
(2007) 11 KAR CK 0010
In the Karnataka High Court
Case No : Criminal C.C.C No. 2 of 2004

The Bangalore Development Authority	APPELLANT
Vs	
Gururaj and B.V. Ram Murthy, Advocate	RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11A, Order 7 Rule 13
Contempt of Courts Act, 1971 — Section 15 (1) (b)

Citation : (2007) ILR (Kar) 5184 : (2008) 1 KarLJ 684

Hon'ble Judges : V. Gopala Gowda, J; L. Narayanaswamy, J

Bench : Division Bench

Advocate : C.B. Srinivasan for Krishna, for the Appellant; V. Lakshminarayana, for G. Manivannan, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—This Criminal Contempt Petition is filed by the Bangalore Development Authority against the accused for initiating contempt proceedings and to punish him for abuse of process of the Court, which amounts to criminal contempt.

2. The brief facts leading for filing of this criminal contempt petition are, one M.S. Prithviraj, the father of the accused, filed suit in O.S. No. 6463/2000 on the file of XVI Additional City Civil Judge, Bangalore seeking a declaration that he perfected title by adverse possession and for injunction in respect of the property bearing Corporation Nos. 619 and 620 situated in 8th Block, Koramangala, Bangalore. The BDA filed I.A.IX under Order 7 Rule 11(a) CPC for rejection of plaint. By order dated 18/9/2003 the Court allowed the application and rejected the plaint for want of cause of action as the property in question was acquired by the BDA. By that time, the accused's father Prithviraj was dead. Against the rejection of the plaint, R.F.A. 1139/2003 was filed before this Court. By judgment dated 17/2/2004 the appeal was dismissed with certain observations. By that time, on 23/10/2003 the accused filed another suit in O.S. No. 7650/2003

seeking same relief. This made the BDA to file the present petition.

In the contempt petition it is averred that the repeated proceedings initiated by the accused against the complainant in respect of the property in question interferes and obstructs the administration of justice and the judicial proceedings. Therefore, it is an act of abuse of process of the Court of the accused persons and amounts to "criminal contempt" as defined u/s 2(c) Clause-(iii) of the Contempt of Court's Act of 1971 (hereinafter called as the "Act" in short). The consent of learned Advocate General is obtained by the complainant on 29/12/2003 as required u/s 15(1) (b) of the Act.

3. The Advocate who had filed the aforementioned two suits was impleaded as second accused. Subsequently, he was given-up and his name has been deleted from the array of second accused in the cause title of the complaint petition pursuant to order dated 6/7/2007. The accused filed objections denying the allegations and averments made against him. He contended that the institution of suits both by his deceased father and himself do not amount to contempt and prayed to dismiss the petition, as there is no merit in the allegations made against him.

4. Mr. C.B. Srinivasan, learned Counsel appearing for the BDA relied upon the Division Bench decision of this Court reported in Vijaya Bank Employees Housing Co-operative Society Ltd. Vs. Muneerappa, wherein at paragraph 5 it is held as under:

5. In order to appreciate the respective contentions, we must find out whether there is an abuse of process of Court. Such an abuse undoubtedly would constitute contempt of Court as held by the Supreme Court in (1980) 3 S.C.C page 311. While examining the scope of criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, their Lordships pointed out as follows:

Abuse of the process of the Court calculated to hamper the due courses of a judicial proceeding or the orderly administration of justice is a Contempt of Court.

Their Lordships further pointed out as follows:

In considering whether the action of the accused amounted to Contempt of Court, the Court must take into account the whole course of the continuing contumacious conduct of the accused from the very beginning.

Their Lordships also pointed out:

Application after application was thereafter filed before the same single Judge, everyone of them being designed to circumvent, defeat or nullify the effect of the orders of the Division Benches of that High Court as well as the High Court having the jurisdiction of the case. Every application was a daring "raid" on the Court and each was an abuse of the process of the Court, calculated to obstruct the due course of a judicial proceedings and the administration of justice which amounted to criminal contempt of Court.

The learned Counsel has contended that the allegations made in the contempt petition against the accused falls within the definition of "Criminal Contempt" u/s 2(c)(iii) of the Act and therefore requested this Court to frame charge against the accused and proceed against him.

5. Per contra, Mr. V. Lakshminarayana, learned Counsel appearing on behalf of the counsel for the accused submitted that there is a statutory right provided to him under Order-7 Rule-13 of C.P.C to institute fresh suit upon rejection of the suit for want of cause of action. Therefore, the institution of second suit with proper cause of action does not amount to criminal contempt. He relied upon the decision of the Apex Court reported in Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others, In paragraphs 13, 14 and 15 it is held as under:

13. Before proceeding with the matter further, certain basic statutory features ought to be noticed at this juncture. The Contempt of Courts Act, 1971 has been introduced in the Statute Book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country -undoubtedly a powerful weapon in the hands of the law Courts but by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law Courts to exercise jurisdiction under the Statute. The observation as above finds support from a decision of this Court in Chhotu Ram Vs. Urvashi Gulati and Another, , wherein one of us (Banerjee. J.) stated as below:

As regards the burden and standard of proof, the common legal phraseology" he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the "standard of proof", be it noted that a proceeding under the extraordinary jurisdiction of the Court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt.

14. Similar is the situation in Mrityunjoy Das and Another Vs. Sayed Hasibur Rahaman and Others, and as such we need not dilate thereon further as to the burden and standard of proof vis-a-vis the Contempt of Courts Act - Suffice it to record that powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide.

15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a "civil contempt" within the meaning of Section 2(b) of the Act of 1971 - the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly,

in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation - the act or acts cannot be ascribed to otherwise contumacious in nature. A doubt in the matter as regards the willful nature of the conduct if raised question of success in a contempt petition would not arise.

The learned Counsel contended that in order to initiate contempt proceedings there must be contumacious act on the part of the accused and the same must be deliberate and intentional; that there must be "Mens rea" to cause harm to the opposite side; that the allegations in the petition should be that the suit instituted was vexatious, suppression of material facts and misleading the Court to obtain a favourable order that amounts to interference in the administration of justice which constitute criminal contempt. He further submitted that the acts of the accused must be established beyond reasonable doubt. The learned Counsel has placed reliance upon Halsbury's Laws of England, Fourth Edition, Vol-9 page 27, wherein it is mentioned as under:

38. Abuse of process in general. The court has power to punish as contempt any misuse of the court's process. Thus the forging or altering of court documents and other deceits of like kind are punishable as serious contempts. Similarly, deceiving the court or the court's officers by deliberately suppressing a fact, or giving false facts, may be a punishable contempt.

Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, or oppressive. In such cases the court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting the taking of further proceedings without leave. Where the court, by exercising its statutory powers, its powers under rules of court, or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as a contempt of court. On the other hand, where an irregularity or misuse of process amounts to an offence against justice, extending its influence beyond the parties to the action, it may be punished as a contempt.

Learned Counsel Mr. V. Lakshminarayana further submitted that if the pleadings in the suit instituted by his deceased father and him were frivolous or vexatious, the same would amount to contempt. But, the Court can strike down those pleadings in exercise of its inherent power. That is not the position in this case. The trial Court while rejecting the first suit held that there is no cause of action for the accused in instituting that suit. That gave right to the accused under Order VI Rule 13 CPC to file another suit by pleading the cause of action. That is precisely done in the suit instituted subsequently for the second time. But, the said suit was withdrawn by the accused. Therefore, the learned Counsel submitted that there is neither willful disobedience of any order nor any intention to harass the BDA. The learned Counsel also placed reliance upon the decisions of the Supreme Court reported in Advocate-general, State of Bihar Vs. Madhya

Pradesh Khair Industries and Another, ; Dhananjay Sharma Vs. State of Haryana and Others, in support of the contention that mere abuse of Court does not warrant initiation of criminal contempt proceedings against the contemnors. In the light of the above Supreme Court rulings, the rejection of first suit: for want of cause of action, the judgment passed in RFA 1139/2003 by this Court and the withdrawal of the subsequent suit, it is not a fit case to proceed further against the accused to frame charge and conduct trial against the accused. He has also pointed-out that this Court while dismissing the RFA has observed that the BDA should consider grant of alternative site to the accused and submitted that at no stretch of imagination the accused can be said to have committed criminal contempt as alleged in this petition. Therefore, the learned Counsel requested this Court to dismiss the contempt petition.

6. With reference to the above rival legal submissions urged by the learned Counsel for the parties, we now proceed to examine, whether it is a fit case to frame charge, conduct trial and punish the accused. For that purpose, it is to be seen as to what constitutes "criminal contempt" and the definition of it u/s 2(c) reads thus:

2(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which:

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

As per the definition of criminal contempt, in order to take action for criminal contempt against the accused, any one of the actions mentioned in Clauses (i) to (iii) of Section 2(c) of the Act extracted above should have been done or committed by the accused. According to the Contempt petition, the allegations have to be brought under Clause (iii), namely, obstruction in the administration of justice. Keeping this in view, we proceed to examine the matter.

7. The first suit in O.S. No. 6463/2000 was filed by the father of the accused. The same was rejected by the Civil Court under Order VII Rule 11 (a) CPC by allowing I.A.IX for want of cause of action. The said order was the subject matter in R.F.A No. 1139/2003. The said appeal was dismissed with an observation to the B.D.A to allot alternative site to the accused on payment basis. The first appeal was filed against the order of rejection of the plaint by invoking the right by the accused u/s 96 CPC. Therefore, filing of the appeal against the order of rejection of plaint cannot be termed as interference in the administration of justice or obstruction of the same.

8. Now, coming to filing of second suit. It was not filed by the same person who filed the first suit. After the death of his father, the accused filed this suit. Whether filing of second suit will constitute criminal contempt has to be examined. For that purpose, it is necessary to extract Order VII Rule 11 and Rule (13) CPC they read as under:

Rule-11: Rejection of plaint: The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(Rule-13): Where rejection of plaint does not preclude presentation of fresh plaint:

The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

(Emphasis supplied)

Rule 13 of Order VII CPC extracted above clearly permits the accused for filing fresh suit on the same cause of action, when the plaint is rejected on any of the grounds enumerated under Rule 11 of Order VII CPC. Since the accused availed the statutory remedy in accordance with law and filed the second suit, the same cannot be termed as obstruction or interference in the administration of justice. The action taken by the accused as permitted in law by instituting another suit by pleading cause of action in exercise of his statutory right for enforcement of his rights in respect of the property in question does not constitute "criminal contempt". Filing of second suit on the same cause of action is not abuse of process of the Court. More over, the second suit filed by the accused has been withdrawn. Therefore, the BDA cannot have any grievance at all What prompted the BDA to file this criminal contempt is really un-understandable. It is really an unnecessary and unwarranted litigation.

9. Anil Ratan Sarkar and Others Vs. Hiral Ghosh and Others, , which is extracted above. As per this ruling, contempt power being a powerful weapon, it must be used sparingly with utmost care and caution.

10. In the decision reported in Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, the Supreme Court, after extracting the definition of "criminal contempt" defined u/s 2(c) of the Act, at paragraph 7 has held as under:

7. xxx

While we are conscious that every abuse of the process of the Court may not necessarily amount to Contempt of Court abuse of the process of the Court calculated to hamper the due course of a Judicial proceeding or the orderly administration of justice we must say, is a Contempt of court. It may be that certain minor abuses of the process of the court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of Order 6, Rule 16 or in some other manner. But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against Obstruction and outrage". Per Frank Furter, J. in *Offutt v. U.S.* (1954) 348 US 11.

The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope". Per Judge, Curtis-Raleigh quoted in *Jennison v. Baker* (1972) 1 All ER 997 at p. 1006.

A Division Bench of this Court in the decision reported in *Vijaya Bank Employees Housing Co-operative Society Ltd. Vs. Muneerappa*, at paragraph 5, has extracted the relevant portion of the Supreme Court reported in *Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another*, which is extracted above. From the above two decisions, it is clear that abuse of process of the Court must calculate to hamper the due process of Court and the action of the accused must be contumacious from the very beginning. It must be calculated to obstruct the administration of justice. In the instant case, we do not find any such act on the part of the accused.

11. As per the commentary on Criminal Contempt of Court written by Borie and Lowe, III Edition, at page 457 the Author has written as under:

38. ABUSE OF THE COURT'S PROCESS: The term "abusing the court's process can be applied to many different types of conduct but generally the term connotes some misuse of the court's process.

The most serious example of abuse of process is conduct which is intended to deceive the court, for example, by the deliberate suppression of facts or by the presentation of falsehood, but the term also includes the bringing of frivolous or

vexatious proceedings.

Not all acts which may be termed "abuse of process" will be punished as contempt. Courts are generally reluctant to commit for contempt and will exercise the jurisdiction only in extreme cases.

Again, at page 459 it is written as under:

Acts amounting to "abuse of process" which have been punished as contempt can be classified as follows:

- (1) Acts which involve the forging or altering of the process itself.
- (2) Acts which involve falsehoods intended to deceive the court.
- (3) Acts which misuse the process thereby prejudicing other persons.

Learned Counsel Mr. V. Lakshminarayana has also rightly relied upon 17 American Jurisprudence on Consumer and Borrower Protection to Contractors" Bonds. Under the heading "Contempt" at page 374 what constitutes "criminal contempt" is stated as under:

8. Criminal contempt generally-Criminal contempt is the commission of a disrespectful act directed at the court itself which obstructs justice. A criminal contempt proceedings is maintained solely and simply to vindicate the authority of the court or to punish otherwise for conduct offensive to the public in violation of an order of the court. Thus, where the object of a contempt proceeding is to vindicate the dignity or authority of the court, it is criminal in character even though it arises from, or is ancillary to, a civil action.

At page 377 of the same book the element of criminal contempt is mentioned as under:

10. Wilfulness as distinguishing factor- Willfulness is not decisive as to whether a contempt proceeding is civil or criminal, though willfulness or intent is an essential element of a criminal contempt.

But since the purpose of civil contempt proceedings is remedial, willfulness or intent is not an essential element of a civil contempt. Where the trial court fails to specify whether it is finding a party guilty of civil or criminal contempt, and in the absence of a finding of willful disobedience, the alleged contempt will be considered civil in nature.

12. In view of what has been observed above, the decision of the Division Bench of this Court relied upon by Mr. C.B. Srinivasan for the complainant is of no assistance and the action complained of against the accused cannot be construed as an act of criminal contempt of the Court. The second suit filed by the accused is by invoking the right granted under Order VII Rule 13 CPC, which Rule is already extracted above, the enforcement of right upon the property in question by the accused cannot be termed as abuse of the process of the court.

13. The statutory right availed of by the accused in respect of the property in question is sought to be brought under criminal contempt. The pleadings disclose some grouse or vengeance against the Advocate who filed the two suits, and who has been subsequently deleted from the array of the party accused in these proceedings. We are constrained to observe that a negligible matter is sought to be made out a Mount Everest issue by the B.D.A. No adverse order is obtained in the subsequent suit against the B.D.A in respect of the property in question, but on the other hand it has been withdrawn, in this regard the learned Counsel for the accused has filed memo, the same is taken on record. The BDA is not affected in any manner whatsoever in respect of the property in question. The filing of subsequent suit does not amount to contempt, much less criminal contempt. None of the ingredients or requirements of criminal contempt are involved in this case. There is no allegation made against the accused that either himself or his deceased fattier instituted suit by pleading frivolous and vexatious facts, we have perused the allegations made against the accused on this petition to find out whether the allegations would prima-facie constitute Criminal Contempt for framing charge against the deceased. In our view the allegations made against the accused certainly do not constitute criminal contempt as alleged.

14. The BDA is litigating this case against the accused without there being any cause of action for contempt. If the claim of the BDA is accepted, it amounts to nullifying the statutory right granted to the accused under Order VII Rule 13 CPC. That cannot be done by any Court. Statutory right given under CPC to a party for filing second suit on the same cause of action is not to invite criminal contempt proceedings. The right so given cannot be whittled down on the pretext of contempt proceedings. In our view, the contempt petition is filed either on wrong advice or with some grouse or vengeance against the Advocate who filed the suits on behalf of the accused and definitely not to punish the accused. Virtually, it is a fit case to impose exemplary costs but we are not inclined to do so for the foregoing reasons, the contempt petition is frivolous and devoid of merits and liable to be dismissed.

15. Accordingly, the petition is dismissed.