
(2010) 09 CAL CK 0048

In the Calcutta High Court

Case No : C.R.C. No. 9 of 2010 in C.O. No. 1009 of 2009

Wilson Engineering Industries Private Limited

APPELLANT

Vs

Mrigendra Mohun Dhar and Another

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2010) 09 CAL CK 0048

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Aniruddha Chatterjee and Avirup Chatterjee, Ganesh Srivastava, Soumya Bhattacharya and S.N. Dutta, for the Appellant;

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—The petitioner herein purchased 95 per cent share in a flat at the second floor of premises No. 13, Abdul Hamid Street, P.S. Hare Street, Kolkata-700069, from the erstwhile owners of the said flat excepting the share of the one co-owner, by a registered deed of conveyance dated 23rd December, 1997. Even prior to such purchase, the petitioner was a tenant in respect of the said flat under all the owners of the said flat. All throughout the petitioner was enjoying the supply of water through common water supply system in the said premises. The deed of conveyance also recognised the petitioners' right to get supply of water and/or to enjoy all other common amenities in the said premises jointly with the other co-owners of the said building.

2. Since supply of water to the petitioner's flat was disconnected by Reliable Hrdes Private Limited, the petitioner herein filed an application u/s 151 of the CPC in the pending suit before the learned Judge, Seventh Court, City Civil Court at Kolkata, inter alia seeking issuance of direction upon the Reliable Hrdes Private Limited, the defendant therein to restore the supply of water to the

petitioner's flat in the second floor of the said building.

3. The defendant contested the petitioner's said application by contending that since the petitioner had illegally taken water connection from the connection which was taken by the defendant separately in the said premises by incurring additional expenses therefore, the petitioner is not entitled to get his illegal connection restored by an order of Court.

4. The learned Trial Judge was pleased to allow the petitioner's said application on 26th February, 2009 by directing the defendant to restore the supply of water to the suit flat of the petitioner forthwith. The defendant was aggrieved by the said order. Hence the defendant filed an application under Article 227 of the Constitution of India before this Court.

5. In Course of hearing of the said revisional application, the learned Advocate, appearing for the defendant, did not deny the petitioner's right to enjoy the supply of water in the said premises as the petitioner is a co-owner of the said premises, but at the same time he contended that the plaintiff cannot be permitted to enjoy the said right without discharging his liability for payment of proportionate charges for enjoying the said supply.

6. Learned Advocate, appearing for the plaintiff/petitioner herein, also submitted that his client never claimed that he would enjoy such amenities without discharging his liability towards the payment of proportionate charges for supply of water to the suit flat. He thus contended that his client was agreeable to pay proportionate share towards charges for supply of water to the suit flat.

7. Under these circumstances, this Court modified the impugned order to the following extent:

The defendant was directed to restore the supply of water to the suit flat positively within a period of 2 days from the date of payment of proportionate arrear charges for supply of water to the defendant.

8. The defendant was, directed to intimate the exact quantum of money which the plaintiff was required to pay towards his aforesaid liability regarding payment of proportionate arrear charges for supply of water in the suit premises, within two days from the date. The plaintiff was also directed to go on paying the proportionate charges for availing of such amenities to the defendant for the current months as and when such demand will be made by the defendant and the defendants were restrained from distributing such supply provided the proportionate charges are paid by the plaintiff regularly till the disposal of the suit.

9. None of the parties challenged the said order in any of higher forum. Thus they accepted the said order.

10. The petitioner herein filed the instant application for contempt against the directors of the Defendant Company alleging willful intentional and contemptuous

disobedience of the aforesaid order passed by this Court on 21st May, 2009, by them. It is alleged by the petitioner that the contemnors demanded a sum of Rs. 1,03,218/- towards the proportionate charges for restoration of the supply of water to the suit flat of the petitioner. The bill which was prepared by the alleged contemnors shows that a sum of Rs. 78,048/- was demanded towards proportionate charges in respect of installation of water connection from K.M.C. A further sum of Rs. 2,640 was demanded towards the proportionate charges in respect of installation of new pump. An additional amount of Rs. 5,916/- was demanded towards proportionate charges in respect of installation of new GI Pipe and overhead tank. That apart a sum of Rs. 16,650/- was demanded towards the proportionate charge in respect of electricity consumption at the rate of Rs. 450/- per month for 37 months excluding caretaker salary till disconnection of supply. Thus a total sum of Rs. 1,03,218/- was demanded as a condition for restoration of the supply of water to the petitioner's flat.

11. Immediately on receipt of that said bill the petitioner wrote a letter to the Directors of the defendant company namely the contemnors herein, on 6th July, 2009 disputing his liability to pay any amount either towards the proportionate charges in respect of the installation of water connection from K.M.C. or towards the proportionate charges in respect of installation of new pump or towards proportionate charge in respect of installation of new GI pipe line and overhead tank by contending that since the petitioner was availing of the said amenities of supply of water in the said flat all throughout even prior to its purchase when the petitioner was occupying the said flat as a tenant thereof, the petitioner is not liable to pay any amount towards any of the aforesaid heads excepting the proportionate charges in respect of the electric consumption for lifting of water and/or for maintenance of the distribution system as mentioned in the said bill. The petitioner alleged that even though the electric charges which were claimed by the contemnors in the said bill was excessive but still then the petitioner expressed his willingness to pay the said charges subject to the result of the suit. Thus a dispute has emerged between the parties with regard to the actual charges which the petitioner is required to pay for restoration of the supply of water to the suit flat.

12. The parties have filed their affidavits, counter affidavits, supplementary affidavits, reply to the supplementary affidavits etc. to establish their respective contention regarding their claims and counter claims. The contemnors contended that the original connection through which the occupiers of the suit premises were enjoying the supply of water in the suit premises was an illegal and unauthorized connection and as such the contemnors had to discontinue the said water supply system by disconnecting the said connection and subsequently they obtained a new connection from the Municipal Authority and reorganized the entire water supply system in the said premises by spending huge expenses therefore. The alleged contemnors thus claimed that if the petitioner herein wants to enjoy supply of water through the said new connection, the petitioner is liable to pay the proportionate charges in terms of the demand made by the

contemnors in their bill as referred to above.

13. On the contrary the petitioner contended that the facts regarding disconnection of the original water connection in the said premises and/or obtaining a new connection from the Municipal Authority and/or reorganizing the water supply system in the said premises, is a new story made out by the contemnors for the first time in their affidavits filed in connection with the contempt proceeding.

14. Mr. Srivastava, learned Advocate, appearing for the petitioner, contended that since undisputedly the petitioner was enjoying such supply of water in the suit flat all throughout even prior to its purchase and further since the petitioner's right to enjoy the common facilities and/or amenities in the said premises including the water supply system therein was recognized in its deed of conveyance, the alleged contemnors cannot avoid implementation of the order of restoration of supply of water to the suit flat by raising an inflated bill by including therein certain charges which are not at all payable by the petitioner. Mr. Srivastava thus contended that the said bill was raised with a deliberate intention to avoid implementation of the solemn order passed by this Court in a circuitous way.

15. Mr. Srivastava, thus invited this Court to punish the contemnors under the Contempt of Courts Act.

16. Mr. Chatterjee, learned Advocate, appearing for the contemnor, contended that his clients had or have no intention to disobey and/or violate the solemn order passed by this Court. Mr. Chatterjee submitted that his client demanded the aforesaid amount from the petitioner as the petitioner is liable to pay the said amount towards the proportionate charges which the defendant company had to incur for installation of the new connection in the said premises and/or for reorganizing the distribution system of supply of water in the said premises. Mr. Chatterjee further contended that when the liability of the petitioner to pay any particular amount towards the restoration of the supply of water to the petitioner has not been determined and/or fixed by this Hon'ble Court while passing the order for restoration of the supply of water to the petitioner, his clients cannot be held to be disobedient as they made their own collection determining the proportionate liability of the petitioner on the basis of the actual cost incurred by the defendant company for recognizing the distribution system in the said premises. In support of such submission Mr. Chatterjee relied upon the following decisions:

- i) In the case of Manish Gupta and others Vs. Gurudas Roy, ;
- ii) In the case of Gopal Chandra Biswas v. State of West Bengal and Ors. reported in 1973 CLJ;
- iii) In the case of Sushila Raje Holkar v. Anil Kak reported in (2008) 14 SCC 392.

17. Relying upon those decisions Mr. Chatterjee ultimately submitted that his

clients have not violated the order of this Hon''ble Court and even if any violation is ultimately found by this Court, the petitioner/contemnor cannot be held to be guilty under the Contempt of Courts Act, as such violation was not made deliberately, willfully and/or contemptuously. Mr. Chatterjee ultimately submitted that if it is found that contemnors are guilty for violation of the solemn order of this Hon''ble Court then his clients'' prayer for acceptance of their unqualified apology for such violation be accepted by this Court.

18. Let me now consider the respective submission of the counsel appearing for the parties in the facts of the instant case. The order which has been allegedly violated by the contemnors has already been set out hereinabove. On perusal of the said order this Court finds that the proportionate charges which the petitioner was required to pay on account of restoration of such supply of water was not determined by this Court. Rather such determination was left to the contemnors. The contemnors made their own calculation. Justification for raising such demand and/or correctness of such calculation, in my view, cannot be ascertained by this Court in this contempt proceeding particularly when such ascertainment depends upon the determination of various factors such as justification for disputed claims of the parties regarding discontinuation of the earlier water connection and/or installation of new water connection in the said premises and/or reorganization of the entire distribution system for supply of water to different flats in the said premises and/or the actual costs incurred by the defendant company for recognition of such water supply system and/or the correctness in the calculation of the proportionate share of the petitioner''s liability etc. In fact, voluminous documents were filed by the parties along with their affidavits, counter affidavits, supplementary affidavits, reply to their supplementary affidavits used by the parties. A letter written by the contemnors to the Municipal Authority inquiring about the genuineness of one document allegedly issued by the Municipal Authority which was annexed to the reply affirmed by the petitioner to the supplementary affidavit used by the contemnors, has also been submitted by the contemnors before this Court in course of hearing of the contempt application even without disclosing the same in their affidavits. Mr. Chatterjee submitted that since the disputed document was disclosed by the petitioner in their reply to the supplementary affidavit used by the clients, his clients could not get any opportunity to disclose the letter written by his clients to the Municipal Authority.

19. In my view there is hardly any scope for determination of such dispute in a contempt proceeding wherein the court is only required to consider as to whether the contemnors have violated the order of this Court deliberately, intentionally or contemptuously. This Court does not find any deliberate and/or intentional violation of the Court''s order by the contemnors for which they can be punished under the Contempt of Courts Act.

20. The application for contempt thus stands rejected. The rule which was issued upon the contemnors, thus, stands discharged.

21. This order however will not prevent the petitioner from approaching the learned Trial Judge for ascertainment of its actual liability towards the payment of the proportionate charges for restoration of the supply of water to the said flat and in the event, any of the parties approaches the learned Trial Judge for such determination, the learned Trial Judge is requested to resolve the said dispute as early as possible without granting any unnecessary adjournment to any of the parties.

22. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.