

Barfi Bai Vs. Savitri Bai

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Court : Andhra Pradesh

Decided On : Jun-26-1998

Reported in : 1998(4)ALD235; 1998(4)ALT107; 1999CriLJ1308

Judge : Ramesh Madhav Bapat, J.

Acts : [Contempt of Courts Act, 1971](#) - Sections 2, 10 and 12; [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rule 9 - Order 39, Rules 1, 2, 2-A and 9-A; [Constitution of India](#) - Articles 129 and 142; Contemp of Courts Act, 1952 - Sections 4

Appeal No. : C.C. No. 112 of 1995

Appellant : Barfi Bai

Respondent : Savitri Bai

Advocate for Def. : Mr. J. Prabhakar, Adv.

Advocate for Pet/Ap. : Mr. Janardhana Rao, Adv.

Judgement :

1. The respondent herein had obtained permission from the Municipal Corporation of Hyderabad for construction of a building which consisted of ground floor plus two floors bearing permit number 318/40 dated 31-3-1992. The respondent herein started construction violating the terms and conditions contained in the permit

referred to above. The petitioner herein is a neighbour of the respondent. Therefore, the petitioner filed O.S.No.1509 of 1992 in the Court of the II Assistant Judge, City Civil Court, Hyderabad for declaration and injunction and also for mandatory injunction to pull down the structure, which was constructed unauthorisedly by the respondent herein. The petitioner herein also filed I.A.No. 1723 of 1992 in the same suit seeking interim relief. The said I.A., was ordered ex parte on 16-4-1992 and ad-interim injunction was granted. On appearance of the respondent herein in that suit, the orders passed ex parte earlier in IANo.1723 of 1992 was made absolute on 15-9-1992. However, the respondent herein was permitted to construct the building leaving 11 feet space towards the side of the petitioner herein as per the sanctioned plan. The respondent herein was aggrieved by the said order. Therefore, the respondent herein filed C.M.A.No.286 of 1992 in the Court of the Additional Chief Judge, City Civil Court, Hyderabad. The said C.M.A., was allowed on 3-11-1992 on the ground that the ingredients of Order 39 Rules 1 and 2 C.P.C. were not established. The petitioner herein was aggrieved by the order of the Additional Chief Judge, City Civil Court, Hyderabad and therefore the petitioner preferred C.R.P.No.3600 of 1992 in the High Court of Judicature, Andhra Pradesh, Hyderabad. The petitioner also filed C.M.P.No. 18646 of 1992 for interim relief. The said C.M.P. was ordered on 9-10-1992 and the order of the Addl. Chief Judge, City Civil Court, Hyderabad was suspended by this Court. The respondent appeared in the said C.R.P., and filed C.M.P.No19094/92 to vacate the interim order of suspension. Subsequently i.e., on 19-11-1992 the respondent herein gave an undertaking to this Court to the effect that the respondent would make construction strictly in accordance with the sanctioned plan leaving 11 ft. open space towards the side of the petitioner and therefore C.R.P.No.3600/1992 was disposed of by recording the undertaking given by the respondent.

2. It is the further case of the petitioner that the respondent did not comply with the undertaking but filed a petition on 19-4-1993 for clarification. The said petition was numbered as C.M.P.No. 11060/93. This Court by an order dated 20-7-1993 dismissed the above C.M.P., on the ground that the undertaking given by the respondent herein was itself self-explanatory and therefore no further clarification was required. The respondent went on making construction. The respondent again

filed C.M.P.No.13383 of 1993 in C.R.P.No.3600 of 1992 to set aside the previous order in which the respondent herein had given undertaking. The said C.M.P.No.13383 of 1993 was dismissed by this Court. The respondent herein went on making constructions in violation of undertaking and in violation of the plan sanctioned by the Municipal Corporation of Hyderabad. Therefore the petitioner herein filed C.C.No.563 of 1993 against the respondent herein. In the aforesaid C.C., this Court appointed one Municipal Engineer as a Court Commissioner to inspect the site and to file the report. The Commissioner visited the site in the presence of both the parties and prepared a report giving all violations made by the respondent herein including the violation of not leaving 11 ft. open space towards the side of the house of the petitioner.

3. It is the further case of the petitioner herein that in the contempt case, the respondent herein filed an affidavit stating that all the old structures existing towards the side of the petitioner herein was demolished and hence the contempt case was closed by this Court.

4. On 4-11-1994 when the petitioner herein noticed that the violation of undertaking as well as the violation of the terms and conditions contained in the permission given by the Municipal Corporation of Hyderabad continues, the petitioner gave a telegram to that effect to the respondent herein but no reply was given by the respondent herein. Therefore, the petitioner herein was constrained to file the present Contempt Case.

5. In the present Contempt Case, the respondent herein filed counter stating that in the first week of July 1995 in the presence of neighbours and well-wishers there was a compromise between the petitioner and the respondent in which the petitioner agreed that the respondent should leave only 5 ft. towards the side of the house of the petitioner herein and therefore she continued with the construction.

6. It further appears that during the pendency of the Contempt Case, the suit filed by the petitioner herein i.e., O.S.No. 1509 of 1992, was dismissed for default. Therefore, the petitioner herein filed an application for restoration of the suit under Order 9 Rule 9 C.P.C. The respondent herein resisted the said application by filing

counter but no plea was raised in the counter that there was a compromise between the parties.

7. The respondent herein settled the property in favour of her two sons on 10-1-1997 and all of them applied to the Government for regularisation of illegal construction. The Government did regularise the construction by an order dated 4-3-1997 with certain terms and conditions. It is specifically mentioned that the construction was regularised by the Government which will not affect the rights of other parties and pending suits and legal proceedings pending against the respondent herein. Subsequently the application under Order 9 Rule 9 C.P.C. was allowed and the suit was restored to file.

8. With this factual position on record, the learned Counsel Mr. Kotamraju Janardhana Rao appearing on behalf of the petitioner herein submitted at the Bar that the respondent herein has clearly committed wilful contempt disobeying the undertaking given by her to this Court in C.R.P.No.3600 of 1992. The learned Counsel further brought to my notice that in C.C.No.563 of 1993, this Court had appointed an Officer from the Municipal Corporation of Hyderabad as a Court Commissioner. The Court Commissioner gave a report pointing out to the Court the various types of violations made by the respondent herein including that of violation of not leaving 11 ft. towards petitioner's side as an open space.

9. The learned Counsel further submitted at the Bar that in present case for the first time a plea of compromise between the petitioner and the respondent was raised by the respondent herein stating that by mutual consent between the parties it was agreed that the respondent herein should leave only 5 ft. towards the side of the petitioner herein, which is totally false to the knowledge of the petitioner herein. The learned Counsel further submitted that, if at all, there was a compromise between the petitioner and the respondent, it was the duty of the respondent to get the compromise recorded in the Civil Revision Petition but that was not done. Therefore, it must be held that the defence of compromise raised by the respondent in the present Contempt Case is an after thought.

10. The learned Counsel further brought to my notice that in so-called compromise between the petitioner and the respondent, the Municipal Corporation of

Hyderabad is not a party. They also did not approach the Municipal Corporation to get the plan revised as per the compromise. Therefore, this must be held that it is for the first time in the counter the defence of compromise .was raised by the respondent herein which is an after thought.

11. The learned Counsel for the petitioner also brought to my notice that the respondent herein applied to the Government for regularisation of illegal constructions and the Government did regularise the same by an order dated 4-3-1997. While applying to the Government, the respondent herein did not seek the permission of this Court. Moreover, the Government was also not informed regarding the Contempt Case pending against the respondent and therefore submitted that all these attempts are made by the respondent to continue with the illegal constructions.

12. The learned Counsel for the petitioner had also pointed out that the respondent herein had filed O.S.No.1907 of 1992 challenging the notices given by the Municipal Corporation of Hyderabad. The respondent herein got the aforesaid suit dismissed for default when the respondent was successful in getting her illegal constructions regularised from the Government. Under these circumstances, the learned Counsel for the petitioner herein submitted that the respondent has clearly wilfully committed the act of Contempt of Court and therefore, the respondent should be punished in accordance with the law.

13. In support of the case of the petitioner, the learned Counsel for the petitioner relied upon a ruling reported in Delhi Development Authority v. Skipper Construction Company (P) Ltd., and another, AIR 1966 SC 2005 in which their Lordships of the Supreme Court were pleased to hold as under :

'Para 17 :- The Contemner should not be allowed to enjoy or retain the fruits of his contempt :

The principle that a contemner ought not to be permitted to enjoy and/or keep the fruits of his contempt is well-settled. In Mohd Idris v. R.J. Babuji, : 1985 CriLJ353 , this Court held clearly that undergoing the punishment for contempt does not mean that the Court is not entitled to give appropriate directions for remedying and

rectifying the things done in violation of its orders. The petitioners therein had given an undertaking to the Bombay High Court. They acted in breach of it. A learned single Judge held them guilty of contempt and imposed a sentence of one month's imprisonment. In addition thereto, the learned single Judge made appropriate directions to remedy the breach of undertaking. It was contended before this Court that the learned Judge was not justified in giving the aforesaid directions in addition to punishing the petitioners for contempt of Court. The argument was rejected holding that 'the single Judge was quite right in giving appropriate directions to close the breach of undertaking.'

Para 21:--There is no doubt that this salutary rule has to be applied and given effect to by this Court, if necessary, by overruling any procedural or other technical objections- Article 129 is a constitutional power and when exercised in tandem with Article 142, all such objections should give away. The Court must ensure full justice between the parties before it.'

The learned Counsel for the petitioner further relied upon a ruling reported in *Noorali Babul Thanewala v. Sh. K.M.M. Shetiya and others*, : 1990 CriLJ316 in which their Lordships of the Supreme Court were pleased to hold as under :

'Para 11 : When a Court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the Court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a Court by a person in a civil proceeding on the faith of which the Court sanctions a particular course of action is misconduct amounting to contempt. The remedy in such circumstances may be in the form of a direction to the contemnor to purge the contempt or a sentence of imprisonment or fine or all of them. On the facts and circumstances of this case in

the light of our finding that there was a breach of the undertaking we think that mere imposition of imprisonment or fine will not meet the ends of justice. There will have to be an order to purge the contempt by directing the first respondent-contemnor to deliver vacant possession immediately and issuing necessary further and consequential directions for enforcing the same.'

Para 12 :--In the foregoing circumstances, we find the first respondent guilty of committing contempt by wilful disobedience of the undertaking given by him in this Court and accordingly we convict him and sentence him to pay a fine of Rs.500/- within the period of four weeks, failing which he shall suffer simple imprisonment for one month, and also direct him to deliver vacant possession of the premises forthwith to the petitioner to the extent possible by him. We further direct the District Magistrate, Thane, to evict all those who are in physical possession of the property including the 2nd respondent and his men and if necessary with police help and give vacant possession of the premises to the petitioner forthwith."

The learned Counsel for the petitioner further relied upon a ruling reported in *The Secretary, Hailakandi Bar Association v. State of Assam and Another*, : 1996 CriLJ2518 in which their Lordships of the Supreme Court were pleased to hold as under :

'[Constitution of India](#), Article 129 -Contempt - Contempt of Supreme Court - Apology - Police Officer asked by Supreme Court to submit report about death of undertrial prisoner submitting false report - When subsequently called upon to file affidavit, he not bringing true facts to notice of Court - He ignoring injuries noted in record - Contemnor, held, deliberately forwarded inaccurate report to mislead Court and thus interfered with course of justice - Apology rejected - Sentenced to simple imprisonment for 3 months.'

The learned Counsel for the petitioner herein further relied upon a ruling reported in *Tayabhai M. Bagasarwalla and another v. Hind Rubber Industries (P) Ltd., Etc.*, : [1997]2SCR152 in which their Lordships of the Supreme Court were pleased to hold as under :

'C.P.C. (5 of 1908) Order 39 Rule 2A, Section 9A (Maharashtra) - Disobedience of order - Interim order of injunction passed in suit - Flouted and disobeyed defendants - However ultimately Civil Court found to have no jurisdiction to entertain the suit -Even then defendants can be punished for violation of said interim orders.'

14. With these rulings and factual position as stated to above, the learned Counsel for the petitioner herein submitted that the respondent be dealt with according to law for wilful disobedience of the Court order and undertaking given by her.

15. While rebutting the arguments of the learned Counsel for the petitioner, the learned Counsel for the respondent submitted that, as a matter of fact, the suit filed by the petitioner herein bearing O.S.No.1509 of 1992 was dismissed for default and when there was no suit pending, the construction was made by the respondent herein and therefore the respondent is not liable to be punished for committing wilful disobedience of any judgment or order by this Court.

16. The learned Counsel for the respondent herein relied upon a ruling reported in *Nandipati Rami Reddy and others v. Nandipati Padma Reddy and others*, : AIR 1978 AP30 . I have gone through the said ruling and I am of the considered view that the said ruling has no application in the present set of facts. The question before the Division Bench of this Court was whether the interim order stands restored when the application under Order 9 Rule 9 C.P.C. is allowed and the suit is restored to file. Their Lordships were pleased to hold in the aforesaid ruling that when Order 9 Rule 9 C.P.C. petition is allowed and the suit is restored to file, all the interim orders made on the interim application stands restored as if there was no order of dismissal of the suit for default.

17. The learned Counsel Mr. J. Prabhakar Rao for the respondent herein further relied upon a ruling reported in *Debabrata Bandopandhyay and others v. The State of West Bengal and another*, : 1969 CriLJ401 in which their Lordships of the Supreme Court were pleased to hold as under :

'(C) Contempt of Courts Act (1952), Section 4 - Contemner must offer an apology and that too clearly and at earliest opportunity - Person offering belated apology

runs the risk that, it may not be accepted, for such an apology hardly shows contrition which is the essence of purging of contempt - However a man may have the course of his convictions and may stake his all on proving that he is not in contempt and may take the risk. (Here the persons ran gauntlet of such risk and fairly succeeded).'

With this ruling, the learned Counsel for the respondent herein submitted at the Bar that at the earliest opportunity, the respondent herein had tendered apology and therefore the apology be accepted and the contempt case be closed. This Court is not in agreement with the submission made by the learned Counsel for the respondent because the respondent herein while C.R.P.No.3600 of 1992 was pending in this Court had given undertaking specifically stating that the respondent would make construction strictly in accordance with the plans sanctioned by the Municipal Corporation of Hyderabad leaving 11 ft. open space towards the side of the petitioner herein. In spite of the undertaking given by the respondent, the respondent continued to make illegal constructions in violation of the undertaking and in violation of the sanctioned plan. Thereafter one more feeble attempt was made by the respondent herein by filing C.M.P.No. 11060 of 1993 seeking clarification from this Court. This Court dismissed the clarification petition holding that the undertaking given by the respondent herein is self-explanatory. It can further be seen that O.S.No.1509 of 1992 was dismissed for default of the petitioner herein and when an application under Order 9 Rule 9 C.P.C. was pending, the respondent herein did not resist the said application on the ground that there was a compromise between the petitioner and the respondent herein. It is for the first time in the counter filed in the Contempt Case such plea was raised. Therefore, this Court is of the considered view that the respondent herein has not come to the Court with clean hands. Therefore, there is no question of accepting the apology would arise.

18. The learned Counsel for the respondent further relied upon a ruling reported in S. Abdul Karim v. M.K. Prakash and others, : 1976 CriLJ641 . With this ruling it was submitted by the learned Counsel for the respondent that strict proof of contempt is required to be proved to hold a person guilty under the Contempt of Courts Act. I have no hesitation in accepting the proposition. But in the present

case, it stands proved beyond all reasonable doubt that the contemner-respondent herein has violated the undertaking given to this Court which amounts to disobedience of the order given by this Court as contemplated under Section 2(b) of the Contempt of Courts Act.

19. The learned Counsel for the respondent herein further relied upon a ruling reported in Kashinath Kher and others v. Dinesh Kumar Bhagat and others, : 1998 CriLJ666 in which their Lordships of the Supreme Court were pleased to hold as under :

'Contempt of Court - [Contempt of Courts Act, 1971](#) - Section 2(b) - Non-implementation of Court's order in its true spirit and purport - When not wilful - Contemner acting on the advice of their Counsel (a senior Advocate), who owned responsibility by making a statement before the Court - The Counsel's statement accepted keeping in view personal responsibility taken by him, his standing at the bar, his fairness and candid admission - Disobedience, therefore held, not wilful - Further time granted for implementing the Court order in its full spirit - [Constitution of India](#), Article 129.'

In the present set of facts, the undertaking was given by the respondent herein in writing and therefore this Court is of the considered view that there was a wilful disobedience of the order of this Court.

20. The learned Counsel for the petitioner-herein submitted that once the contempt is held proved, this Court should be pleased to order the demolition of the structures to the extent of leaving 11 ft. towards the side of the petitioner's house as an open space and also punish the respondent.

21. I am not inclined to do so at this stage because of the fact that a suit between the parties is pending in City Civil Court, Hyderabad. Similar view was taken by the learned single Judge of this Court in an unreported ruling in C.C.No.998 of 1997.

22. From the above discussion, this Court finds the respondent herein is guilty under the Contempt of Courts Act and she is punished under Section 12 read with Section 10 of the [Contempt of Courts Act, 1971](#) by imposing a fine of Rs.5,000/-

(Rs. Five thousand only) payable within two weeks from to-day in default to suffer imprisonment for one month.

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