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(1981) 10 AHC CK 0023

In the Allahabad High Court

Case No : F.A.F.O. No. 43 of 1979

Sheo Kumar Saxena — APPELLANT

Vs

Zila Sahkari Vikas Sangh and Others — RESPONDENT

Date of Decision : 16-10-1981

Acts Referred:

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

Citation : (1981) 10 AHC CK 0023

Hon'ble Judges : S.C. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C Mathur, J.—The short question arising for determination in this appeal is whether the person against whom an interim injunction had been granted can be punished under Order 39 Rule 2-A of the Code of Civil Procedure, 1908, for short Code, for violation of that injunction after the said injunction has been vacated through final orders passed in the proceedings in which the order of injunction was passed? Putting it differently, the question is whether subsistence of the order of injunction is a necessary condition for passing an order of punishment under Order 39, Rule 2-A? The question has arisen in the circumstances hereinafter indicated.

2. Appellant Sheo Kumar Saxena filed a suit against the Respondents for injunction restraining them from terminating his services. An application for interim injunction was also made. The trial Court by order dated 2-1-1978, granted an interim injunction in favour of the Appellant. After hearing both the parties the injunction was vacated by the trial Court on 5-4-1978. Aggrieved by this order, the Appellant preferred an appeal before the learned District Judge. In

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this appeal also an application was made for the grant of an interim injunction which was allowed and an interim injunction restraining the Respondents from terminating the Appellant''s services during the pendency of the appeal was passed on 25-4-1978.

On 23-4-1978 the Appellant moved an application before the lower appellate Court under Order 39, Rule 2-A of the Code for taking action against the Respondents for violation of the interim injunction on the allegation that after the service of the injunction order the Respondents on 25-4-78 broke open the locks and took charge of the post held by the Appellant. The appeal was dismissed on 31-8-1978 but the application under Order 39, Rule 2-A remained pending and was ultimately disposed of by order dated 16-12-1978. The learned District'' Judge dismissed the application on the ground that since there was no subsisting injunction against the Respondents, no action could be taken against them under Order 39, Rule 2-A. Aggrieved by this order the Appellant has approached his Court.

3. Shri Hari Shankar Sahai, learned Counsel for the Appellant, argued that the learned District Judge has passed a very cryptic order and he has not referred to any provision of law which barred action under Order 39, Rule 2-A after the injunction had been vacated. According to him the Code does not contain any such bar and, therefore, the order of the Court below cannot be sustained.

4. The appeal has been opposed by Sri Raj Kumar who put in appearance on behalf of Respondents 1, 4 and 5. He argued that the purpose of Order 39, Rule 2-A was to compel obedience of the order of injunction and since after the injunction has been vacated there can be no question of compelling its obedience and, therefore, the punitive action prescribed under the Rule also cannot be taken after the injunction order ceases to exist.

5. Rules 1 and 2 of Order 39 empower the Court to grant temporary injunction to prevent threatened actions referred to in the Rules. Rule 2-A prescribes the consequences of disobedience or breach of the interim injunction by the party against whom the injunction was issued. The Rule inserted by Act No. 104 of 1976 reads as follows:

Rule 2-A. Consequence of disobedience or breach of injunction.

(1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the

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property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

6. Clause (1) provides two consequences. First, the property of the guilty person may be attached and second he may be detained in civil prison. The period of detention can in no event exceed three months. Clause (2) provides the maximum period for which the attachment of property may continue. The maximum period is one year at the and of which the property may be sold and put of the sale proceeds the Court may award such compensation to the injured party as it deems fit and the balance, if any, is to be paid to the party entitled thereto.

There is, however, one restriction upon the exercise of the power of sale; the sale can be ordered only if the disobedience pr the breach is continuing. If the disobedience or the breach ceases to exist the property cannot be sold. Thus if after the attachment of property, the guilty person complies with the order fit temporary injunction, the attached property cannot be sold. On the same analogy, if the occasion to comply with the injunction vanishes, the attached property cannot be sold. Once the temporary injunction has been vacated, there is no occasion to comply with, the same. Therefore, after the temporary injunction has been vacated, the attached property cannot be sold, there is no occasion to attach property after injunction has been vacated. The obvious purpose of keeping the property under attachment for one year is to give opportunity to the violator to comply with the interim order and thereby remedy the wrong committed by him. In my opinion, the first consequence of disobedience prescribed under Clause (1) cannot be given effect to after the temporary injunction has been vacated.

7. It may now be examined whether the second consequence of the disobedience can be enforced. The second consequence is detention in civil prison. The maximum period of detention is three months. This period may be curtailed if the Court directs release earlier. This is apparent from the use of the words ''unless in the meantime the Court directs his release. The occasion to direct this earlier release would arise only when some extenuating circumstance comes into existence. The extenuating circumstances may arise in either of the two ways. First it may arise by compliance of the interim order which had so far remained uncomplied and secondly, it may arise by vacation of the interim order. In either circumstance there would be no justification to continue the detention of the defaulter.

8. There is another way of looking at the matter. The use of the words ''and may also order in Clause (1) shows that the punishment of attachment of property is the primary or substantive punishment and the punishment of detention in civil prison is secondary or ancillary punishment. Now if the substantive punishment cannot be awarded after the vacation of the interim order, can there be any justification to resort to or impose the secondary or ancillary punishment? In my

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opinion, there cannot be any justification.

9. There is yet another way of looking at the matter. The final order by which the interim order of injunction is vacated reflects Court''s considered opinion not only on the question whether the interim order deserved to be continued but also on the question whether the applicant was entitled to interim injunction on the date the same was passed. Now, will there be any justification to punish the violator for not obeying an order which the Court itself, after full consideration, comes to the conclusion, the applicant was not entitled to? In my opinion the answer must be in the negative.

10. The view taken by me is in accord with the spirit and purpose of the provision which is to compel obedience of the order and not to feed the private grudge of the party which obtained the order of injunction. Interpreting Clause (3) of Order 39, Rule 2, which is in same towns as Clause (1) of Rule 2-A their Lordships of the Supreme Court The State of Bihar Vs. Rani Sonabati Kumari, observed in Para 23 at page 227 as follows:

...Though undoubtedly proceedings under Order 39. 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....

After the temporary injunction has been vacated, it cannot be enforced or executed and, therefore, punitive action also cannot be taken after the vacation of the injunction.

11. The above judgment of their Lordships was relied upon by a learned single Judge of this Court (Hari Swarup, J. as he then was) in Sitaram v. Ganesh Das AIR 1973 All 4491 while setting aside the punishment awarded by the trial Court and confirmed by the lower appellate Court on the ground that during the pendency of the civil revision in this Court the contemner remedied the breach of injunction by removing the tin-shed which he had put up in violation of the injunction.

12. The view taken by me is in accord also with the view taken by this Court Surendra Nath Koley Vs. A.R. Sinclair Day and Another, and in Monoharlal Vs. Sri Prem Shankar Tandon and Others, . In both these cases action for disobedience of interim injunction was sought to be taken under the Contempt of Courts Act. In Surendra Nath''s case (supra) the learned Chief Justice observed at page 286 as follows:

Proceedings for contempt should be taken only in cases where a Court is satisfied that something has been done, which it is necessary in the larger interest of the administration of justice, that the Court should take notice of....

...But where the order issued is a doubtful order, Where the order itself has been vacated.... simply because a party considers that he has been aggrieved by some action which he considers high-handed, it would not be proper to issue a notice

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for contempt to show cause.

(Emphasis supplied).

13. The above passage was referred to with approval by the Division Bench in Manohar Lal''s case (supra).

14. I am of the contrary view expressed Thakorlal Parshottamdas Vs. Chandulal Chunilal, and in re; Gobinda Parida v. Chakradhara Routray AIR 1971 Orissa 10. For the reasons already recorded I am, with great respect to the learned Judges, unable to subscribe to the view taken in these two cases.

15. In view of the above the appeal is dismissed but without any order as to costs.

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