
(2006) 05 AHC CK 0275
In the Allahabad High Court
Case No : C.M.W.P. No. 30115 of 2006

Smt. Jagannathiya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, Order 39 Rule 2A(2)
Constitution of India, 1950 — Article 227

Citation : (2006) 3 AWC 2600 : (2007) 2 CivCC 280 : (2007) 5 RCR(Civil) 571

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

Bench : Division Bench

Advocate : M.A. Haseen, for the Appellant; C.S.C., for the Respondent

Judgement

B.S. Chauhan, J.—This writ petition reveals a very sorry state of affair, wherein the learned civil court and the revisional court expressed their inability to enforce the order passed by them, leaving the hapless litigant on the mercy of the so called police administration.

2. The present petitioner filed a Suit No. 477 of 2003 along with an application for injunction, under Order XXXIX, Rules 1 and 2 of the CPC (hereinafter called C.P.C.). The said application was rejected by the trial court vide order dated 15.7.2003. Being aggrieved. Revision No. 12 of 2003 was preferred and the revisional court granted the injunction vide order dated 18.11.2004, to the effect that the respondents were restrained from interfering with the peaceful possession and occupation of the petitioner in respect of the premises in dispute. The order passed by the revisional court was not complied with. Therefore, petitioner filed an application under Order XXXIX, Rule 2A, C.P.C. before the trial court, which stood rejected vide order dated 2nd July, 2005, observing that once the order is passed by the civil court, it is for the police administration to ensure its compliance. Therefore, the party may approach the police authorities. Unfortunately, revision preferred against the said order also stood dismissed vide

order dated 28.7.2005, and Writ No. 319 of 2006 under Article 227 of the Constitution also stood dismissed as withdrawn vide order dated 4.1.2006, with liberty to the petitioner to approach the appropriate forum. Hence this petition.

3. Learned Counsel for the petitioner has submitted that in spite of the interim injunction in her favour, the respondents are harassing and interfering with her peaceful possession, with all impunity, and the courts below have expressed their inability observing that it is the duty of the police administration to enforce the orders passed by the Courts.

4. Order XXXIX, Rule 2A deals with the power to enforce the order passed by the Court and impose the punishment. It is settled legal proposition that any action taken in contravention of the order of the Court is a nullity as having been done in disobedience of the interim order of the Court. Vide *Mulraj Vs. Murti Raghonathji Maharaj*,

5. Similar view has been reiterated in *Surjit and others Vs. Harbans Singh and others etc. etc.*, and *Govt. of Andhra Pradesh and Others Vs. Gudepu Sailco and Others*,

6. A Constitution Bench of the Hon''ble Supreme Court, in *The State of Bihar Vs. Rani Sonabati Kumari*, has categorically held that the said provisions deal with the wilful defiance of the order passed by the civil court.

7. In *Tayabbhai M. Bagasarwalla and another Vs. Hind Rubber Industries Pvt. Ltd. etc.*, the Hon''ble Supreme Court dealt with a case of disobedience of an injunction passed under Order XXXIX, Rule 1, C.P.C., wherein the contention was raised that the proceedings under Order XXXIX, Rule 2A cannot be initiated and no punishment can be imposed for disobedience of the order because the civil court, which granted the Injunction, had no jurisdiction to entertain the suit. The Apex Court rejected the contention holding that a party aggrieved of the order has a right to ask the Court to vacate the injunction pointing out to it that it had no jurisdiction or approach the higher court for setting aside that order, but so long the order remains in force, the party cannot be permitted to disobey it or avoid punishment for disobedience on any ground, including that the Court had no jurisdiction, even if ultimately the Court comes to the conclusion that the Court had no jurisdiction to entertain the suit. The party, who willingly disobeys the order and acts in violation of such an injunction, runs the risk for facing the consequence of punishment.

8. 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 for disobedience of the disobeying party or attaching his property 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.

9. Thus, in view of the above, it becomes crystal clear that the proceedings are analogous to the contempt of court proceedings but they are taken under the provisions of Order XXXIX, Rule 2A, C.P.C. for the reason that the special provision inserted in the Code shall prevail over the general law of contempt contained in the Contempt of Courts Act, 1971 (for short, "the Act, 1971"). Even the High Court, in such a case, shall not entertain the petition under the provisions of Act, 1971. (Vide *Ram Rup Pandey Vs. R.K. Bhargava and Others*, *Smt. Indu Tewari Vs. Ram Bahadur Chaudhari and Others*, *Rudraiah Vs. State of Karnataka and Others*, *Papanna Vs. Nagachari and others*, and *Smt. Savitri Devi Vs. Civil Judge (SD) and Others*,

10. In *Md. Jamal Paramanik and Ors. v. Md. Amanullah Munshi* AIR 1989 Gau 50 the Gauhati High Court held that it is not permissible for a court to impose a fine or compensation as one of the punishments, for the reason that the provisions of Order XXXIX, Rule 2A do not provide for it. In *Thakorlal Parshottamdas Vs. Chandulal Chunilal*, Hon"ble Mr. Justice P.N. Bhagwati (as His Lordship then was) held that the punishment for breach of interim injunction could not be set aside even on the ground that the injunction was ultimately vacated by the appellate court. In *Rachhpal Singh Vs. Gurdarshan Singh*, a Division Bench of Punjab and Haryana High Court held that if an interim injunction had been passed and is alleged to have been violated and application for initiating contempt proceeding under Order XXXIX, Rule 2A has been filed but during its pendency the suit itself is withdrawn, the Court may not be justified to pass order of punishment at that stage. Thus, it made a distinction from the above referred Gujarat High Court's decision in *Thakorlal Parshottamdas* (supra) that contempt proceedings should be initiated when the interim injunction is in operation.

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

The purpose of Order XXXIX, Rule 2A, C.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, C.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), C.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 was drawn between the provisions of Order XXI, Rule 32 and of 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, C.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.

12. In *Kochira Krishnan Vs. Joseph Desouza*, it has been held that violation of injunction or even undertaking given before the Court, is punishable under Order XXXIX, Rule 2A, C.P.C. The punishment can be imposed even if the matter stood disposed of, for the reason that the Court is concerned only with the question whether there was a disobedience of the order of injunction or violation of an undertaking given before the Court, and not with the ultimate decision in the matter. While deciding the said case, the Court placed reliance upon the judgment of the Privy Council in *Eastern Trust Co. v. Makenzie Mann and Co. Ltd* AIR 1915 PC 106 wherein it had been observed as under:

An injunction, although subsequently discharged because the plaintiffs case failed, must be obeyed while it lasts....

13. A Constitution Bench of the Hon'ble Supreme Court in *The State of Bihar Vs. Rani Sonabati Kumari*, observed that the purpose of such proceedings is for the enforcement or effectuation of an order of execution.

14. Thus, it is evident from the above discussion that the proceedings are analogous to the proceedings under the Act, 1971. The only distinction is that as the Legislature, in its wisdom, has enacted a special provision, enacting the provisions of Order XXXIX, Rule 2A, C.P.C., it would prevail over the provisions of the Contempt of Courts Act.

15. In *K.L. Virmani Vs. IIIrd Additional Dist. Judge, and others*, this Court held that once the Court is satisfied that interim order passed by it is disobeyed, there could be no justification for the Court not to initiate proceedings for enforcement of its order.

16. However, the Court cannot merely be a silent spectator while the order passed by the competent Court is being violated with impunity and the party is left on the mercy of the so called administration. There is not only an obligation but a solemn duty of the Court to enforce its order by all means. The Statute

itself has conferred all powers upon the Court to enable it to enforce its order. The provision itself empowers the civil court to attach the property of the person guilty of disobedience or to detain him in civil prison for a term not exceeding three months. The provision was inserted as it was felt to be necessary in order to maintain the dignity of the Court in the eyes of the people so that the supremacy of law may prevail and to deter the people of mustering the courage to disobey the interim injunction passed by the Court.

17. In such a fact-situation the civil court must ensure by all means that interim order passed by it is complied with and for that purpose, it should issue necessary instructions to the police if the facts so warrant, our conscious is shocked and it is beyond our imagination as how the trial court and appellate court could take such a casual and indifferent attitude.

18. It is settled legal proposition that a party cannot be rendered remedy less. (Vide Rameshwarlal Vs. Municipal Council, Tonk and Others, , The petitioner had been running from pillar to post for enforcement of the interim order passed by the revisional court but in vain. Undoubtedly, the writ court should not interfere in the matter where suit is pending. (Vide K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., ; A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, ; Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, ; Jai Singh Vs. Union of India and Others, and Bombay Metropolitan Region Development Authority, Bombay Vs. Gokak Patel Volkart Ltd. and Others,

19. However, in Awadh Bihari and Other Vs. State of Bihar and others, the Hon"ble Supreme Court held that in extraordinary circumstances, writ court may exercise its discretionary jurisdiction even if the party has approached the other forum. The Court held as under:

There must be extraordinary situation or circumstances, which may warrant a different approach, where the orders passed by a Court are sought to be violated or thwarted with impunity. The Court cannot be a silent spectator in such extraordinary situation.

(Emphasis added)

20. If such a course is not resorted to, the very existence of the Courts, i.e., judicial system will come in the jeopardy.

21. Learned standing counsel takes notice on behalf of respondent Nos. 1 to 7. Issue notice to respondent Nos. 8 to 12 returnable in four weeks.

22. In the fact-situation we have no option but to direct the civil court to issue necessary orders to the Superintendent of Police, Kaushambi, to take all measures to ensure the compliance of the interim orders passed by it at the earliest, and we direct the said authority to ensure its compliance forthwith. We further direct the Superintendent of Police, Kaushambi, to file his personal affidavit within a period of three weeks from today as under what circumstances

the interim order passed by the trial court could not be complied with.

23. List the matter on 6.7.2006.