

(1982) 07 BOM CK 0013

In the Bombay High Court

Case No : Contempt Petition No. 6 of 1981

White Lily Co-operative Housing Society Ltd.

APPELLANT

Vs

Mukund Balkrishna Paradkar and Others

RESPONDENT

Date of Decision : 30-07-1982

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (1982) 1 BomCR 787

Hon'ble Judges : S.J. Deshpande, J

Bench : Single Bench

Advocate : B.R. Naik and Y.R. Naik, for the Appellant; J.P. Devadhar, for the Respondent

Judgement

S.J. Deshpande, J.—The petitioners are a Co-operative Society (hereinafter referred to as the society") and the respondent Nos. 1 and 2 are allottees of the flats. There are certain disputes between the parties in the Co-operative Court. In a dispute which was filed by the society against respondent Nos. 1 and 2 being No. ABN/11670/2582 of 1978. The society claims certain amount in the sum of Rs. 1,97, 267-30 from the allottees i.e. respondent Nos. 1 and 2 for flats Nos. 27, 28 and 25. During the pendency of this dispute, the society obtained an injunction on May 7, 1979, which was made absolute after hearing the parties. By reason of this injunction respondent Nos. 1 and 2 were prevented from occupying the suit flats Nos. 27 and 28 and in respect of remaining flat No. 25 no order was sought.

2. After this dispute was filed, a second dispute being Arbitration Case No. ABN/1/1014 or 1981 came to be filed by respondent Nos. 1 and 2 against the society claiming possession of suit flats and denying the allegation that they have not paid amount as alleged in the earlier dispute by the Society. This dispute is also pending for disposal. During the pendency of this dispute the respondents Nos. 1 and 2 obtained an injunction, dated November 23, 1981 and this order of, injunction is of very peculiar type. From the order which is in the paper book it is

disclosed that the authority who had granted injunction dated November 23, 1981 was made aware of the earlier injunction also, although respondents Nos. 1 and 2 have not been fair enough to definitely state that an earlier injunction was in operation against them. The society was also made party to the dispute. This injunction was obtained by respondents Nos. 1 and 2 saying that the society was at once to give possession to them. It was mandatory injunction sought against the Society to put them in possession. This order was challenged by the Society before the Maharashtra State Co-operative Court in appeal. It appears that on 28th December, 1981 the Appellate Court rejected the appeal filed by the society being Appeal No. 637 of 1981 and refused to grant any stay. It appears that Writ Petition No. 1936 of 1981 was filed by the society on December 29, 1981 and notice was issued in that writ petition to the other side, returnable on January 5, 1982. Respondent Nos. 1 and 2 filed an affidavit and it appears that after hearing the respondents 1 and 2 on January 14, 1982 injunction was issued by this Court staying the operation of the order, dated November 23, 1981. This order was passed by the High Court on January 14, 1982.

3. Against the order, respondents filed L.P. appeal being Appeal No. 14 of 1982, which came for admission before the Division Bench and it appears that the Division Bench dismissed the same on January 20, 1982. It appears that after the dismissal of the said appeal, a consent order came to be recorded on January 22, 1982 and effect of that consent order is that the respondents right to occupy the flats was not accepted. The Court Receiver was appointed and respondent Nos. 1 and 2 were allowed to occupy the flats as agents of the Court Receiver in terms of the order, dated November 23, 1981 passed by the learned Judge, first Co-operative Court in Arbitration Case No. ABN/1/1014 of 1981. The respondent Nos. 1 and 2-appellants in that case reiterated the undertaking already filed by them in terms of the order. The effect of this order is that on January 22, 1982 respondents Nos. 1 and 2 were handed over possession of the flats as agents of the Receiver and they are in occupation today.

4. During the pendency of these proceedings, as I have stated earlier injunction against respondent Nos. 1 and 2 was in operation as far back from May 7, 1979. It appears that respondent Nos. 1 and 2 obeyed this injunction for a period for more than two years till they filed the second dispute on June 29, 1981. It is only after June 1981 when the second dispute came to be filed by the respondents, some trouble arose in regard to possession of those flats. It is in these circumstances that between the date from December 28, 1981 and till December 30, 1981, it appears that respondent Nos. 1 and 2 took forcible possession of the flats at the instance of the secretary of the Society as stated by the respondents in their statement of claim. It is in these circumstances that by change of possession, the order passed on May 7, 1979 granting injunction, came to be violated by respondent Nos. 1 and 2. Therefore, the Society filed this contempt petition on January 18, 1982 in this Court alleging that the first and second respondents are guilty of contempt having violated injunction granted by the Court on May 7, 1979 and they are liable for punishment.

5. In this petition, rule was issued by the High Court and the petition came up for hearing today. When the petition was called for hearing yesterday, on behalf of respondent Nos. 1 and 2 an apology was tendered, and that was presented in the Court which is on record.

6. The learned Advocate for the petitioner-society. Dr. Naik, therefore, contends that in this case the respondents' conduct is highly objectionable. They are fairly educated people and having deliberately violated the order of injunction passed by the Court dated May 7, 1979, they must be dealt with severely as they have committed a gross contempt of the Court. As against this, the learned Advocate for respondent Nos. 1 and 2 has filed an apology in which it has been stated that the contempt stands purged that actual possession was handed over to the Society in the course of the proceeding of Appeal No. 14 of 1982 and by reason of the consent order of the High Court passed in that appeal contempt if any stands purged. There is controversy between the parties about the actual state of condition in regard to the allegations made of contempt being pending before the Division Bench. It is urged by respondent Nos. 1 and 2's Advocate that it was brought to the notice of the Division Bench that there is contempt petition pending and contempt in respect of the alleged breach of the order dated May 7, 1979, because they were in occupation of the flats at time when the Division Bench's judgment was delivered.

7. On the other hand, the learned Advocate for the petitioner disputes that this part of the controversy relating to the contempt was not strictly in controversy before the Division Bench and the Division Bench was only persuaded to accept the consent terms on the basis that the respondents were ready to accept the possession as agents of the Court Receiver.

8. Dr. Naik, who appears for the society, has pressed into service three judgments of the Supreme Court in order to support his contention that the respondents have been guilty of the contempt and they do not deserve any sympathy and they may be punished according to law. The judgment, which is relied on by the learned Advocate for the petitioner is reported in Babu Ram Gupta Vs. Sudhir Bhasin and Another, . The learned Advocate invited my attention to para 9 of the judgment and especially the observations in the judgment, which are as follows :

".....It must also be clearly understood in this connection that to employ subterfuge to avoid compliance of a Court's order about which there could be no reasonable doubt may in certain circumstances aggravate the contempt."

It is the contention of the learned Advocate for the petitioner in this case that the respondents Nos. 1 and 2 have themselves admitted that they occupied the flats and their occupation was there itself is contravention of the order of injunction, which was in the operation at that time. They could rely on the leniency of the Secretary of the Society who gave permission to them to occupy the same as alleged by them. In any event, the actual occupation of the flats by respondents

Nos. 1 and 2 when injunction was running against them is highly objectionable and it cannot be explained away on other grounds except wilful disobedience of the said order. In view of this contention, and relying on the authority cited above, it was argued that the respondents have not properly explained as to why their apology should be accepted.

9. As against this, the learned Advocate for the respondents 1 and 2 has invited my attention to the apology and requested me to permit to delete certain portion of the affidavit. This happened at the time when the Counsel for the petitioner-Society had already filed his reply and he had given answers to the affidavit-in-reply. Dr. Naik has also filed the reply in the form of affidavit before me today and it is at that stage that the advocate for the respondents requested me to permit to withdraw certain sentences from the affidavit. I have allowed the respondents to delete sentences, which form the part of the affidavit which was already filed before me. The sentences deleted are as under :---

"The petitioners are prosecuting this petition with a view to pressurise us to settle the pending dispute on the terms desired by the petitioner and the present petition is not bona fides."

This part is allowed to be deleted and it is after this deletion that I have to deal with the affidavit and counter-affidavit filed by the society in order to appreciate whether the apology tendered by the respondents is genuine and really based on good faith.

10. u/s 12 of the Contempt of Courts Act, in a matter of civil contempt, the Court is empowered to accept even a conditional apology. This provision, which was made by the Parliament makes departure from the old law. The judgment of the Supreme Court cited by the learned Advocate for the petitioner does not have any reference to this section. Therefore, from that judgment, no guidance can be available to find out the scope of section 12 of the Act, which gives power to the Court to accept even a conditional apology if it is given bona fide. u/s 12 of the Act, the Court is required to be satisfied about the bona fides and repentance caused to the contemner. Normally by tendering an unconditional apology it should be possible for the Court to infer that the contemner has presented sincere apology. Against this background I propose to accept the apology of the respondents 1 and 2 in this case in addition to the other circumstances which I have narrated in this judgment.

11. It is well settled that after the Contempt of courts Act of 1971 came into force, there is a statutory definition of civil and criminal contempt. The contempt which is alleged in this petition is a civil contempt because an order of injunction is obeyed by the respondents. In the matters of civil contempt, it is possible for the Court to take into account certain circumstances, which may diminish the gravity of the offence. There may be certain exceptional circumstances in some cases which may be taken into account by the Court while assessing the guilt of the contemner, when he is facing the charge of violation of order of Civil Court.

In this case, violation of injunction granted on May 7, 1979 is alleged against the respondents. It is true that the apology which has been filed by the respondents 1 and 2 should have contained some details with regard to mental condition and should have expressed sufficient regret in so many words. But then I am taking charitable view of the matter,, and I do not find that the apology tendered by the respondents should be rejected. In this case, the Court cannot easily forget that the Division Bench of this Court had an occasion to consider that a contempt petition was at least pending at the time when the Division Bench had passed an order of consent. It is borne out by the record itself that there is an affidavit filed by the Society itself which is dated March 29, 1982 and from that it appears that the facts relating to the contempt petition are set out therein. The Division Bench, it is true, while passing the order on consent terms has not referred to any of these facts. I was told at the Bar that these facts were actually mentioned. I have no reason to dispute this statement. I proceed on the basis that the Division Bench of this Court on January 22, 1982 was aware of the fact that a contempt petition was actually filed in this Court on January 18, 1982 and that related to the very conduct of respondent Nos. 1 and 2 in regard to occupation of flats which were in dispute in Appeal No. 14 of 1982. Against this back ground, it is difficult for me to apply ratio of the judgment of the Supreme Court to the facts of the present case. The exceptional circumstances in this case is the passing of the consent order by the Division Bench which actually purges the contempt if at all it was committed by the respondents. Secondly, I think that since May 1979 till June 29, 1981 the respondents have obeyed the injunction. This fact also cannot be ignored. Nonetheless, the respondents were not justified in taking such steps as would either defeat injunction or destroy the effect of that order by their own conduct. In view of these facts the counter affidavit which was filed on behalf of the Society loses much of its force because offending sentences in the apology stands deleted. It is true that the respondents have stated that they have not committed any breach of injunction. Assuming that they have committed breach of injunction, I hold that it is technical breach in the sense that their conduct was immediately brought to the notice of the Court and by a reason of the order of the High Court immediately the status quo was maintained and the Society obtained the relief and chose to become the party to the consent order. In civil matters, the consent of parties can be taken into account to determine the offending character of particular acts. In view of these consent order, I do not think that respondent Nos. 1 and 2 are liable to be punished for contempt.

12. However, this is a typical case in which a lenient view taken by this Court is likely to be misunderstood saying that if a party suffers an injunction order and files an affidavit and apology, the Court can accept the apology. I am not laying down any precedent at all. I may observe while parting with the case that the conduct of respondents 1 and 2 is highly objectionable having regard to their educational backgrounds. Though I am not inclined to impose any punishment on them, I feel that this is a fit case to administer an admonition to the

respondents, which will be just and proper in this case. Therefore, I direct that the respondents 1 and 2 are admonished for their highly objectionable conduct inviting the authorities to pass mandatory injunction against them, when the earlier order of injunction was operative against them. Therefore, I admonished them for their conduct and pass the order of costs of Rs. 500/-, which should be paid to the society.

13. In this view of the matter, the petition fails and the rule is discharged with no order as to costs.