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Court : Chhattisgarh

Decided On : Feb-02-2015

Judge : Sanjay K. Agrawal

Appeal No. : Contempt Case (C) No. 322 of 2014

Appellant : Itwar Singh

Respondent : Ganeshram and Another

Judgement :

1. Invoking contempt jurisdiction of this Court under Section 12 of the Contempt of Courts Act read with Article 215 of the Constitution of India this contempt petition has been filed complaining, non-compliance of judgment and decree for injunction dated 02.02.2007 passed by the First Civil Judge Class-II, Durg in matter of Itwar Singh and another v. Gram Panchayat Achhoti and others, granting decree for permanent injunction in favour of applicant/plaintiff and restraining the respondent No.2/contemnor and other defendants therein from interfering with his peaceful possession.

2. The applicant herein Itwar Singh and Rohit Kumar instituted a Civil Suit No.34-A/2006 before the jurisdictional Civil Court (First Civil Judge Class-II, Durg) for seeking declaration of their title and permanent injunction restraining the defendant Gram Panchayat and thirty others from interfering with their peaceful possession. The said Court by its judgment and decree for injunction dated

02.02.2007 decreed the suit holding that the defendants therein had no right to make an encroachment over the suit land and restrained them from interfering with the peaceful possession of the plaintiffs.

3. Thereafter, present applicant filed an application under Order 39 Rule 2-A of C.P.C. for breach of injunction order stating inter alia that the present respondents/contemnors had dismantled the Iron Gate affixed by the applicant in breach of decree for permanent injunction granted by the civil court, and therefore, they are liable to be punished. It is case of the applicant herein that the said application was dismissed by the said court finding the said application not maintainable in law by order dated 18.07.2014.

4. The applicant has now preferred contempt petition under Article 215 of the Constitution of India read with Section 10 and 12 of Contempt of Courts Act for initiating contempt proceeding against the respondent herein for breach of decree for injunction granted by the civil court on 02.02.2007 stating inter alia that the respondents/contemnors had dismantled the Iron Gate affixed by the applicant in breach of decree for permanent injunction granted by the civil court and therefore, the respondents/contemnors deserves to be punished for the breach of decree for injunction granted by the civil court.

5. Shri Praveen Dhurandhar, learned counsel appearing for the contempt petitioner would submit that the respondents/contemnors have deliberately violated the decree for perpetual injunction granted by the civil court on 02.02.2007 by dismantling the Iron Gate and as such the proceeding for contempt be initiated against them for the deliberate non compliance of the Court's order.

6. Shri Ajay Shrivastava, learned counsel appearing for the respondents/contemnors would submit that the decree for perpetual injunction is executable decree under Order 21 Rule 32 of Code of Civil Procedure and as such contempt petition framed and filed is not maintainable in law and deserves to be dismissed.

7. I have heard the learned counsel for the parties and given thoughtful consideration to the submission made therein.

8. Section 2(b) of the Contempt of Courts Act, 1971 defines civil contempt to mean willful disobedience to any judgment, decree, direction, order, writ or other process of a court, thus the contempt proceeding can be initiated for willful disobedience to comply with or carryout an order made in favour of a party.

9. Order 21 Rule 32 of the Code of Civil Procedure provides manner of executing the decree for an injunction. Order 21 Rule 32 of the Code of Civil Procedure provides as under:-

Rule 32. Decree for specific performance for restitution of conjugal rights, or for an injunction.-

(1) Where the party against whom a decree for specific performance of a contract, or for restitution of conjugal rights or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced [in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

(2)

(3)

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of a [six months] from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decreeholder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

[Explanation.-For the removal of doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunctions.";]

10. It is well settled law that the contempt proceeding is not like a execution proceeding under the Code of Civil Procedure, 1908. In the matter of Niaz Mohammad and others v. State of Haryana and others ((1994) 6 SCC 332), their Lordships of the Supreme Court pointed out the distinction between the contempt and execution proceeding by observing as under:-

9 The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional

11. Again in the matter of Kapildeo Prasad Shah and others v. State of Bihar and others ((1999) 7 SCC 569), the above stated proposition has been reiterated by their Lordships of the Supreme Court in following words:-

10 Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with the order of the court or disregards the order continuously. Initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved.

12. Their Lordships of the Supreme Court have cautioned the courts against misuse of contempt jurisdiction to execute the decree in a matter of R.N. Dey and other v. Bhagyabati Pramanik and others ((2000) 4 SCC 400), by holding that the contempt court should be slow to haul up officers for contempt for non satisfaction of money decree. The relevant paragraph states as under:-

7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the courts dignity and majesty of law...

8. Further, the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree. In land acquisition cases when a decree is passed the State is in the position of a judgment-debtor and hence the court should not normally lend help to a party who refuses to take legally-provided steps for executing the decree. At any rate, the court should be slow to haul up officers of the Government for contempt for non-satisfaction of such money decree.

13. Very recently the aforesaid proposition has been reiterated by the Supreme Court in a matter of Kanwar Singh Saini v. High Court of Delhi ((2012) 4 SCC 307), by holding as under:-

18. In case there is a grievance of non-compliance with the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order 21 Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. Application under Order 39 Rule 2-A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order 21 Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the 1971 Act when an effective and alternative remedy is not available to the person

concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings.....

20. The proceedings under Order 39 Rule 2-A are available only during the pendency of the suit and not after conclusion of the trial of the suit. Therefore, any undertaking given to the court during the pendency of the suit on the basis of which the suit itself has been disposed of becomes a part of the decree and breach of such undertaking is to be dealt with in execution proceedings under Order 21 Rule 32 CPC and not by means of contempt proceedings. Even otherwise, it is not desirable for the High Court to initiate criminal contempt proceedings for disobedience of the order of the injunction passed by the subordinate court, for the reason that where a decree is for an injunction, and the party against whom it has been passed has willfully disobeyed it, the same may be executed by attachment of his property or by detention in civil prison or both.

21. The provision of Order 21 Rule 32 CPC applies to prohibitory as well as mandatory injunctions. In other words, it applies to cases where the party is directed to do some act and also to the cases where he is abstained from doing an act. Still to put it differently, a person disobeys an order of injunction not only when he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing. Execution of an injunction decree is to be made in pursuance of Order 21 Rule 32 CPC as the CPC provides a particular manner and mode of execution and therefore, no other mode is permissible.

14. Bearing in mind the principles of law laid down by their Lordships of the Supreme Court in above-stated cases (supra) particularly case of Kanwar Singh (supra), in which it has been clearly held that execution of injunction decree is to be made in a manner prescribed under Order 21 Rule 32 of the Code of Civil Procedure. The contempt jurisdiction is not substitute of the execution proceeding and remedy of the decree holder of injunction decree is to levy execution for

injunction decree as he has the effective alternative remedy in law. Turning attention to the factual score of the case, if the respondents/contemnors have violated the injunction decree, the remedy of the applicant is to proceed in accordance with Order 21 Rule 32 of the Code of Civil Procedure by levying execution, as such, the contempt petition as framed and filed cannot be entertained for alleged violation of injunction decree dated 02.02.2007 being inexpedient in law.

15. The decision relied upon by the applicant in the matter of S.K. Sarkar v. Vinay Chandra Mishra ((1981) 1 SCC 436), in which their Lordships of the Supreme Court has held that High Court may also take suo moto cognizance of criminal court subordinate to it, is no way helpful to the applicant in view of the facts of this case noted hereinabove.

16. Consequently the contempt petition deserves to and hereby dismissed with a cost of Rs.2,000/- payable by the present applicant to the respondents and contempt proceeding is hereby dropped. However, the applicant is at liberty to proceed in accordance with Order 21 Rule 32 of the Code of Civil Procedure, 1908.

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