

(1994) 06 BOM CK 0031

In the Bombay High Court

Case No : Civil Revision Application No. 1179 / 93

Shrimati Ratnabai, Adv. and another

APPELLANT

Vs

Shri Satwarao Naik

RESPONDENT

Date of Decision : 17-06-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 35, Order 21 Rule 77, Order 21 Rule 97, Order 21 Rule 98
Constitution of India, 1950 — Article 226

Citation : AIR 1995 Bom 61 : (1994) 96 BOMLR 662

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : Shri C.S. Kaptan, N.S. Khubalkar and A.R. Sambre, for the Appellant; Shri Jugalkishore Gilda, for the Respondent

Judgement

1. Rule was obtained at the instance of the applicants/original defendants and is directed against the order passed by the learned Addl. District Judge, Pusa, below Exh. 13 i.e. the application for grant of Police Aid filed by the opposite party i.e. the respondent/applicant u/s 151 of the Code of Civil Procedure, on 1st of December, 1993.

2. The applicants are the appellants in Misc. Civil Appeal No. 10/93 and also the original defendants in Regular Civil Suit No. 102/93 pending before the 3rd Joint Civil Judge, Jr. Dn., Pusa. The Regular Civil Suit is filed by the respondent/plaintiff for declaration and temporary injunction against the applicant/defendants Smt. Ratnabai w/o Narayanrao Naik and her son Girish s/o Narayanrao Naik, contending that he is the owner of area admeasuring 0.70 Hectors out of survey No. 1 situated at Mouza Dhansala, Tah. Pusa, Dist. Yavatmal.

The applicant/original defendant Smt. Ratnabai is a step-mother of the respondent/plaintiff Shri Satwarao Naik and the applicant/original defendant No. 2 is the step brother of the respondent/ plaintiff Satwarao Naik. According to the

respondent/plaintiff Shri Satwarao Narayanrao Naik the land in suit had fallen to his share under the partition in the family as early as in the year 1959. It is stated at bar that the deceased Narayanrao Naik had left huge property behind him and the applicants/original defendants as also the respondent/plaintiff are in possession of the properties left by deceased Narayanrao. It is the specific case of the plaintiff that he is in cultivating possession of the suit land and the applicants/defendants always are trying to disturb his cultivating possession and, therefore, the respondent/plaintiff was constrained to file the Regular Civil Suit No. 102/93 against the applicants/ defendants. A separate application under Order 39, Rules 1 and 2 of the Code of Civil Procedure for grant of temporary injunction to restrain the applicants from interfering with his possession over the suit property was filed vide Exh. 7. After hearing the learned counsel for the parties, considering the documents filed by both the parties to support the rival contentions, the learned trial Court found that the respondent/plaintiff proved his prima facie possession and consequently granted temporary injunction against the applicants/original defendants by its order dtd. 3rd April, 1993.

2A. Being aggrieved by the order dtd. 3rd April, 1993, the applicant/original defendants have preferred Misc. Civil Appeal No. 10/93 before the learned Addl. District Judge, Pusa and the same is pending. The applicants/defendants presented an application under Order 41, Rule 5 of the CPC to stay the impugned order dtd. 3rd April, 1993 and the same is also pending.

3. The respondent/original plaintiff specifically contended that he is in cultivating possession of the suit land since long and in view of the order of injunction passed by the learned trial Court on 3rd April, 1993, the applicants/defendants cannot disturb the possession unless the order is vacated by the learned trial Court or got stayed the operation and effect of the order of injunction granted by the learned trial Court on 3rd April, 1993.

The respondent/applicant filed an application u/s 151 of the CPC vide Exh. 13 on 22-10-1993 for Police Aid in order to protect his possession over the disputed suit land. It is specifically stated by the respondent/plaintiff that since before the order was passed on the injunction application by the learned trial Court, the original defendants with their associates used to disturb the possession of the plaintiff and also extended threats to destroy the crops as also to his life. Even after the injunction order was passed on 3rd April, 1993, the applicants/original defendants continued their activities of disturbing the possession of the plaintiff and extending threats to the person and life of the respondent/plaintiff. On many occasions, the respondent/plaintiff reported the matter to the Police but no action had ever been taken by Police to safeguard the person and property of the respondent/plaintiff. Lastly on 19-10-1993 when the non-applicant/plaintiff had been to cut the spike of Jawar, the applicants/original defendants with their supporters entered the field and extended threats not to take away the crop. While leaving the field in suit, the original defendants extended threats to the plaintiff that in case he cut the spike of Jawar, he will be done away with life.

Consequently, he reported the matter to the Police. Under the circumstances, to protect the possession and standing crop, the plaintiff applied for Police Aid.

The original defendants by their reply Exh. 18, resisted the application on the grounds that the contents of the application for Police Aid are totally false and deserve to be dismissed. It is stated at bar by the learned counsel for the applicants/original defendants, an application for Police Aid was also filed by the plaintiff on 27th April, 1993. To that application too the reply was filed. However, the respondent/plaintiff has withdrawn that application. In the application Exh. 13 which is filed on 22-10-93, same relief being sought, the same deserves to be dismissed. The learned District Judge on hearing the learned counsel for the parties allowed the application for Police Aid on payment of necessary process.

The instant Revision Application is filed against this order dtd. 1st December, 1993.

4. The impugned order dtd. 1-12-1993 is challenged on the ground that the learned lower Appellate Court has acted in excess of its jurisdiction in granting Police Aid to the plaintiff in absence of any specific provision under the CPC or Rules made therein to grant Police Aid particularly with respect to implement the order of injunction under Order 39, Rules 1 and 2 of Code of Civil Procedure. The learned counsel for the applicants further submitted that the learned lower appellate Court has exceeded its jurisdiction u/s 151 of the Code of Civil Procedure. The provisions of Section 151 of the CPC cannot be invoked to cause injustice to the parties.

Shri Gilda, the learned counsel for the respondent/plaintiff, on the contrary submitted that there being no specific provisions in this behalf, the Civil Court has inherent power u/s 151 of the CPC to direct the Police to render aid where the implementation of the order of Civil Court is obstructed or prevented.

5. Ordinarily, a Decree-holder or a party who obtained the injunction order would not need any Police help for execution or his decree or of injunction. The judicial process through the bailiff or Sheriff of the machinery of execution would be enough. A person who obtains the decree or order of injunction from the Court, must reap fruits of the same else the decrees or orders will be nugatory.

Section 36 of CPC relates to the execution of decrees. The principle is that the Court has inherent power to have its order carried out.

Section 38 of the CPC refers to the decree to be executed either by the Court which passed it or by the Court to which it is sent for execution. The principle is that the Court has inherent power to have its order carried.

Order 21 of the CPC deals with detailed procedure relating to the execution of the decrees and Section 36 of the CPC makes the provision of Order 21 applicable to the execution of all the orders.

Order 21, Rule 32 of the CPC deals with the decree for specific performance for

restitution of conjugal rights or for an injunction. Sub-rule (1) of Rule 32 reads as follows:

"Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced (in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction) by his detention in the civil prison or by the attachment of his property or by both."

In a case of Venkat Niloba Kabade v. Kishan Dadarao Dhumal 1983 Mah LJ 1105; this Court held;

"the provisions relating to execution of decrees shall be deemed to apply for execution of orders and it could not be disputed that Order 21, Rule 35 of the CPC lays down the procedure for execution of decree for possession. Now by virtue of Section 36 of the amended CPC the same procedure will be applicable for execution of orders."

In this connection, Rules 97 and 98 of Order 21 of the CPC should also to be considered. There is no doubt that Rules 97, 98 and are to be read collectively.

Rule 97 of Order 21 of the CPC reads as under :

"97(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction. (2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Rule 98 of Order XXI of the CPC reads as under:

"98.(1) Upon the determination of the questions referred to in Rule 101, the Court shall in accordance with such determination and subject to the provisions of sub-rule (2)-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other persons at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining

possession the Court may also at the instance of the applicant, order the judgment or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days."

Rule 99 of Order XXI of the CPC reads as under :

"99(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

Upon the filing of an application under Rule 97 and upon hearing the parties and considering the material before it when the Court is satisfied that there was resistance or obstruction without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, it shall direct that the decree-holder be put into possession of the property. But in spite of the direction if the decree-holder still resisted or obstructed then according to Rule 98 of Order XXI of the Code of Civil Procedure, the person resisting or obstructing may be detained in Civil prison as indicated therein. This is the ordinary procedure in case of obstruction or resistance by the judgment-debtor or any other person as contained in Rules 97 and 98. The prayer for police help may be made by the decree-holder either in an application under Rule 97 and/or 98 of Order 21, of the CPC or separately without filing such application or before any specific obstruction made by a particular person.

There may be cases where the decree-holder may pray for police help due to the general disturbance in the locality for which execution without police help cannot be possible. There may be cases where in spite of repeated obstructions by the judgment-debtor or any person at his instance the decree-holder cannot get possession, but the Court's bailiff of the decree-holder faces serious breach, of peace or personal danger at the time of execution of the decree. In such cases also the Court will consider whether police help will be essential for the execution of the Court's decree to see that such decree is respected and executed. For application for grant of Police help, there need not be any actual resistance and such a help can be prayed for and such a procedure can be availed of at any time even when breach of peace is apprehended or anticipated. Police help is an aid to execution, not the execution by itself.

6-7. Besides the above provisions, it is always open to the party to invoke the jurisdiction u/s 151 of the CPC for grant of said relief. Section 151 of the CPC reads as under :

"151. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the

ends of justice or to prevent abuse of the process of the Court."

This section confers power to the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. It is now well established that Section 151 of the CPC cannot be invoked where there is an express provision of law under which the relief could be claimed by the aggrieved party. The power u/s 151 of the CPC can only be invoked to supplement other provisions of the Code and not to override or evade other expressed provisions. It is impossible in the nature of the things to anticipate the difficulties or inconvenience and to make appropriate provisions in the Code or Rules. Not only the Court should have power to make orders but should have also power to implement the same. Though the method and manners of implementation are provided for in the several provisions of the Code, still there may be cases where the said provisions may not be sufficient to implement the orders of the Court fully nor to render justice or redress a wrong in such cases. I do not see why the provisions of Section 151 of the CPC cannot be invoked.

In a case of *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, , their Lordships observed as follows at page 532:

"We are of opinion that the latter view is correct and that the Courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of Order 39, Civil P. C. There is no such expression in Section 94 which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order 39 or by any rules made under the Code. It is well settled that the provisions of the Code are not 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."

His Lordship further observed that;

"No party has a right to insist on the Court's exercising the jurisdiction and the Court exercises its inherent-jurisdiction only when it considers it absolutely necessary for the ends of justice to do so."

Again at page 533, after referring to the decision of the Supreme Court in *Padam Sen and Another Vs. The State of Uttar Pradesh*, , his Lordship observed as follows:--

"These observations clearly mean that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in Section 151 itself. But those powers are not to be exercised when their exercise may be in conflict With what had been expressly provided in the Code or against the intentions of the Legislature. This restriction for practical purposes, on the exercise of those powers is not because those powers are controlled by the provisions of the Code but because it should be presumed that the procedure specifically provided by the Legislature for orders in certain circumstances is

dictated by the interests of justice."

Further on their Lordships stated as follows: --

"The Section (Sec. 151, Civil P. C.) itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it. Further, when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code."

The following observations in *Padam Sen and Another Vs. The State of Uttar Pradesh*, are also apposite in this context at page 219.

The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and, therefore, it must be held that the Court is free to exercise them for the purpose mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature.

In view of these clear observations of their Lordships with regard to the scope and ambit of the inherent powers of the Court u/S. 151, Civil P. C., we are clearly of the opinion that in order to do justice between the parties or to prevent the abuse of process of the Court, the Civil Courts have ample jurisdiction to give directions to the police authorities to render aid to the aggrieved parties with regard to the implementation of the orders of the Court or the exercise of the rights created under orders of Court. That the police authorities owe a legal duty to the public to enforce the law is clear from a decision of the Court of Appeal, reported in *R. v. Metropolitan Police Commr.* (1968) 1 All ER 763, where Lord Denning M. R. observed at page 769 as follows:

"I hold it to be the duty of the Commissioner of Police, as it is of every Chief Constable to enforce the law of the land. . . . but in all these things he is not the servant of anyone, save of the law itself. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."

8. It is no doubt that the Police help is an extraordinary mode or procedure to implement the execution of the decree or orders. In other words, Police help is to be regarded as an extreme step, and as such it should not be recommended unless the Court is fully convinced of the existence of a grave emergency. Therefore, a decree-holder praying for police help has to state whether such help is required either;

(i) because of apprehension of violence or obstruction from judgment-debtor himself or at his instance by others or;

(ii) because of conditions of a general character such as the locality where execution will have to be effected being in a disturbed state or a class of people, similarly situated being likely to make, a common cause with judgment-debtor and resist execution.

Thus, the special procedure for police help would not be allowed unless there are reasonable grounds to suppose that the execution will not be effected without serious danger to public peace, because of apprehension of violence or obstruction from the judgment-debtor himself or because of the conditions of general character as such where the execution will have to be done in disturb stage or a class of people similarly situated being likely to make common cause that the judgment-debtor can resist the execution.

Besides this, in addition to the circumstances enumerated above to grant police help the Court must be fully convinced of the existing of grave emergency and to prevent commission of cognizable offence by the judgment-debtor or on his behalf by any person or a third party.

In a case *Rayapati Audemma Vs. Pothineni Narasimham*, , their Lordships observed that at page 57;

"If the police authorities are under a legal duty to enforce the law and the Public or the citizens are entitled to seek directions under Article 226 of the Constitution for discharge of such duties by the police authorities we feel that the civil courts can also give appropriate directions u/s 151, Civil P. C. to render aid to the aggrieved parties for the due and proper implementation of the orders of Court. It cannot be said that in such a case the exercise of inherent power u/s 151, Civil P. C. is devoid of jurisdiction. There is no express provision in the Code prohibiting the exercise of such a power and the Court can give appropriate parties to the police authorities to render its aid for enforcement of the Court's order in a lawful manner."

9. Shri Sambre, the learned counsel for the applicants relied on a case of *Subal Kumar Dey Vs. Purna Chandra Giri and Others*, and submitted that Considering the facts and circumstances of the case, there was no need to grant police help and, therefore, the order impugned deserves to be set aside. The facts of the case in hand and case cited supra are altogether different. In the case cited supra an ex parte order of injunction was passed. Proceeding for violation of order was pending and, therefore, under the circumstances, in the case cited supra it is held that there was no need to grant police help for implementation of ex parte injunction order. However, it is further observed that to give direction for police help would depend upon the facts and circumstances of the case. Therefore, the case cited supra is of no help to the applicants.

10. Moreover, the High Court can only interfere with the order passed by the Subordinate Court, if it is passed without jurisdiction or there is an a ex facie mistake or the order is vitiated by any irregularity. The learned trial Court has considered all the aspects and passed the order satisfying himself granted police

help on depositing necessary fees with the concerned Police Station in his inherent jurisdiction for the ends of justice.

11. Considering the facts and circumstances of the case there is no substance to disturb the order passed by the learned trial Court.

12. In the result, the instant application is dismissed. Stay vacated. No order as to costs.

Application dismissed.