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Court : Mumbai

Decided On : Mar-06-1995

Reported in : 1995CriLJ3278

Judge : B.U. Wahane, J.

Appeal No. : Contempt Petn. No. 307 of 1994

Appellant : Narayan S/O Govind Murugkar

Respondent : The lind Additional District Judge, Nagpur (Q. A. Shaikh), and Others

Advocate for Def. : S.V. Manohar and ;A.S. Ghare, Advs. and ;Mrs. Vandile, A.G.P.

Advocate for Pet/Ap. : N. Kamalakar, Adv.

Judgement :

ORDER

1. This Court issued notice before admission returnable early in 30/11/1994 in this petition filed by the petitioner Shri Narayan Govind Murugkar, under Sections 10 and 12 of the Contempt of Courts Act, 1971. Vide order dt/- 30/11/1994, leave was granted to the petitioner to add the landlord Shri Rajaram Vithal Joshi as the

respondent No. 3 to the petition. In view of the leave granted by this Court, Shri Rajaram Joshi was added as respondent No. 3 on 1/12/1994. The facts giving rise to the present contempt petition are as under :

Admittedly, the petitioner Shri Narayan Murugkar is the tenant of Shri Rajaram Joshi-the respondent No. 3. The petitioner filed Reg. Civil Appeal No. 490/87 against the judgment and decree passed by the Small Causes Court, Nagpur, regarding the arrears of rent. The petitioner also filed Reg. Civil Appeal No. 290/91 against the judgment and decree passed by the Small Causes Court, Nagpur, regarding eviction.

In Reg. Civil Appeal No. 490/87, an application was filed by the petitioner for permission to lead additional evidence including the documentary evidence at the appellate stage. The learned lower Court rejected the application. Consequently, Civil Revision Application No. 522/92 was preferred before this Court. This Court, in the Civil Revision Application, passed the following order on 24-6-1992.

'Heard Mr. Kamlakar Advocate for the applicant.

Being aggrieved by the rejection of the application for permission to lead evidence U/s. 107(1)(d) of the C.P.C. at the appellate stage the present revision has been filed by the applicant/defendant. The grudge was about refusing to lead evidence in appeal. The defendant wanted to examine the Assessor of the Nagpur Municipal Corporation for proving the two documents viz. declaration given by the applicant/tenant to the Corporation and the communication issued by the tax Assessment Authority to him. The non-application has filed the pursis and he has no objection for exhibiting these two documents and for reading the same in evidence. In the wake of this pursis, Mr. Kamlakar, learned counsel for the applicant seeks permission to withdraw this revision application which is granted.

The appellate Court is directed to exhibit these two documents referred to in the pursis and to read the same in evidence and decide the appeal after taking into consideration these two documents. In the facts and circumstances the Additional District Judge is directed to dispose of the appeal itself as early as possible.'

2. According to the petitioner, in spite of the specific direction on the mandate of this Court, the learned lower appellate Court has not exhibited the two documents referred in the pursis. Consequently, the petitioner filed pursis on 20-6-1993, 23-9-1993 and 14-9-1994 and also applications on 2-4-1994, 23-6-1994 and 2-8-1994. In spite of various pursis and applications, the learned lower appellate Court has not exhibited the two documents as directed by this Court and thereby flouted the order of this Court showing utter disregard for this Court. Therefore, the petitioner has filed the instant contempt petition.

3. Reg. Civil Appeal Nos. 490/87 and 290/91 were consolidated vide order dt. 30-8-1994 passed by the District Judge, Nagpur, in Misc. Civil Application No. 263/93.

4. Shri Kamlakar, the learned counsel for the petitioner, took me through the pursis and the applications filed before the lower appellate Court to exhibit the two documents as directed by this Court. Shri Kamlakar vehemently argued that the lower appellate Court, in spite of the knowledge of the order passed by this Court as also specifically brought to the notice of the lower appellate Court by the petitioner, wilfully showed disregard to the order passed by this Court and, therefore, his act being intentional one, he has committed contempt of Court : A reliance has been placed on the case of B. K. Kar v. Hon'ble the Chief Justice and his companion Justices of the Orissa High Court, : [1962]1SCR319 . Their Lordships in para 7 observed as under :

'Before a subordinate Court can be found guilty of disobeying the order of the superior Court and thus to have committed contempt of Court, it is necessary to show that the disobedience was intentional. There is no room for inferring as intention to disobey an order unless the person charged had knowledge of the order. If what a subordinate Court has done is in utter ignorance of an order of a superior Court, it would clearly not amount to intentional disobedience of that Court's order and would, therefore, not amount to a contempt of Court at all. There may perhaps be a case where an order disobeyed could be reasonably construed in two ways and the subordinate Court construed it in one of those ways but in a way different from that intended by the superior Court. Surely, it cannot be said that disobedience of the order by the subordinate Court was contempt of the

superior Court. There may possibly be a case where disobedience is accidental. If that is so, there would be no contempt. What is, therefore, necessary to establish in a case of this kind is that the subordinate Court knew of the order of the High Court and that knowing the order it disobeyed it.'

5. Further it is submitted on behalf of the petitioner that mere refusal to implement the directions issued by this Court in spite of the fact being brought to the notice of the respondent No. 1., shows that he deliberately and wilfully not complied with the order and his action amounts to utter disrespect or disregard to this Court. A reliance has also been placed on the case of *The State of Maharashtra v. Ishwar Piraji Kalpatri* : 1993(1)BomCR712 . In para 4 of the Judgment, Brother Saldanaha, J. observed :

'Delay in implementing a final order is no different from disregarding those orders and avoiding to implement them and would most certainly constitute an act of contempt.'

6. Shri Kamlakar, further submitted that whether the respondent No. 1 Shri Shaikh, 2nd Addl. District Judge, Nagpur, has disrespected the order of this Court, is to be gathered from his conduct. The directions given by this Court were the mandate directed to the District Court. The lower appellate Court was duty bound to obey the order and implement as directed. In fact, the petitioner was neither duty bound nor it was necessary on his part to file the pursis and the applications and thereby to bring to the notice of the respondent No. 1 that he has to exhibit the two documents. Pursis and the applications presented by the petitioner from time to time show his courtesy towards the lower appellant Judge Shri Shaikh. The conduct of the person who committed the contempt of Court is paramount consideration while deciding the issue. A reliance has been placed on the case of *Prakash Chand v. S. S. Grewal* . My attention is attracted to para 9 of the judgment wherein it is observed :

'Mere inaction in the part of the Government or its servants to take any action to reinstate a decreeholder whose dismissal has been declared to be void or ineffective and grant him all the benefits and privileges of his service will not amount to contempt of Court, but, if the conduct of the particular Government

servant, whose duty it is to give effect to the decree, shows that he has wilfully and deliberately refrained from giving effect to the decision of the civil Court, a case of contempt of Court may arise.'

Shri Kamlakar, the learned counsel for the petitioner, has specifically submitted that his first pursis is dated 20-6-1993 and the last one is dated 14-9-1994. In spite of the efforts made by the petitioner, the respondent No. 1 turned deaf ears and wilfully or deliberately refrained from complying the order and, therefore, his conduct be construed as a wilful or deliberate disobedience of the order of this Court.

Shri Kamlakar, the learned counsel for the petitioner further submitted that though this Court in Civil Revision Application No. 522/92, passed the order on 24-6-1992, the respondent No. 1 did not comply with the same till 7th January, 1995 and that too after filing of the present contempt petition. The considerable delay without any explanation whatsoever for the laches, constitutes the contempt of Court. A reliance has been placed on the case of Ekka Tonga Mazdoor Union v. Aligarh Municipal Board, : AIR1967 All93 . In para 16 of the judgement, observations are made as under :

'The orders of the Courts are to be implemented and acted upon with promptitude. If their implementation is unduly delayed, it would amount to showing scant respect to the Court concerned and its judicial process, which would obviously be a serious contempt of that Court, even though the person sought to be injected or restrained might have had no intention to flout the orders of the Court, for in many cases the very object of obtaining the order of stay or restraint would be rendered nugatory and the thing sought to be enforced or restrained by the Court might be accomplished or completed such as in the case of stay of demolition, etc. Moreover, considerable delay in carrying out an order of a Court after notice, without adequate explanation for laches, would by itself constitute serious contempt of court, inasmuch as it tends to undermine the prestige and authority of a Court of law and the efficacy of its judicial process. A person who has obtained an order in his favour from a Court is entitled to instant relief and its delayed implementation would discredit the administration of justice.'

7. At this stage, Shri kamlakar, the learned counsel for the petitioner, attracted my attention to the recent judgment of the Apex Court in the case of Niaz Mohammad v. State of Haryana, : AIR 1995 SC308 , Their lordships observed :

'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 condemner is held guilty and punished, the Court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the Court, the Court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the condemner to comply with the order, the Court may not punish the alleged condemner'

In the case referred to above, a liability was created for payment of about 28 crores of rupees, as arrears to the instructors in the Adult and Nonformula Education Scheme under the Education Department in the State of Haryana. Out of that amount about 20 crores of rupees have already been disbursed at different periods to the instructors. In this background, the Lordship of the Apex Court did not hold that the respondents have committed contempt of the Court, for which they ought to be punished by the Apex Court.

8. Lastly, Shri kamlakar, the learned counsel for the petitioner submitted that the petitioner being a retired Class-I Officer, knowing his duty and limitations well, for getting early relief and to meet the ends of justice, presented various applications and pursis to the lower appellate Court. However, no order was passed either on the pursis or on the applications presented from time to time and, therefore, the present petition filed is a bona fide one to take necessary action under the provisions of Contempt of courts Act, against the respondent No. 1 Shri Shaikh, 2nd Addl. District Judge, Nagpur.

9. On behalf of the respondent No. 1 Shri Shaikh, 2nd Addl. District Judge, Nagpur, reply is filed. A copy of the order sheet in Reg. Civil Appeal No. 490/87 since 28-6-1993, has also been placed on record. Admittedly, the respondent No.

1 joined as 2nd Addl. District Judge, Nagpur, on 1-5-1994. Therefore, the first pursis dt. 28-6-1993, second pursis dt. 23-9-93 and the application dt. 2-4-1994, do not pertain to his period. The perusal of the order sheet of Reg. Civil Appeal No. 490/87, makes it clear that at to time either Reg. Civil Appeal No. 490/87 or Reg. Civil Appeal No. 290/91 was posted for final hearing. The first order sheet dt. 23-6-1994, after the respondent No. 1's jointing on 1-5-1994, reads as under :

'39. Parties by their counsel.

Application for adj. filed by appellant counsel.

Application is allowed.

Case adj. for hearing 2-8-94.'

2nd August, 1994 was declared holiday due to sad demise of Justice Dayal and, therefore, the case was adjourned for hearing to 14-9-1994. On 14-9-1994 the Presiding Officer, i.e., the respondent No. 1 was on leave. On 14-9-1994 itself, pursis exh. 42 was filed by the appellant's counsel. The case was posted for hearing on that pursis on 8-11-1994. On 8-11-1994, no order came to be passed on pursis exh. 42 as the Presiding Officer was busy and he could not find time to hear the application. Therefore, the case was adjourned to 6-12-1994. It needs mention here that on 8-11-1994 itself present contempt petition came to be filed in this Court.

10. In the instant petition, the petitioner has made no allegations against the respondent No. 1 in respect of his judicial work, conduct and behaviour. So also there is no allegation whatsoever in respect of the dealing of two matters, viz., Reg. Civil Appeals preferred by the petitioner. From the submissions made on behalf of the petitioner as also by the petitioner in person and considering the actual period of the respondent No. 1 as the 2nd Addl. District Judge, Nagpur, according to me, except on one occasion, i.e. 8-11-1994, the respondent No. 1 was not on duty on other dates. In spite of this, Shri Kamlakar specifically submitted that instead of adjourning the matter on 8th November, 1994, the respondent No. 1 ought to have heard the matter and complied with the orders of

this Court. As he has not heard the matter on 8-11-1994 in spite of various applications and pursis filed earlier, according to the learned counsel, it amounts to intentional disobedience of the order of this Court and thereby he means to say that the respondent No. 1 has committed the contempt of Court.

11. Before dealing with the pursis and the applications filed by the petitioner in the Court of respondent No. 1., an important aspect has to be considered as to whether those two appeals, viz., Reg. Civil Appeal Nos. 490/87 and 290/91 were fixed for final hearing. Admittedly, till the last application made by the petitioner before filing the instant contempt petition, both the civil appeals were not fixed for final hearing. This Court vide order dt. 24-6-1992 directed the lower appellate Court to exhibit two documents referred to in the pursis and read the same in the evidence and decide the appeal after taking into consideration these two documents. The order is very clear that before hearing the appeal on merit, two documents referred to in the pursis by the appellant, were to be exhibited. A question was put to Shri Kamalkar, the learned counsel for the petitioner that whether at any time, the respondent No. 1 Shri Shaikh, 2nd Addl. District Judge, Nagpur, expressed that in spite the appeals being not ready, the parties to proceed with the arguments. A fair reply was given by Shri Kamalkar that at no time, the respondent No. 1 expressed his desire to hear the matter finally. Alternatively he submitted that it was not possible for the respondent No. 1 to hear the matter as the appeals were not ready.

Another aspect requires to be mentioned as admitted by the petitioner and also stated in the reply that the petitioner moved three interlocutory applications, viz., exhs. 16, 17 and 18 on 8-8-1993. Exh. 16 pertains to amendment to the memo of appeal filed in Reg. Civil Appeal No. 290/91. Exh. 17 pertains to the permission to file xerox copy of the documents and exh. 18 is the list of the annexures. All these interlocutory applications filed on record have not been finally decided. Admittedly, all the while, the cases were adjourned for hearing on exhs. 16, 17 and 18. After hearing the learned counsel for the petitioner at length, I do not find any nexus between exhibiting two documents as directed by this Court and the interlocutory applications exhs. 16, 17 and 18. In spite of this, the petitioner filed the application on 2nd April, 1994 titling it as 'application for adjournment of the appeal'. Another

application dt. 23-6-1994 also titled as 'Application for adjournment of the appeal' was filed. The matter does not end here, but even during the pendency of this petition, the petitioner filed various applications for adjournment of the appeals on the ground that the contempt petition is pending in this Court as also on another ground that the petitioner has filed the application under Section 24 of C.P.C. for transfer of two regular civil appeals from the file of the respondent No. 1 to the file of any other competent Judge. I fail to understand what was the necessity for adjourning the matter from time to time. The contempt petition is altogether on different grounds while the cases were always fixed for hearing on the interlocutory applications. There seems absolutely no necessity to file vexatious applications for adjournment and thereby to prolong the matter. I have, therefore, no hesitation to come to the conclusion that only intention of the petitioner was to prolong the matter on this or that ground. When no allegations have been levelled against the respondent No. 1 either in respect of his judicial work or behaviour in the Court, it is very difficult to understand as to what was the necessity for the petitioner to file an application under Section 24 of C.P.C., for transfer of the appeals from the file of the respondent No. 1 to any other competent Judge. Keeping in view the facts and circumstances as narrated above, another question was put to Shri Kamlakar the learned counsel for the petitioner, as to whether at any time any endeavour was made by the petitioner to get the applications exhs. 16, 17 and 18 finally heard and decided earlier so that thereafter immediately both the appeals could be finally heard. The answer given by the learned counsel is in negative.

12. The order passed by this Court is very clear to the effect that before adjudication of the appeals, two documents referred to in the pursis were to be exhibited. Thus, it is clear that the order passed by this Court was not time bound order. Under this circumstance, when both the appeals were not ready for final hearing, there was no necessity for the petitioner to file various applications creating obstructions in disposing of the appeals finally. At the some time there was also no necessity for the petitioner to bring the order of this Court to the notice of the respondent No. 1 when exhis. 16, 17 and 18 were pending for the disposal. It is an obligatory duty of the lower Courts to comply the orders of the Higher Courts. In case the respondent No. 1 would have decided the matter or persuaded

the parties to argue the matter without complying the order passed by this Court then the respondent No. 1 would have been said to have committed contempt of this Court. The purpose behind filing the pursis and applications to exhibit the documents, is not clear and also not explained at all. From the circumstances, the working of the mind of the petitioner can be fathomed that all the endeavours were to prolong the litigation.

13. One another glaring aspect is necessary to be mentioned that if the respondent No. 1 who joined on 1-5-1994 as 2nd Addl. District Judge, Nagpur, and before whom the appeals were placed once only, is compelled to face the proceeding for contempt of Court, why his predecessor before whom atleast 3 or 4 pursis or applications were filed by the petitioner, has not been made party to this proceeding. Giving conscious thought to the facts and circumstances as discussed above, according to me, the petitioner has not filed various pursis or applications from time to time with bona fide intention, but filed the same an ulterior motive to prolong the matter, and to brow beat the Presiding Officer at the worst to dissuade him from hearing the appeals without any fault on his part. Shri Manohar, the learned counsel for the respondent No. 1, has rightly submitted that in the instant case, the petitioner himself has committed the contempt of Court under Section 2(c) of the Contempt of Courts Act. Section 2(c)(iii) of Contempt of Courts Act, 1971 reads as under :

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

From the discussion above, I am of the opinion that the petitioner interfered and obstructed the administration of justice by filing the adjournment applications from time to time knowing full well that the interlocutory applications are pending before the respondent No. 1. In the case of *The Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries*, : 1980 CriLJ684 . Their Lordships held that the filing of the application dated December 14, 1972, was an abuse of the process of the Court, calculated to obstruct the due course of a judicial proceeding and the administration of justice and was, therefore, a Criminal Contempt of Court. Not a single application made to single Judge was bona fide. Every application was a

daring 'raid' on the Court and each was an abuse of the process of the Court.

Shri Manohar further placed reliance on the case of Ramji Lal Sharma v. Civil Judge, Allahabad, : AIR1988 All143 of the judgment, His Lordships observed :

'Moving contempt application against a Judge on flimsy grounds with deliberate intention of embarrassing and disqualifying him from trying a case, setting up against him unfounded plea of bias, open expression of lack of confidence in the Judge without any valid reason and then urging him to release a case, and seeking unnecessary adjournments on non-existent grounds with oblique motive of arresting or obstructing the progress of a case are the instances of contumacious conduct tending to interfere with the administration of justice inviting action for contempt.'

Further a reliance has been placed on the unreported case of J. H. Bhavsagar & One v. M/s. Chandulal Chhaganlal Pobaru, (Misc. Civil Applied No. 255/93, decided by me on 11-11-1993). In para 12 it has been observed :

'The attitude of the defendants (applicants) is nothing but to accuse and pressurise the Court, calculated to obstruct the due course of judicial proceedings and administration of justice. Therefore, before disposing of this application, I feel in the interest of justice to initiate the suo motu proceedings under the contempt of Court.'

14. There is no iota of evidence of circumstance to persuade this Court that the respondent No. 1 Shri Shaikh, 2nd Addl. District Judge, Nagpur, disrespected the order passed by this Court and thereby flouted the same. Also there is nothing on record against the respondents Nos. 2 and 3, they being formal parties. I do not feel any hesitation to observe that the instant petition is absolutely vexatious and frivolous.

15. In the result, the present contempt proceedings are dropped, against the respondents. However, considering the fact that the petitioner tried to interfere with the administration of justice, according to me, a proceeding under the provisions of Contempt of Courts Act, 1971, is to be initiated against the petitioner.

16. Heard the petitioner Shri Murugkar in person. While making submissions driven by great remorse over-powered by emotions so much so that virtually he wept and could not restrain him from expressing his apology with immense grief. Touched by such sentiments and demeanour observed by me, and taking account an old age and Class-I retired officer, leniency would be quite in place to serve the present purpose. It cannot be expected a layman in law to know the niceties of the legal intricacies, and under misplaced advice, such misfeasance must have occurred. This Court, thus, feels not to proceed against him under the provisions of Contempt of Courts Act. However, he is warned and directed not to indulge himself in such instant conduct. With this direction, the intended proceeding against the petitioner is hereby dropped.

17. Order accordingly.

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