP was actually dismissed on

May 6, 1987. This Court has, therefore, to examine the effect of the Supreme Court's order dated December 18, 1986. It is obvious that the Supreme Court did not grant any stay order in this case. The undertaking given by the plaintiff's advocate which is recorded in the order only meant that the plaintiff undertook not to execute the decree in the meanwhile, i.e. upto January 9, 1987. This period may, taking the most liberal view, be taken as extended to the date on which the matter actually came up for consideration before the Supreme Court. Even then the undertaking could not go beyond May 6, 1987 when SLP was eventually dismissed.

So far as the defendants were concerned, they were obliged to, under the undertakings given by them to the Court, hand over vacant possession of the suit premises to the plaintiff on or before January 27, 1987, i.e. within two months of the decision in the writ petitions against them. Therefore, considered from any point of view, the defendants were in clear contempt after May 6, 1987 whereas the contempt petition was filed on June 15, 1987.

9. On May 11, 1987 the plaintiff gave notice to the defendants as well as to their advocate Shri Goyal demanding vacant possession of the suit premises. It was stated that he would file a petition for contempt in the event of defendants failure to do so. The contempt petition was eventually filed on June 15, 1987. It is difficult to appreciate the argument that the defendants were not in contempt on that day and the contempt petition so filed was premature. In any event, contempt of Court is a matter primarily between the Court and the contemner. Notices in the contempt petition were served on the defendants on or after July 11, 1987 and the petition was proceeded with thereafter. Therefore, even if the contention of Shri Abhyankar is accepted that the defendants were entitled to a further period of two months from the date of the dismissal of the petition by the Supreme Court on May 6, 1987, the contempt petition was proceeded with by the learned Single Judge after July 8, 1987 only.

Moreover, contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial tribunals. It is a matter between the Court and the alleged contemner. Any person including an aggrieved person may bring to the notice of the Court certain facts constituting contempt of Court and may assist the Court, but it must always be borne in mind that in contempt proceeding there are essentially two parties, namely, the Court and the contemner. What is pertinent is not how and when the fact of contempt was brought or came to the notice of the Court but whether when punished the contemner was in contempt.

10. The contention that the plaintiff had not impleaded Shri Dinesh Tripathi " Tiwari as a party to the contempt petition is also untenable. Dinesh Tripathi himself did not file any undertaking. Therefore, he need not be impleaded in the present proceeding. Dinesh has not yet filed any proceeding to establish his alleged right, inter alia, upon the allegation that on 18th June, 1987 he had paid to the petitioner Rs. 1,25,000/- or any sum for obtaining a fresh tenancy. When

the contempt petition was filed on June 15, 1987, the plaintiff, assuming that he was telling the truth, could not possibly have anticipated that the defendants were going to put up a defence that Dinesh was the tenant. He could not, thus, be blamed for not impleading Dinesh Tripathi as a party in the contempt petition. Moreover, contempt proceedings lie against a person or persons who are in contempt. The respondents are persons who had undisputedly given undertaking to the Court but did not honour it. Admittedly, Shri Dinesh Tripathi/Tiwari had not given any undertaking to the Court.

It is true that if what the defendants claim is correct, i.e. Dinesh Tripathi paid a sum of Rs. 1,25,000/- to the plaintiff to get the tenancy of the suit premises restored in his favour, his rights should not be defeated by the results of the contempt proceedings. But that is a matter entirely between him and the plaintiff. However, that fact by itself cannot deprive the plaintiff of his right to bring to the notice of the Court that the defendants are in contempt.

11. As regards the contention that by filing the present contempt petition and not taking that by execute the decree the plaintiff was trying to abuse the process of law which he was not entitled to, the legal position appears to us, to be as held by Calcutta High Court in Dulal Chandra Dhar and others v. Sukumar Banerjee and others, AIR 1956 Cal 474 , Madras High Court in A. Ramalingam Vs. V.V. Mahalinga Nadar, , and in Abdul Razack Sahib Vs. Mrs. Azizunnissa Begum and Others, and Andhra Pradesh High Court in R. Narapa Reddy Vs. Jagarlamudi Chandramouli and Others, that the law of contempt of Court is essentially to keeping the administration of justice pure and undefiled. It is difficult to rigidly define contempt. While dignity of the Court is to be maintain at all costs, it must be borne in mind that the contempt jurisdiction is of a special nature and should be sparingly used and that any attempt to obtain an adjudication from the Court or an action which a party desires to have for his own interest or purpose under the guise of a contempt action must not be encouraged in other words, the test has to be and should be whether the exercise of this jurisdiction is necessary for the preservation of the dignity of the Court or for the purpose of administration of justice. It is only when the answer is clearly in the affirmative that this special power should be exercised.

In Chhaganbhai Norsinbhai Vs. Soni Chandubhai Gordhanbhai and Others, , the Supreme Court has quoted with approval the following observations from Halsbury's Laws of England:

"An undertaking given to the Court by a person or corporation in pending proceedings, on the faith of which the Court sanctions a particular course of action or inaction, has the same force as an injunction made by the Court and a breach of the undertaking is misconduct amounting to contempt."

It was held that the case before it being of a deliberate violation of an undertaking to the Court, the effect was the same as that of an injunction.

The Supreme Court in Balram Singh Vs. Bhikam Chand Jain and Others, , took a

serious view of the conduct of contemnors in committing a breach of the undertaking in view of the growing tendency to trifle with the Court's orders based on undertakings with impunity.

12. Thus, the motive with which the plaintiff filed the present contempt petition before this Court is of not much significance. What is more pertinent is whether the dignity of the Court is involved and attempted to be defiled by the defendants by their not honouring the undertaking given to the Court. Considering the facts of the case before us in this background, there remains no manner of doubt that the defendants were in contempt when the learned Judge awarded punishment for contempt. The defendants had given a categorical undertaking and filed an affidavit on January 14, 1986 and had bound themselves to hand over vacant possession of the suit premises to the plaintiff within two months of the date of the decision against them in the writ petitions. This was subject only to their obtaining a stay from the Supreme Court. Subsequently, further undertakings were given to the effect that they were in possession and occupation of the suit premises, that nobody else was in possession and occupation of the same and that they shall not alienate, transfer or part or deal with possession and /or create any third party interest in the suit premises in any manner adverse to the interest of the landlord in the circumstances, it does not lie in the mouth of the contemnors to plead that the plaintiff was trying to misuse the process of the Court of law to vindicate his civil rights.

13. He also does not agree with Shri. Abhyankar that remedy available to Shri Dinesh Tripathi will be meaningless if the impugned judgment was allowed to stand. No doubt the observation by the learned Single Judge in the contempt proceedings to the effect that the agreement dated June 23, 1987 between Shri Dinesh Tripathi and the plaintiff was not proved to be genuine will make his task difficult. The risk that he has taken is of his own choice. Dinesh did not himself file any legal proceeding asserting his alleged tenancy right. The present contemner had filed proceedings on the alleged receipts in Dinesh's favour. Dinesh himself testified as a witness on the side of the contemnors. The learned Single Judge therefore, was bound to adjudicate the said defence set up by the contemnors. The learned Single Judge has given cogent reasons for disbelieving Dinesh and about the authenticity of the documents produced by the contemnors. We agree with the said findings of the learned Single Judge which are based on cogent reasons. The case has had a chequered history. The defendants had gone upto the Supreme Court. They cannot even plead ignorance. It Dinesh Tripathi, son of the defendants, had to come to some sort of agreement with the plaintiff regarding tenancy of the suit premises, he should have first asked the defendants to get themselves absolved from the undertaking. Having not done so, the defendants cannot take advantage of an argument which he may or may not eventually advance at an appropriate stage.

14. The question whether the defendants are in contempt of the Court or not, in

our opinion, requires to be decided with reference to the undertaking given and their conduct in not honouring the same. It has already been stated that the defendants were under an obligation to hand over vacant possession of the suit premises to the plaintiff on or before January 27, 1987 or latest before May 6, 1987 when the SLP was dismissed in the Supreme Court. This was admittedly not done. It was not even their case that by the subsequent agreement the plaintiff had agreed to let out the suit premises to them despite the Supreme Court decision. The case made out is that the plaintiff had, by an agreement dated June 18, 1987, accepted their son Shri Dinesh Tripathi alias Tiwari as tenant. Assuming for the present that it was so, even then so far as the defendants are concerned, they were bound by their undertaking to the Court to hand over vacant possession of the suit premises to the plaintiff latest before May 6, 1987 particular as the said agreement is dated June 18, 1987. The defendants were, thus in clear contempt from May 7, 1987 to June 17, 1987 to June 17, 1987. See then their conduct during this period. It one contemner's case was to be accepted the suit premises was in the alleged occupation of Shri Dinesh Tripathi not only during the pendency of the SLP in the Supreme court but also after its dismissal and that he was not listening to the defendant No. 1 (evidence at page 521 marked portion). This itself a clear breach of undertaking given by the defendants in the form of affidavits dated December 1, 1986 and December 11, 1986 to this Court They had specially undertaken not to past or deal with or hand over possession to anybody else nor to create any third party interest in the suit premises to the prejudice of the plaintiff. Looked at from any point of view, the defendants do not have reasonable defence for not handing over vacant possession of the suit premises to the plaintiff with in the stipulated period.

15. Sufficient it to observed that some of the facts and the sequence are such makes the execution of agreement in favour of Dinesh highly improbable. For instance, the source from which the defendants could collect a sum of Rs. 1,25,000/- for payment to the plaintiff is not reasonably indicated. The agreement is said to have been executed during the pendency of another litigation between the parties. The contempt petition was filed on June 15, 1987 whereas the agreement is dated June 18, 1987. Correspondence exchanged between the parties even earlier. Despite the fact that the defendant had gone up to the Supreme Court, it was beyond one's comprehension that they would pay as big an amount as Rs. 1,26,000/- without absolving themselves of the undertaking legally etc. In any event, considerable evidence brought on record by the Kulkarni will have to be ignored because of the material contradictions. In the circumstances, the finding that the defendants were in contempt is fully justified and is upheld.

16. Coming to the question of punishment which has been raised by the plaintiff, it is not as if in case of every breach of an undertaking the Court has no option but to punish by committing the contemner to prison. Such committal is always discretionary with the Court and the Court has to exercise such discretion on the

facts of the case after due consideration. The plaintiff is not a party to the contempt proceedings as stated by us earlier. The parties in contempt proceedings are only two, viz., the Court and the alleged contemner. In view of the facts and circumstances stated above, this Court does not consider this case to be a fit case for interference.

17. In the result, both the appeal and the cross-objections are dismissed. No order as to costs.

On application of Shri Abhyankar, the operation of this order is stayed for five weeks from today.