

Ganesh Panda Vs. Kailash Auto Finance Ltd. Represented Through Its Branch Manager, Sri Prakash Chandra Giri

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Court : Orissa

Decided On : Dec-17-2008

Reported in : 107(2009)CLT277

Judge : A.S. Naidu, J.

Appellant : Ganesh Panda

Respondent : Kailash Auto Finance Ltd. Represented Through Its Branch Manager, Sri Prakash Chandra Giri

Judgement :

A.S. Naidu, J.

1. This OCRMC has been filed under Section 12 of the Contempt of Courts Act, 1971 for holding the Opposite Party guilty of 'civil contempt' and punishing him for alleged violation and deliberate disobedience by him of order passed by this Court on March 11, 1998 in Civil Revision No. 333 of 1997.

2. The facts of the case, briefly stated are as follows:

In the year 1993 the Petitioner entered into a contract with the Opposite Party for purchasing a Tempo Trax vehicle bearing registration number OLR-07-A-3301 to

be financed by the latter. After payment of the price delivery of the vehicle was given to the Petitioner. In consonance with the terms of contract the Opposite Party paid a portion of the price of the vehicle and the rest was paid by the Petitioner.

3. It is averred in this OCRMC petition that the Petitioner paid certain amounts to the dealer of the vehicle after consultation with the Opposite Party. While matter stood thus certain misunderstanding crept in regarding payment of instalments and the Opposite Party threatened the Petitioner to take away the vehicle forcibly. Having no way out the Petitioner filed Title Suit No. 65 of 1995 in the Court of the Learned Civil Judge (SD) Aska seeking direction to the Opposite Party-Defendant and other Defendants for settlement of accounts and permanently injunctioning the Opposite Parties restraining them from th,e seizing the vehicle in question. Thereafter a petition was filed by the Petitioner under Order 39, Rales 1 and 2 of the Code of Civil Procedure praying for issuance of interim injunction restraining the Opposite Party from seizing the Petitioner's vehicle until disposal of the aforesaid Title Suit. The said petition was registered as Misc.Case No. 418 of 1997. The Trial Court initially granted ad interim injunction temporarily restraining the Opposite Party from seizing the vehicle in question, but after final hearing dismissed the said Misc. Case.

4. Being aggrieved by the said order of the Trial Court the Petitioner filed Misc. Appeal No. 14 of 1997.The Misc. Appeal was dismissed on September 18,1997. The Petitioner thereafter filed Civil Revision No. 333 of 1997 before this Court but in the meanwhile, it is alleged, the Opposite Party forcibly seized the vehicle. After hearing the Hon'ble Judge who disposed of Civil Revision by Order Dated 11-3-1998 inter alia observed as follows:

I consider that this is a fit case where the suit should be expeditiously disposed of preferably by end of June, 1998 under intimation to this Court. If written statement has not been filed by the Opposite Parties, the same shall be filed within a period of three weeks from today and thereafter the Trial Court shall proceed to hear the matter on merit in accordance with law without being influenced by any of the observations made in the impugned orders or in the present order. If the Trial

Court feels it necessary, it can call for the affidavits filed in this Court by the respective parties.

Since the vehicle has already been seized, Opposite Party Nos. 1 is directed to maintain the vehicle in the same condition in which it was at the time of seizure and not to transfer the same to any person till disposal of the suit.

While matter stood thus, the Title Suit was decreed preliminary with costs by Judgment dated 24th August, 1996. The decree stated thus: The Defendants are hereby directed jointly and severally to settle the accounts regarding the purchase of the vehicle with the Plaintiff and to return the vehicle to the Plaintiff in the same condition which it was at the time of seizure they had taken from the possession of the plff. Failing to which plff is at liberty to recover the said vehicle from the possession of the Defendants under the process of law and to realise all the money from the Defendants No. 1 and 3.

5. After passing of the final decree, it appears that a petition was filed by the Opposite Party-Defendant under Order 9, Rule 13 of the Code of Civil Procedure praying for setting aside the ex parte decree. The said petition was registered as MJC No. 4 of 1999. It appears that the said MJC was also dismissed for default. Consequently another petition was filed under Section 151 of the aforesaid Code which was registered as MJC No. 32 of 2005. It is stated that the latter Misc. Case was also allowed to be dismissed for default. Thereafter a further petition was filed which was registered as MJC No. 5 of 2000. According to the Petitioner, the entire endeavour of the Opposite Party was to somehow or other gain time and see that the Petitioner does not enjoy the fruits of the decree.

6. In the meanwhile the Petitioner as decree- holder filed E.P. No. 21 of 2000 before the Trial Court. The Opposite Party appeared in that case and filed a petition for staying further proceedings of that case. The said prayer having been allowed, the Petitioner filed Civil Revision No. 249 of 2002 before this Court. By Judgment dated 23-4-2000 this Court disposed of the said Civil Revision modifying the order of stay passed by the Court below and directed the J. Dr-Opposite Party to deposit the entire decretal amount or furnish bank guarantee/security for the said amount to the satisfaction of the executing Court within a period of one week.

7. During pendency of the litigation, the Petitioner learnt that the Opposite Party had since sold away the vehicle. After ascertaining from the RTO, Bhubaneswar that the said vehicle had been transferred on 19th November, 1998 in favour of one Ghulam Mustak Khan, he filed the present OCRMC.

8. On being prima facie satisfied, this Court issued notice to the Opposite Party. He filed a preliminary show-cause reply admitting the fact that this Court by Order Dated 11th March, 1998 in C.R. No. 333 of 1997 had directed that the vehicle should not be transferred to any person during pendency of the suit and took the plea that as the vehicle was getting damaged and was lying unused for a long time open to sun and rain, on receiving information that the suit was no longer pending and had been disposed of and there was no restriction against sale of the vehicle, he bona fide sold the same to Ghulam Mustak Khan on 19-11-1998. He stated that he had learnt that the Title Suit had been disposed of on 24-8-1998.

9. In para-5 of the show-cause he averred as follows:

That it is humbly submitted that the vehicle was getting damaged as it was lying unused for a long time and heavy rains had started. So on receiving information that the suit was no longer pending and had been disposed of and under the bona fide belief that there was no restriction against sale of vehicle as the suit had been disposed of the vehicle was sold to one Ghulam Mustak Khan on 19-11-98. Title Suit No. 65/95 has been disposed of on 24-08-1998. At that time the Opp.party No. 1 was not aware that the order in suit was ex parte or against it.

10. A rejoinder affidavit has been filed on behalf of the Petitioner disputing the averments made in the show-cause reply of the Opposite Party and specifically averring therein that with full intention and knowledge and in order to frustrate the order passed by this Court, the Opposite Party who had no scant regard for the rule of law intentionally sold away the vehicle in spite of restraint order as well as the decree. A further affidavit has been filed by the Opposite Party stating that he had utmost regard and respect for this Court and was tendering unconditional apology for selling away the vehicle.

11. This Court has given most anxious and thoughtful consideration to the rival contentions of the parties. This Court has also gone through the relevant records and orders passed by the executing Court and this Court in the Civil Revisions. This Court has also perused the affidavit, the show-cause reply, further affidavits filed by the parties and has gone through various documents on record. It is apparent that in C.R. No. 333 of 1997 by Order Dated 11-3-1998 this Court directed that since the vehicle had already been seized by the Opposite Party he would maintain that in the same condition in which it was at the time of seizure and not to transfer the same to any person until disposal of the suit. It also appears that the Petitioner was initially contesting the suit and also strongly opposed the petition filed for interim orders. But then surprisingly later-on he did not contest the suit and allowed the same to be decreed ex parte. The Trial Court in its Judgment held that the Plaintiff was entitled to the decree sought and the Defendants were directed to settle the accounts in respect of the vehicle purchased by the Plaintiff and further to return the vehicle to the Plaintiff in the same condition in which it was at the time of seizure or at the time when they took over forcible possession from the Plaintiff.

12. In para-5 of the show-cause reply, the Opposite Party stated '.... At that time the Opp. party No. 1 was not aware that the order in suit was ex parte or against it' and that the suit was disposed of there was no restriction to sell the vehicle.

It also appears that soon thereafter he filed a petition under Order 9, Rule 13 CPC and allowed the same to be dismissed not once but twice. In the Execution Petition however a stand was taken that as a petition under Order 9, Rule 13 CPC had been filed, the same would be considered to be continuation of the suit and the decree could not be executed.

This Court also in C.R.P. No. 249 of 2002 in which an order passed in E.P. No. 21 of 2000 arising out of T.S. No. 65 of 1995 inter se between the parties, accepting the submission of the Petitioner that pendency of the proceeding under Order 9, Rule 13 CPC for setting aside the ex parte decree was to be considered as continuation of the suit itself stayed further proceedings of the E.P. subject to certain conditions. Thus the Opposite Party is estopped from taking the stand that

the suit having been disposed of he sold away the vehicle in question. Even otherwise, as stated earlier, in the decree the Opposite Party had been directed to restore the vehicle to the Petitioner.

13. Thus the question before this Court is whether the contemner-Opposite Party had violated the order passed by this Court and whether such violation or disobedience was willful or intentional as alleged by the Petitioner. If so, what punishment should be imposed on the contemner-Opposite Party and what should be the final order in this contempt petition. At this juncture it would be prudent to note that in consonance with direction of this Court in C.R.P. No. 249/02, the contemner, it is stated, has deposited a sum of Rs. 90,000.00 before the this Court towards the sale proceeds of the vehicle. Let the said amount be sent to the Trial Court which shall invest the same in Fixed Deposit for a period of one year in any Nationalised Bank.

14. The case at hand is a glaring instance as to how a private financial organisation took the law into its own hands and illegally and forcibly took possession of a vehicle from its owner even during lis pendens. A time has come when it must be made clear to the litigant public and to all- that when direction is given and orders are made by a Court, the same are required to be carried out or complied with to the fullest extent and any wilful disregard of the same will not be tolerated by a Court and serious consequences are to follow if the orders are violated.

15. Miss Ratho, Learned Counsel for the contemner, tried her level best to convince this Court that by bona fide mistake the Opposite Party has sold away the vehicle, but in view of the narration of facts made above, this Court stands unconvinced. Her further submission was that the contemner having tendered unqualified apology in writing the same be accepted and the matter may be dropped. After diligent consideration of the matter, the irresistible conclusion arrived at by this Court is that the contemner has disregarded and violated the orders passed by this Court knowing very well that he had been restrained by Court from selling away the vehicle. His action therefore amounted to over-reaching the order passed by Court.

16. The next question is whether for disobedience of the order passed by Court the contemner would be liable to be punished.

Section 94(C) of the Code of Civil Procedure provides that in order to prevent the ends of justice from being defeated, the Court may, if it is so prescribed, grant a temporary injunction and in case of disobedience to commit the person guilty thereof to civil prison and order that his property be attached and sold.

Rule 2A of Order XXXIX of the said Code deals with consequences of disobedience or breach of injunction. The said provision stipulates that in case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any term on which the injunction was granted or is made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach, to be attached, and may also order such person to be detained in civil prison for a term not exceeding three months.

Section 2 of the Contempt of Courts Act, 1971 under clause (a) states that contempt of Court means 'civil contempt' or 'criminal contempt'. Clause (b) thereof defines 'civil contempt' as willful disobedience to any Judgment, decree, direction, order, writ or other process of a Court, or willful breach of an undertaking given to a Court.

A cumulative reading of the said clauses make it clear that the following conditions must be satisfied before a person can be held to have committed a civil contempt:

- (1) There must be a Judgment, decree, direction, order, writ or other process of a Court.
- (2) There must be disobedience to such Judgment, decree, direction, order, writ or other process of a Court; and
- (3) Such disobedience must be willful.

17. In the case of *Ashok Paper Kamgar Union v. Dharam Gpdjha and Ors.* (2003) 11 SCC 1, the Supreme Court had the occasion to consider the concept of willful

disobedience of order of a Court. It observed 'wilful' means an act or omission which is done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. According to the Court, it signified the act done with evil intent or with a bad motive for the purpose. It was observed, that the act or omission has to be judged having regard to the facts and circumstances of each case.

In the case of Kapildeo Prasad Sah and Ors. v. State of Bihar and Ors. : AIR 1999 SC3215 , the Supreme Court held that for holding a person to have committed contempt, it must be shown that there was willful disobedience of the Judgment or order of the Court. But it was indicated that even negligence-and carelessness may amount to contempt.

In the case of Attorney General v. Times Newspaper Ltd. 1974 AC 273 : (1973) 3 All ER 54, Lord Diplock had observed that there was an element of public policy in punishing civil contempt since the administration of justice would be undermined if the order of any Court of law could be disregarded with impunity.

18. If an order passed by a competent Court is clear and unambiguous and not capable of more than one interpretation, disobedience or breach of such order would amount to contempt of Court. There can be no laxity in such a situation because otherwise the Court orders would become the subject of mockery. Misunderstanding or own understanding of the Court's order would not be a permissible defence (see Anil Ratan Sarkar and Ors. v. Hirak Ghosh and Ors. : 2002 CriLJ1814 .

19. Looking at the affidavits of the parties and also the circumstances of the case, this Court has every reason to hold that the Opposite Party deliberately and willfully disobeyed direction of this Court in C.R. No. 333 of 1997. Law is well settled that an order made by a High Court must be obeyed unless and until it is varied.

20. Of course by filing an additional affidavit, the contemner has tendered unqualified apology. But an apology is neither a weapon of defence to purge the

guilty of their offence; nor is it intended to operate as a universal panacea, it is intended to be evidence of real contriteness, as has been observed in the case of *M.Y. Shareaf v. Hon'ble Judges of the High Court of Nagpur* : 1955 CriLJ133 .

21. This Court is satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a tactful move when the contemner is in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case at hand would be allowing the contemner to go away with impunity after committing gross contempt of Court.

22. Looking at the entire scenario, this Court does not hesitate to hold that the intention of the contemner was apparent from day one. During pendency of the interim petition filed before this Court in C.R. No. 333.of 1997, by using muscle power he took over forcible possession of the vehicle so as to frustrate any restraint order that might be passed by this Court. This Court directed the contemner to maintain the vehicle in the condition it was at the time of seizure and not to transfer the same in favour of anybody else until disposal of the suit. Thereafter he did not contest the suit and allowed the same to be decreed ex parte. Then he transferred the vehicle. After the transfer he filed a petition under Order 9, Rule 13 CPC for setting aside the ex parte decree. In the E.R he took the stand that a petition had been filed by him under Order 9, Rule 13 CPC for restoration of the suit and the same proceeding being a continuation of the suit, the decree could not be executed. On the other hand, in the show-cause reply filed by him before this Court he has taken a stand that as the suit had been disposed of he had transferred the vehicle. This facts clearly give an impression that the contemner was bent upon to deprive the Petitioner of enjoying the fruits of the decree even by flouting this Court's orders.

23. Be that as it may, the Petitioner was a borrower and the contemner was the financier. The vehicle was purchased by the Petitioner with the finance of the Opposite Party. It is not known whether the vehicle had been mortgaged with the Opposite Party or not. The dues payable by the Petitioner towards loan is yet to be determined in the final decree proceeding.

24. Considering all the aspects and the submission that the overt act of the contemner is first of its kind, this Court is of considered opinion, that imposition of fine on the Opposite Party in lieu of imprisonment will serve the ends of justice.

25. Accordingly, while holding the Opposite Party guilty under Section 12 o(the Contempt of Courts Act, 1971 read with Section 94(c) and Rule 2-A of Order 39 of the Code of Civil Procedure, this Court reprimands the Opposite Party and imposes a fine of Rs. 2,000.00 (two thousand) on him with direction that he shall deposit the said amount before the Trial Court within a period of one month, failing which he shall suffer simple imprisonment for two weeks.

The OCRMC is, accordingly, disposed of.

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