

(2012) 04 AHC CK 0168

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12192 of 2011

Shashi Kant Bajpai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4, 151
Constitution of India, 1950 — Article 226

Citation : (2012) 6 ADJ 15 : (2012) 4 AWC 4127

Hon'ble Judges : Devi Prasad Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Advocate : Ashok Bajpal, for the Appellant; Mohd. Adil Khan, Mohd. Aslam Khan and C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

1. The instant writ petition under Article 226 of the Constitution of India has been preferred feeling aggrieved with non-compliance of the order of injunction, granted by the trial Court. It has been brought to the notice of this Court that injunction was granted by the trial Court but the same was not complied with, hence, petitioner preferred Writ Petition No. 5821 (MB) of 2010 which was decided on 17.6.2010 providing therein that option is open to the petitioner to move appropriate application u/s 151 C.P.C. and the trial Court, as laid down by this Court in a case in Mohd. Hamja v. Additional Civil Judge (S.D.) Lko. and others, 2010 (28) LCD 637, will adjudicate the controversy. This Court (one of us (Hon'ble D. P. Singh, J.) held that u/s 151 C.P.C. trial Court has ample power to issue appropriate order or direction to the district authority to ensure compliance of the judgment & order or injunction granted by it. The relevant portion of the judgment rendered in Mohd. Hamja's case (supra) reads as under:

9. In view of the above, the Court has got ample power to enforce its order. Local authorities or officers concerned may be directed to ensure the compliance of injunction granted by the Court. The Court has got ample power to direct the

police to ensure that no construction should be raised and parties may not remove any structure standing over the disputed land in terms of injunction granted by the Court. It should be paramount consideration of Court to ensure that rule of law should be maintained and orders of the Court must be complied with in its letter and spirit. Power to punish under the contempt procedure does not fulfill the requirement and in case Court remain moot spectator and permit the parties or authorities to violate its order, damage may cause to parties and may suffer from irreparable loss and injury. Accordingly trial Court should have issued appropriate direction or order to the local authorities and administration to ensure compliance of injunction granted by it in pursuance to inherent power conferred by Section 151 of the CPC and it shall be obligatory for the State authorities to comply with such order.

2. However, reiterating the proposition of law, we are of the view that in a democratic polity, it is always incumbent upon the governing authorities to implement the interim order or injunction order, granted by the trial Court or this Court. In case, the injunction is not complied with by the private parties, the Court has got ample powers to issue appropriate orders u/s 151 C.P.C., directing the district authorities to implement the injunction granted by it. Non-compliance of the Court's order or injunction is the antithesis of the rule of law. In a civilized society, no one is above the law, whether it is a dispute with regard to the construction of a house or any other building including temple, mosque or church. In case, the Court has passed injunction order, it shall be incumbent upon the district authorities to implement the injunction or the order passed by the Court.

3. On the other hand, in case, an objection is filed under Order XXXIX Rule 4 of the Code of Civil Procedure, it shall be always incumbent upon the trial Court to decide such objection in accordance with law expeditiously. Continuance of an ex-parte injunction for a long period, erodes the belief and faith of people. Objection filed under Order XXXIX Rule 4 must be decided on priority basis. It is pointed out by Mohd. Arif Khan, learned Senior Counsel, appearing for opposite parties that an amendment application has been moved by learned counsel for petitioner and in consequence thereof application could not be decided by the trial Court. Even if the amendment application is moved alongwith some other application, priority must be given to an application moved under Order XXXIX Rule 4 C.P.C. Reason behind this is that while granting ex-parte injunction the affected parties are not being heard. There may be cases where injunctions are granted on the basis of pleadings of record raised by the plaintiff. In such situation, defendant may suffer irreparable loss, in case objection is not decided within reasonable period.

4. In view of the above, it was incumbent upon the trial Court to decide the objection expeditiously. Admittedly, in the present case, objection was filed on 2.5.2010 but the same has been kept pending for one or the other reason.

5. Our attention has been invited towards the order passed by this Court in Writ

Petition No. 3533 (MS) of 2010, filed by the petitioner himself which reads as under:

Having heard the counsel for the parties, I find that the order dated 29.5.2010 passed by the revisional Court is not sustainable in the eyes of law and if the order passed by the revisional Court is allowed to stand then the result would be that the injunction vacation application of opposite parties No. 5 and 6 would be decided although the issue in question is to be adjudicated by the revisional Court in regard to the presidency to be given for deciding the injunction vacation application or the amendment application. Since the issue with regard to the merit of the matter is to be adjudicated upon, therefore, in the opinion of the Court the remittance of the record to the trial Court will lead to the decision of the injunction vacation application and the issue will die its own death and after the decision of the injunction vacation application, the issue cannot be decided, therefore, under the aforesaid facts and circumstances the order dated 29.5.2010 is hereby set aside and the revisional Court is directed to decide the revision as early as possible.

It is also clarified that apart from the disputed land with regard to which the injunction order of status quo was granted the opposite parties No. 5 and 6 will be at liberty to carry on their finishing work, if at all is needed and the authorities will not create any hindrance in the aforesaid action of the opposite parties No. 5 and 6.

Writ petition is party allowed to that extent.

6. At later stage, the defendant-respondent also filed Writ Petition No. 7585 (MS) of 2010 which was allowed by the learned Single Judge of this Court on 1.11.2011, directing the trial Court to decide the objection filed by the defendant-respondent within six weeks, the operative portion of the aforesaid order is reproduced as under:

For the foregoing reasons, the application moved by petitioners/defendants dated 2.5.2010 under Order XXXIX Rule 4 read with Section 151 C.P.C. for vacation of temporary injunction granted in favour of plaintiffs/ respondents is maintainable.

Further, Sri Mohd. Arif Khan, learned Senior Advocate, at this stage, submits that as the revisions No. 73 of 2010 filed by plaintiffs/respondents has already been decided, so he does not press the relief for early disposal of the same, as prayed in the instant writ petition.

Accordingly, the writ petition is allowed, a direction is issued to Civil Judge North (J.D.), Lucknow to decide the petitioner's application dated 2.5.2010 moved under Order XXXIX Rule 4 read with Section 151 CPC for vacation of the temporary injunction granted in favour of the plaintiffs/respondent Nos. 3 and 4 expeditiously preferably within a period of six weeks from the date of receiving a certified copy of this order after hearing counsel for parties in question in accordance with law.

7. The special appeal No. 738 of 2011 was filed in this Court, that too was disposed of by the judgment & order dated 17.11.2011. The operative portion of which is reproduced as under:

We, therefore, modify the order under appeal only to the extent that the finding recorded by the learned Single Judge, if any, with respect to the maintainability of the application moved under Order XXXIX Rule 4 C.P.C., or any other observation which may touch the merit of the application is not binding on the trial Court and is hereby expunged, but the direction to decide the application aforesaid within six weeks would stand.

We, therefore, direct that the application moved under Order XXXIX, Rule 4 CPC shall be decided expeditiously within period of six weeks, in accordance with law, subject to the pleas raised by both the parties.

The special appeal is disposed of accordingly.

8. The repeated orders passed by this Court reveal that the Court directed the trial Court to decide the objection filed under Order XXXIX Rule 4 C.P.C. within six weeks. But, it is unfortunate that the matter is hanging and creating further problem between the parties.

9. The instant writ petition was filed on the ground that respondents are raising construction over the land in question in spite of the fact that the trial Court had directed to maintain the status quo. Attention has been invited towards the order dated 19.6.2010 which reveals that the trial Court has passed the order directing the district authorities to ensure the compliance of the order passed by it. The operative portion of the trial Court's order is reproduced as under:

Hindi Matter (sic)

10. It is settled proposition of law that the trial Court has got ample power to issue appropriate direction to the district authorities to implement the injunction granted by it. For non-compliance of the order passed by the trial Court, the district authorities may suffer the adverse consequences at the hands of Court. Court has got ample power to proceed under the contempt jurisdiction or in case, district authorities fail to enforce the injunction granted by it and feel helpless, the High Court may interfere under extra ordinary jurisdiction conferred by Article 226 of the Constitution of India to strengthen administration of justice and maintain the majesty of law. District Authorities should have been immediately complied the order of the trial Court dated 19.6.2010.

11. It is vehemently argued by Sri Mohd. Arif Khan, learned counsel for respondents that the property in question is mosque and petitioner possesses the hotel at the adjoining land. On account of open window the used materials are being thrown outside the hotel creating unhygienic condition.

12. In case, it is so, petitioner may adopt some ways and means so that person residing in the rooms of hotel may not throw used materials outside the window.

It shall be appropriate that the grills or net should be installed immediately in the windows of hotel adjoining to mosque to save the sanctity of the mosque.

13. Subject to the aforesaid observation and direction, we are of the view that the trial Court should proceed and decide the application filed by the respondents under Order XXXIX Rule 4 C.P.C. expeditiously, say, within two weeks, in case already not decided. The trial Court shall proceed on day to day basis and decide the objection filed under Order XXXIX Rule 4 C.P.C. in case already not decided, in accordance with law after affording opportunity to the parties concerned. In case, record has been sent by the trial Court to the revisional Court, it shall be requisitioned immediately so that the application may be decided by the trial Court within 15 days after providing opportunity of hearing to the parties concerned.

14. In the meantime, parties shall ensure the compliance of the injunction granted by the trial Court as well as this Court (supra) till it is vacated or modified.

15. During pendency of the proceedings of this Court, we have sent the Advocate Commissioner to make spot inspection and to submit photographs and report. The Registrar shall send the report of the Advocate Commissioner alongwith the photographs to the trial Court which shall be part of evidence before the trial Court in pending regular suit. The application shall be decided by the same Court and case shall not be transferred in other Court except in condition, the Presiding Officer is not available or while deciding an application for transfer on merit.

16. Learned counsel for the petitioner submits that a proposal has been made for compromise between the parties. In case, it is so, it shall be open to the parties to approach the trial Court for compromise, if any, and the trial Court shall consider the same in accordance with law. Subject to above, interim orders stand vacated. Trial Court and the parties shall abide by the order passed from time to time referred in the body of present judgment. The writ petition is disposed of accordingly.

No order as to cost.