

**Sitaram Vs. Ganesh Das**

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**Court :** Allahabad

**Decided On :** Jan-04-1973

**Reported in :** AIR1973All449

**Judge :** Hari Swarup, J.

**Acts :** Code of Civil Procedure (CPC) - Order 39, Rule 2A

**Appeal No. :** Civil Revn. No. 1062 of 1970

**Appellant :** Sitaram

**Respondent :** Ganesh Das

**Advocate for Def. :** S.S. Tewari, Adv.

**Advocate for Pet/Ap. :** M.P. Singh, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Hari Swarup, J.**

1. This revision is directed against the appellate order arising out of proceedings under Order 39, Rule 2-A. Civil P. C. Plaintiff had filed a suit for a permanent injunction and during the pendency of the suit had prayed for a temporary

injunction. The trial Court issued a temporary injunction restraining the defendant from raising any further constructions. It was found that the defendant applicant Sitaram in spite of the order of injunction having been served on him had put up a Unshed on the constructions. This was treated as breach of the injunction order and the Court ordered attachment of the property and his detention in Civil prison. Defendant went up in appeal and the appeal was dismissed, but a modification was made in the trial Court's order by substituting 15 days' imprisonment instead of unlimited civil imprisonment directed by the trial Court. Against that order the defendant has filed the present revision.

2. The defendant had taken the plea that the tinshed had been placed not by him but by his brother. The trial Court did not believe this statement but held that even if it was true there was breach of the order of injunction. The lower appellate Court believed the statement of Hari Om the plaintiff's son, which was to the effect that the tinshed had been put up by Sitaram defendant. But without expressly holding that Sitaram had put up the tinshed, the Court below impliedly accepted the position and held that the breach of the injunction order by Sitaram had been established. The Court did not expressly rule out the defence version, but overruled it by saying that Sitaram was in default as he had taken no steps to get the tinshed removed.

3. It is, however, not necessary to investigate whether Sitaram had or had not put UP the tinshed because, even on the assumption that the finding of the Court below that he had disobeyed the order of injunction was correct, he would, in view of the subsequent events, be entitled to get the relief. During the pendency of the revision in this Court, an interim order was issued staying the operation of the order of the Court below on condition that the defendant removed the tinshed in respect of which; on the complaint of the plaintiff, the Courts below have held that Sitaram was guilty of violating the injunction order. An affidavit was filed by Sitaram on 6-8-1970 in which it was stated that the Unshed was removed on 1-8-1970. It was also stated therein that an application had been moved in the Court of the Munsif that a commission be issued to verify the defendant's assertion that the Unshed had already been removed. On this application, a commission was issued and the commissioner reported that the Unshed had been removed by the

applicant.

4. The purpose of Order 39., Rule 2-A. Civil P. C. is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similar to the provisions of Order 21. Rule 32, Civil P. C. which provide for the execution of a decree for injunction The mode of execution given in Order 21, Rule 32 is the same as provided in Rule 2-A of Order 39. In either case, for the execution of the order or decree of injunction, attachment of property is to be made and the person who is to be compelled to obey the injunction can be detained in civil prison. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by disobedience of the order is remedied and the status quo ante is brought into effect. This view finds support from the observations of the Supreme Court in the case of State of Bihar v. Sonabati Kumari. AIR 1961 SC 221: while dealing with Order 39, Rule 2 (iii). Civil P. C. (without the U. P. Amendment) the Court held that the proceedings are in substance designed to effect enforcement of or to execute the order, and a parallel was drawn between the provisions of Order 21. Rule 32 and of Order 39. Rule 2 (iii). C, P. C. which is similar to Order 39. Rule 2-A. This curative function and purpose of Rule 2-A of Order 39. Civil P. C. is also evident from the provision in Rule 2-A for the lifting of imprisonment, which normally would be when the order has been complied with and the coercion of imprisonment ;no longer remains necessary. Hence, even if Sitaram had earlier been sent to the civil imprisonment, he would have been released on the tinshed being removed, and it would therefore now, serve no purpose to send him to prison. For the same reason the attachment of property is also no longer needed. The order of the Court below has lost its utility and need no longer be kept alive.

5. But as the finding of the Court below is that the applicant had disobeyed the injunction order the liability of costs imposed on him by the appellate Court is justified and as he has removed the tinshed only in the course of revision in this Court, when this Court had refused to stay the lower Court's order unless he removed the tinshed the petitioner must pay the costs of the other side in this Court also.

6. In the result, the revision is allowed and the orders of the Courts below are set aside. But the applicant will pay the costs of the opposite party both in this Court and in the Court below.

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