
(2003) 01 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : F.A.O. No's. 319 and 426 of 2001

Sushil Mittal and Another

APPELLANT

Vs

R.D. Bhardwaj and Another

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

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

Citation : AIR 2003 HP 170 : (2004) 1 CivCC 341

Hon'ble Judges : Kamlesh Sharma, Acting C.J.; Kuldip Chand Sood, J

Bench : Division Bench

Advocate : R.P. Singh, for the Appellant; Ramakant Sharma, Adv, for the Respondent

Final Decision : Allowed

Judgement

Kuldip Chand Sood, J.—These two appeals arise out of a common order of learned District Judge, Solan dated October 12, 2001 in Application No. 355-A/6 of 2000.

2. In order to appreciate the controversy, necessary facts may be noticed.

It appears plaintiff-R.D. Bhardwaj laid a suit before the learned Sub-Judge 1st Class, Arki, for permanent prohibitory injunction with the allegations that he was a permanent resident of village Sehal in Pargana Sandhurt, Tehsil Arki, District Solan. He owned Truck No. HP-12-2009, HP-11-2209 and HP-11 -4009. It was the case of the plaintiff that these trucks were deployed for lifting clinker from the factory of Gujarat Ambuja Cement Ltd., at Darlaghat (GACL, for short) sine April, 1997. The defendants-Sloan District Truck Operators Co-operative Society Ltd., Darlaghat and Arki Tehsil Truck Operators Union, Darlaghat, used to provide clinker for transportation, on turn basis, to the plaintiff. The plaintiff had regularly been lifting the clinker on his turn, at par with the other truck owners of the residents of Tehsil Arki. The plaintiff was en-rolled as Member with the defendant-respondent No. 2-Society on payment of necessary fees. It was his

further case that the defendants stopped providing him clinker for carriage in his trucks on the ground that he was not the resident of Tehsil Arki. It was with these allegations that the plaintiff sought a permanent prohibitory Injunction against the defendants from withdrawing the vehicles of the plaintiff or from stopping the plaintiff from lifting the clinker from the GACL Darlaghat.

3. Along with this suit, an application was moved by the plaintiff under Order 39, Rules 1 and 2, C.P.C. praying for interim relief restraining the defendants from withdrawing the vehicle of the plaintiff from the "floor of the cement factory." The defendants opposed this application. It was the case of the defendants before the trial Court that application was filed without any cause of action and to cover up his lapses as certain requirements to be fulfilled under the bye-laws of the Society were not fulfilled by the plaintiff. It was the case of the defendants that the documents furnished by the plaintiff were forged/manipulated. It was alleged that the plaintiff misrepresented the facts when he obtained the membership of the Society. After scrutiny, his membership was found to be "under cloud" and the suit has been filed to pressurize the defendants. Another objection taken was that the suit was not maintainable as requisite notice u/s 76 of the Himachal Pradesh Co-operative Societies Act, 1969 was not served on the Society. It was also the case of the defendants that the dispute between the parties was regarding the membership of the Society, which could only be agitated before the Forum constituted under the "Co-operative Societies Act" of Himachal Pradesh ("Act" for short) and not by way of civil suit. In the circumstances, the jurisdiction of the Court to hear the suit was disputed. The defendants pleaded that the plaintiff was a resident of Nalagarh and there was a separate Union at that place. It was that Union, which could sponsor the plaintiff, provided there was any surplus work, which could be allotted to the plaintiff in their Society. The defendants alleged that plaintiff had neither a prima facie case nor the balance of convenience in his favour and was not entitled to any interim relief.

4-5. Learned trial Judge, after going through the documents on record, pleadings and other material took a view that the suit was prima facie barred u/s 76 of the Act and, therefore, it cannot be said that the plaintiff had prima facie case in his favour. The application was accordingly dismissed.

6. Dissatisfied, the plaintiff filed an appeal before the learned District Judge, Solan which came to be decided on November 3, 2000. Learned District Judge took a view that notice u/s 76 of the Co-operative Societies Act was not required to be served upon the defendants as the subject-matter of dispute did not fall within the ambit of Section 76 of the Act. Learned District Judge further held that defendants formulated the bye-laws of the Society in January, 1995 and when plaintiff enrolled as member, he fulfilled the necessary qualifications being resident of District Solan and there was no requirement of a member being resident of Tehsil Arki only for being member of defendant No. 2-Society. Learned District Judge also observed that since April, 1997, the plaintiff had been operating his trucks to carry the clinker from GACL, Darlaghat after becoming the

member. He also observed that copies of the registration certificates of two trucks HP-12-2209 and HP-11-4009 were part of the record of the trial Court and, therefore, the plaintiff was entitled to carry the clinker from the GACL, Darlaghat. Learned District Judge allowing the appeal directed :

"The result, therefore, is that the appeal succeeds and the order impugned is set aside and quashed. The defendants are temporarily restrained from terminating the membership of the plaintiff and further from placing any obstruction or inhibition in lifting and transporting the clinker from the AGGL Complex, Darlaghat either themselves or through their agents, representatives, assignees or servants till the final disposal of the suit by the learned trial Judge."

7. Aggrieved, defendants carried a revision-petition before this Court (C.R. No. 200 of 2001). This petition was withdrawn by the defendants and dismissed as such on March 15, 2001 with the direction that the trial Court shall make endeavour to dispose of the suit.

8. Plaintiff moved an application, out of which the present proceedings arise, under Order 39, Rule 2-A read with Section 151 of the CPC before the learned District Judge on 22-11 -2000 for punishing the defendants and one Suman Gupta, who was neither party to the suit nor before the learned District Judge when interim relief was granted to the plaintiffs, for wilfully disobeying and violating the orders passed by the learned District Judge on November 3, 2000.

9. According to the applicant/plaintiff-Mr. Bhardwaj, he was owner of Truck Nos. HP-12-2209, HP-11-2209 and HP-11-4009. He deployed these vehicles for lifting the clinker from GACL at Darlaghat being member of the defendant-Society, However, the defendants and Shri Suman Gupta, in spite of the Orders of learned District Judge dated November 3, 2000, were not permitting the plaintiff to lift and transport the clinker from GACL, Darlaghat. It was the specific case of the plaintiff that he was owner of three trucks, namely, HP-12-2209, HP-11-2209 and HP-11-4009, which were registered with the defendants-Truck Union. The appellants herein and pro forma respondent-Suman Gupta controverted the allegations. It was pleaded that no obstruction was ever caused by them in the way of the plaintiff lifting and transporting the clinker from the GACL, Darlaghat. It was the case of the defendants that plaintiff tried to lift the clinker and transported in a vehicle of which he was not the owner.

10. During the course of arguments before the learned District Judge, it was contended that the defendants have not disobeyed the orders as maintained by the plaintiff. Learned District Judge took a view that even if there was some inadvertent error with regard to registration numbers of the Trucks and total number of Trucks owned by the applicant-respondents cannot alter the situation as the pleadings in the suit have to be read and considered while complying with the orders of the Court. Learned District Judge held that the operative part of the order did not refer to any particular registration number(s) of the Trucks but nevertheless, the order related to the plying or operation of the trucks the

identity of which was given in the plaint and, therefore, the order related to the three trucks which were detailed in the civil suit. Learned District Judge also held that the appellants herein were not entitled to take shelter that registration numbers of the trucks and total number thereof have been detailed differently in the body of the order due to a typographical or clerical error and, therefore, defendants were not entitled to take such a defence.

11. Learned District Judge proceeded to allow the application and directed the attachment of movable and Immovable property of respondent-Sushil Mittal valuing rupees one lakh each and detention of the respondent Nos. 1 and 2 in civil prison for a term of two months until the respondents comply and obey the order in question.

12. Aggrieved, the defendants are in appeal.

13. The plaintiff also filed an appeal (FAO No. 426 of 2001) praying that the defendants be detained in civil prison for three months in the interest of justice.

14. We have heard Mr. R. P. Singh learned counsel for the appellants and Mr. Ramakant Sharma, learned counsel for respondent No. 1. We were also taken through the record.

15. It is settled position that before a party can be punished for disobeying order under Rule 2-A of Order 39, it must be established by the other party that the order which is alleged to have been disobeyed was clear, unambiguous and the party was not under a bona fide apprehension as to the scope of such an order. It is equally true that when the injunction is in force, irrespective of the legality of the orders, the party is bound to obey the orders of the Court. In case of disobedience; such a party is liable to be proceeded under Order 39, Rule 2A(1) of the Code. The Jurisdiction of the Court to punish a contumacious party is to vindicate the majesty of rule of law. It is not intended to benefit the parties. It is equally settled that in a suit for permanent injunction to restrain the defendant and their servants etc. from doing certain activity, the persons who are not party to the lis, cannot be held responsible in case of disobedience of the orders.

16. Under the directions given by the learned District Judge, as extracted above, the defendants were restrained from :

a) terminating the membership of the plaintiff;

b) placing any obstruction or inhibition in lifting and transporting the clinker from the GACL Complex, Darlaghat either themselves or through their agents, representatives, assignees or servants till the final disposal of the suit by the trial Court.

17. It is not the case of even the plaintiff that the defendants terminated the membership of the plaintiff.

18. So far the question of causing obstruction in lifting and transporting the clinker from the GACL Complex is concerned, the case of the, plaintiff is that

copy of the order was served on the defendants on November 6, 2000. The plaintiff met Sushil Kumar Mittal on November 5, 2000 but he was asked to come the next day. On November 6 and 7, 2000, the vehicles of the plaintiff were not allowed to lift the clinker from the premises. It was on November 8, 2000 that three receipts were given to him by the Solan District Truck Operators Cooperative Society in respect of vehicle No. HP-12-2209, HP-11 -2209 and HP-11-4009. Out of these three vehicles, vehicle HP-11-2009 was not owned by the plaintiff and in respect of vehicle HP-11-4009, though receipt was issued, but no token number was issued and thus, the applicant was not permitted to lift the clinker in regard to these two vehicles. Only third vehicle HP-12-2209 was permitted to lift the clinker from the GACL.

19. Para 3 of the application of the petitioner may be extracted thus :

"3. It is submitted on behalf of the applicant that it is only on 8th November, 2000 on which date, three receipts were issued by the Solan District Truck Operators Transport Co-operative Society Ltd., with respect to vehicle Nos. HP-12-2209, HP-11-2009 and HP-11 -4009. It is pertinent to point out that out of these three vehicles, vehicle No. HP 11-2209 is not owned by the applicant and so far vehicle No. HP 11-4009 is concerned, qua that though receipt was issued but no token number was issued meaning thereby that the applicant was not permitted to lift the clinker qua this vehicle. So far third receipt is concerned, i.e. with respect to vehicle No. HP 12-2209 is the only vehicle, which has been allowed to lift the clinker from the floor of GACL Copies of the two receipts with respect to vehicles No. HP 11-2009 (not owned by the applicant) as well as copy of receipt of vehicle No. HP 11T4009 with the endorsement that "no token number" is also annexed with this application as Annexure-A1 collectively."

20. It is the further case of the plaintiff that the defendants were aware that the plaintiff was having three vehicles in his name for which the details were given in the civil suit as well as in the grounds of appeal. The contention of the plaintiff is that the very fact that token were not issued in respect of the two vehicles by the defendants would show that obstruction was caused by the defendants in the lifting of clinker by the plaintiff and thereby violated the orders of restraint passed by the learned District Judge.

21. In the reply filed on behalf of the defendants, it was denied that the defendants caused any obstruction in the lifting of the clinker by the plaintiff. It is also denied that Solan District Truck Operators Transport Society Ltd., Issued three receipts in respect of vehicle Nos. HP 12-2209, HP 11-2209 and HP 11-4009. It is maintained that the defendants at no point of time, obstructed the applicant/plaintiff from lifting and transporting the clinker from GACL Complex. It is also denied that in respect of vehicle HP 11-4009, though receipt was Issued but token was not given. According to the defendants, no order was passed by the learned District Judge in respect of vehicle HP 11-2209. It is the further case of the defendants that token was to be issued by the GACL and not by the defendants.

22. It is the case of the defendants that the applicant did not approach the Court with clean hands. According to the defendants, the order passed by learned District Judge on 3-11-2000 clearly reflects that plaintiff was owner of two trucks bearing registration No. HP 12-2209 and HP 11-4009 which fact can be seen from para 3 of the order.

23. It is noticed that in the directions issued by the learned District Judge in operative part of the order, there is no mention of any of the trucks in which the plaintiff was to carry the clinker from GACL Complex, Darlaghat. What was directed was that the defendants would not cause any obstruction in the lifting of the clinker from the GACL Complex. It is not even the case of the plaintiff that the plaintiff was physically or otherwise obstructed from carrying the clinker.

24. Learned District Judge in his order dated November 3, 2000 noticed in para 3 that the plaintiff was owner of two trucks HP 12-2209 and HP 11-4009 and had deployed these trucks with defendant No. 2 for lifting the clinker from GACL Complex since April, 1997. Learned District Judge in his impugned order observed that the order passed by him has to be read along with the pleadings, proof and other data on record in the suit itself and the operative part of the order, though does not refer to particular registration number of the trucks, however, identity of these three trucks was to be found in the suit laid by the plaintiff and therefore, it was not open for the defendants to say that as registration numbers of the trucks were not given and, therefore, not bound to comply with the orders.

25. In our view, the reasoning given by the learned District Judge is fallacious and cannot be accepted. When an order is passed by the Court, it is not open to a party to go behind the order, by looking into the pleadings together the intention of the Court or mind of the Presiding Officer, to comply with the orders of the Court, particularly when any non-compliance entail punitive consequences. We draw support for the view we have taken from *Jayalakshmi Coelho Vs. Oswald Joseph Coelho*, In *Jayalakshmi* their Lordships observed that the maxim *actus curiae neminem gravabit*, i.e., an act of the Court shall prejudice no man and cannot be stretched beyond an unintentional mistake of the Court, i.e. arithmetical mistake in calculations, a clerical mistake in writing or typing or accidental slip or omission due to calculations on the part of the Court. Nevertheless, in the guise of a mistake on the part of the Court, the order or the Judgment cannot be read to mean what it does not contain even under the inherent powers of the Court u/s 152 of the Code. On second thought, the Court, observed learned Judges "may find that it may have committed a mistake in passing an order in certain terms but every such mistake does not permit its rectification in exercise of the Court's inherent powers as contained u/s 152, C.P.C. It is to be confined to something initially intended but left out or added against such intention,"

26. In *The State of Bihar Vs. Rani Sonabati Kumari*, the Supreme Court construing the provisions of Order 39, Rule 2(3) as it then stood, held that a

party to proceedings under Order 39, Rule 2(3) of the CPC cannot be said to have willfully disobeyed the order if :

(a) such an order was ambiguous and reasonably capable of more than one interpretation;

(b) the party being proceeded against in fact did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order.

27. Now in the present, case, as noticed earlier, the District Judge in his order of November 3, 2000 referred to two trucks HP 12-2209 and HP 11-4009 in para 3 of his order. In para 11 again, he refers to these two trucks saying that these two trucks HP 12-2009 and HP 11-4009 were "obtained by the plaintiff by spending considerable amount." Nowhere learned District Judge made reference to any third truck. Now so far truck No. HP 12-2009 is concerned, it is admitted by the plaintiff, in his application before the learned District Judge, that this vehicle was permitted to lift the clinker from GACL. The plaintiff pleaded :

"so far third receipt is concerned, that is with respect to vehicle HP 12-2209 is the only vehicle which has been allowed to lift the clinker from the floor of GACL."

28. So far the vehicle No. HP 11 -4009 is concerned, it is the case of the plaintiff that though receipt was issued to him but token was not given and, therefore, he was obstructed from lifting the clinker. According to the defendants, the token is issued by the GACL and not by the Union or the Society. An affidavit was filed by Jai Dev Kaundal, Secretary of the Society saying that in compliance of the orders of the learned District Judge, he issued the receipts in respect of vehicles HP 12-2209, HP 11-4009 and HP 11-2009. Similarly, an affidavit has been filed by Suman Gupta who, at the relevant time was Adda in-charge of the Solan District Truck Operators Co-operative Society, saying that in compliance to the orders of the Court, three trucks HP 12-2209, HP 11-2209 and HP 11-4009 were ordered to be deployed for lifting the clinker and accordingly, receipts were issued by the Society in favour of the plaintiff. He further stated that so far truck HP 11-4409 is concerned, It was only purchased on 4-8-2000 and did not undertake any trip for lifting the clinker from GACL, Darlaghat and, therefore, no token number was allowed to this vehicle. It is also stated by him that truck No. HP 11-2209 did not come to lift the clinker after August 5, 2000 when the last trip was undertaken. It is pleaded that the plaintiff had suppressed all these facts in his application.

29. There is nothing on the record, which may show that it was the duty of any of the defendants to issue token to the plaintiff to enable him to lift the clinker. Otherwise also, the record shows that the plaintiff himself was guilty in suppressing material facts. It was the case of the plaintiff that he was plying all these trucks since 1997. Copy of the registration book (Annexure-R3) shows that truck HP 11-4009 was purchased and registered only on August 4, 2000. Obvious as it is, it could not have been plied prior to that for lifting the clinker. Similarly, the copy of the registration certificate Annexure-R4 shows that this truck HP 12-2009 was purchased in 1997. There is nothing on the record to show that

truck HP 11-2009 is owned by the plaintiff. In fact, the plaintiff himself has admitted this fact in his petition under Rule 2-A of Order 39 wherein he clearly stated that truck HP 11-2209 is not owned by him. The relevant para 3 of the application reads ;

"..... .It is pertinent to point out that out of these three vehicles, vehicle No. HP 11-2009 is not owned by the applicant. . . ."

30. Learned District Judge clearly erred in holding that the defendants were guilty of disobeying his order dated November 3, 2000.

31. It is well settled that it is only wilful disobedience of the orders of the Court passed under Order 39, Rules 1 and 2 of the CPC which invites punitive action depriving a person of his personal liberty and property. The expression "wilful" means a deliberate or voluntary or Intentional Act. Unintentional disobedience is not enough to justify an action against the defaulter under Rule 3 of Order 39.

32. It may be recorded that an application (C.M.R No. 848 of 2001) was filed by the defendants for permission to place on record the affidavit of Sushil Mittal, one of the defendants and certain other documents. This application is allowed and shall form part of the record. The documents have been read in appeal. The application is accordingly disposed of.

33. For the reasons recorded above, we find that the impugned order of learned District Judge is not sustainable in law and has to be set aside.

34. In result, the appeal is allowed. The orders of learned District Judge dated October 12, 2001 are set aside. The attachment of the property, if any, shall stand vacated. In view of the fact that impugned order stand set aside, the Appeal No. 426 of 2001 does not survive and is dismissed. Any observations made hereinabove shall not be construed to be any reflection on the merits of the case, which, needless to say, shall be decided on its own merits. There will be no order as to costs.