

(1994) 03 SC CK 0079

In the Supreme Court Of India

Case No : Civil Appeal No. 2193 Of 1994

Syed Abdul Razack

APPELLANT

Vs

Matadin Agarwal

RESPONDENT

Date of Decision : 28-03-1994

Acts Referred:

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

Citation : (1994) 4 SCC 724

Hon'ble Judges : S. P. Bharucha, J; M. M. Punchhi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. This appeal is directed against the order of a division bench of the High court of A. P. passed in LPA No. 193 of 1993 upsetting the orders of a learned Single Judge, passed in breach of injunction proceedings.

3. The appellant herein was enjoined by the court for alienating certain properties. According to the appellant before he was served with the injunction he had disposed of those properties. The price fetched was Rs. 75,000.00. The breach of the injunction was reported to the High court. The learned Single Judge took the view that the appellant had evaded service of the injunction and had indulged in a hide and seek game and, therefore, deserved to be dealt with severely. The appellant was thus ordered to be detained in civil prison for three months. The appellant then showed cause to the learned Single Judge against the action ordered. He pleaded that he was not aware of the issuance of injunction and that the "refusal" recorded by the postman on the registered covered letter sent to him was wrong. The learned Single Judge impressed by the version of the appellant recalled the order of detention and ordered instead attachment of the sum of Rs. 75,000.00, the price which the sold property had fetched, lying with the Vijaya Bank, Secunderabad. Reflected inherently in the

said order was recall of the order of detention since the court effected the said attachment and directed the release of the appellant. This view of the learned Single Judge was upset by the division bench of the High court in Letters Patent Appeal taking the view that it was not open to the learned Single Judge under the guise of a review to modify the sentence and order the appellant's release by exonerating him from his liability for flouting the injunction.

4. We do not agree with the reasoning of the division bench of the High Court. Sub-rule (1 of Rule 2-A of Order 39 of Civil Procedure Code reads as follows:

"(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, of 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."

5. The orders which the court could pass under the aforequoted provision includes an order of recall since it can suspend the detention of the defaulter and direct his release. On what terms would the court take such a step would depend on the facts and circumstances of each case. Nonetheless it cannot ever be said that the court had no power to pass related subsequent orders after ordering detention in civil prison of a defaulter. Its subsequent powers, which are part and parcel of the original powers, cannot be termed as review powers as has been viewed by the division bench of the High court. The order of the learned Single Judge thus squarely fell within sub-rule (1) of Rule 2-A of Order 39 of Civil Procedure Code; this being neither a case under the Contempt of courts Act, 1971 nor a criminal or quasi-criminal action. This distinction needed to be kept in mind when dealing with a matter under sub-rule (1) of Rule 2-A of Order 39 of Civil Procedure Code.

6. We are, therefore, of the view that the division bench was in error in upsetting the orders of the learned Single Judge. Accordingly, we allow the appeal, set aside the impugned order of the division bench of the High Court and restore that of the learned Single Judge. There will be no order as to costs.