

(2006) 03 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Contempt Petition No. 2940 of 2005

Thakurji Maharaj Trust through its Sarvarkar Sri Viswanath
Bajpai

APPELLANT

Vs

Nathu Ram

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (2006) 03 AHC CK 0117

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—The present Contempt petition, under Section 12 of the Contempt of Courts Act, 1971, has been filed by the petitionerapplicant, inter alia, praying for punishing the opposite party for allegedly having committed contempt of this Court by disobeying the order dated 1622005 passed in Civil Misc. Writ Petition No. 8014 of 1999.

2. Copy of the said order dated 1622005 passed in the aforementioned Writ Petition, has been filed as Annexure 1 to the affidavit accompanying the Contempt Petition.

3. It appears that the landlord filed S.C.C. Suit No. 909 of 1982 for eviction of Nathu Ram (opposite party herein) from the premises in question.

4. By the judgment and order dated 30101984, the said Suit was decreed.

5. Thereupon, the said Nathu Ram (opposite party herein) filed S.C.C. Revision No. 267 of 1984.

6. By the judgment and order dated 2111999, the said Revision was dismissed.

7. Thereafter, the said Nathu Ram (opposite party herein) filed the aforementioned Writ Petition.

8. By the order dated 1622005, the aforementioned Writ petition was dismissed.

9. Relevant portion of the said order dated 1622005 is as follows:

?For the aforesaid reasons, I hold that this petition lacks merit and there is no ground to interfere with the judgment under challenge in this petition.

The petition fails and is hereby dismissed. There shall be no order as to costs.

However, with the consent of learned Counsel for respondent No. 3, the petitioner is allowed three month's time from today to deliver vacant possession to the plaintifflandlord provided he furnishes an undertaking through an affidavit in the Court of J.S.C.C., Kanpur Nagar within ten days. In case, the tenant fails to vacate the disputed accommodation within the aforesaid period, the plaintifflandlord shall be entitled to evict him and execute the decree in accordance with law.?

10. From a perusal of the relevant portion of the said order dated 1622005, quoted above, it is evident that by the said order dated1622005, the Court dismissed the aforementioned Writ Petition filed by the said Nathu Ram (opposite party herein). However, the Court allowed three month's time to the said Nathu Ram (opposite party herein) for delivering vacant possession of the premises in question to the landlord provided the said Nathu Ram (opposite party herein) ? furnishes an undertaking through an affidavit in the Court of J.S.C.C., Kanpur Nagar within ten days.?

11. It is, thus, evident that the said period of three months for delivering vacant possession of the premises in question to the landlord was allowed to the said Nathu Ram (opposite party herein) on the Condition that the said Nathu Ram (opposite party herein) would furnish an undertaking through an affidavit in the Court of Judge, Small Causes, Kanpur Nagar within ten days of the said order dated 1622005.

12. Hence, it follows that in case, the requisite undertaking was not given by the said Nathu Ram (opposite party herein) within the said period of ten days from the date of the said order dated 1622005, the said Nathu Ram (opposite party herein) was not entitled to avail the benefit of the said period of three months for delivering the vacant possession of the premises in question to the landlord, and as such, it was open to the landlord to execute the decree passed in the Suit after the expiry of the said period of ten days from the date of the said order dated 16 22005.

13. Evidently, therefore, it was open to the said Nathu Ram (opposite party herein) to give requisite undertaking within the said period of ten days from the date of the said order dated 1622005 or not to give any such undertaking. In the latter case, the said Nathu Ram (apposite party herein) would be givingup the benefit of the period of three months granted by this Court in the said order dated 1622005 for delivering vacant possession of the premises in question to the landlord.

14. However, in case, the said Nathu Ram (opposite party herein) did not give any undertaking, as mentioned in the said order dated 1622005, the said act on the part of the said Nathu Ram (opposite party herein) cannot be construed as disobedience of the said order dated 1622005 making him liable for contempt of this Court.

15. The only consequence of not giving the undertaking, as mentioned in the said order dated 1622005, was that the said Nathu Ram (opposite party herein) disentitled himself of the benefit of the period of three months for delivering vacant possession of the premises in question to the landlord.

16. In paragraph 8 of the affidavit accompanying the Contempt Petition, it is, inter alia, stated that the said Nathu Ram (opposite party herein) ?did not move any undertaking, application or affidavit before the Court of J.S.C.C., Kanpur Nagar within ten days or till today and did not deliver vacant possession to the petitionerapplicant?.

17. From the averments made in the said paragraph 8 of the affidavit accompanying the Contempt Petition, it follows that the said Nathu Ram (opposite party herein) did not give any undertaking, as mentioned in the said order dated 1622005 passed by this Court in the aforementioned Writ Petition.

18. Evidently, therefore, it became open to the landlord (i.e., petitionerapplicant herein) to execute the decree passed in the Suit after the expiry of the period of ten days from the date of the said order dated 1622005.

19. In my opinion, no contempt can be said to have been committed by the said Nathu Ram (opposite party herein) by not giving undertaking, as mentioned in the said order dated 1622005.

20. It is relevant to note that the petitionerapplicant has relied upon an order dated 2782004 passed by this Court in Civil Misc. Writ Petition No. 10151 of 2003, Shri Hemant Agrawal v. District Judge Kanpur Nagar & Ors., decided on 2982003, Copy of the said order dated 2782004 has been filed as Annexure4 to the affidavit accompanying the Contempt Petition.

21. In the said case, a learned Single Judge of this Court while dismissing the Writ Petition, filed by the tenant, by the order dated 2982003 granted eight months" time to the tenant for vacating the accommodation provided the tenant would give an undertaking before the Judge, Small Cause Court within one month from the date of the order of this Court.

22. Pursuant to the said order dated 2932003, the tenant filed an undertaking before the Judge, Small Cause Court on 2792003.

23. As the terms of the undertaking were not complied with by the tenant, this Court by the said order dated 2782004 gave various directions for getting the accommodation vacated by the tenant.

24. The facts of the said case are, therefore, clearly distinguishable from those of

the present case. In the present case, as noted above, no undertaking was given by the said Nathu Ram (opposite party herein).

25. Therefore, the said order dated 2782004, relied upon on behalf of the petitionerapplicant, is not applicable to the present case.

26. Let us now consider another aspect mentioned in the Contempt Petition.

27. In paragraph 6 of the affidavit accompanying the Contempt Petition, it is stated that the petitionerapplicant filed Execution Case No. 23 of 1999 in regard to the said S.C.C. Suit No. 909 of 1982; and that the petitionerapplicant revived the said Execution Case; and that the said Nathu Ram (opposite party herein) filed an application dated 1542005 alongwith an affidavit under Section 47 read with Section 151 of the Code of Civil Procedure, and prayed for staying the proceedings in the Execution Case till the disposal of the said application.

28. Without going into the merits of the said application, filed by the said Nathu Ram (opposite party herein) under Section 47 read with Section 151 of the Code of Civil Procedure, I am of the opinion that the said act on the part of the said Nathu Ram (opposite party herein) cannot be construed as disobeying the said order dated 1622005 passed by this Court in the aforementioned Writ Petition. The said Nathu Ram (opposite party herein) was merely exercising his statutory right of filing application/objections under Section 47 read with Section 151 of the Code of Civil Procedure. The said exercise of statutory right by the Nathu Ram (opposite party herein) cannot be construed as disobedience of the said order dated 1622005 passed by this Court in the aforementioned Writ Petition making him liable for contempt of this Court.

29. In view of the aforesaid discussion, I am of the opinion that the Contempt Petition lacks merit, and the same is liable to be dismissed.

30. The Contempt Petition is accordingly dismissed.