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**ishwar Industries Ltd. Vs. the Crocus Chattels Pvt. Ltd. and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/713708](http://sooperkanoon.com/713708)**

**Court : Delhi**

**Decided On : Jan-12-2006**

**Reported in : 128(2006)DLT10; 2006(87)DRJ430**

**Judge : Swatanter Kumar, J.**

**Acts : [Contempt of Courts Act, 1971](#) - Sections 2, 10, 11 and 12; Code of Civil Procedure (CPC) - Sections 151 - Order 39, Rules 1, 2, 2A and 3; [Constitution of India](#) - Article 215**

**Appeal No. : CCPO 96/2005 in CS(OS) 2041/1997**

**Appellant : ishwar Industries Ltd.**

**Respondent : The Crocus Chattels Pvt. Ltd. and ors.**

**Advocate for Def. : C.P. Vig, Adv. for Respondent Nos. 1-6 and ; Suhail Dutt, ;**

**Advocate for Pet/Ap. : B. Mohan and; Rajiv Dewan, Advs**

**Judgement :**

**Swatanter Kumar, J.**

1. This is a petition under Sections 10, 11 and 12 of the [Contempt of Courts Act, 1971](#) filed by the petitioner against respondent Nos. 1 to 3 (defendants in the original suit No. 80/2003) and respondent Nos. 4 to 11 (not defendants in the

original suit) praying that the contempt proceedings be initiated against the respondents and they be punished in accordance with law.

2. The petitioner filed a suit in the High Court of Delhi at New Delhi being Suit No. 2041/97 for declaration and injunction against the defendants in that suit. The relief prayed was that the defendants be directed to carry out and complete construction in block No. 5 of Tribhuvan Complex, Ishwar Nagar, New Delhi in accordance with the sanctioned plan. Along with the suit, an application under Order 39 Rules 1 & 2 read with Section 151 CPC was also filed by the plaintiff. On 25.9.1997, the court passed the following order on that injunction application & suit:-

Present: Mr. B. Mohan with Mr. N.K. Kantawala, Advocates for the plaintiff

S. No. 2041/1997 & IAs 9367-70/97

Plaint be registered as Suit.

Issue summon in the suit and notice in the application to the defendants but by ordinary process, as well as Registered A/D covers on filing of process fee and registered A/D cover, returnable on 12.01.1998. In the meanwhile, defendants are directed not to create any third party interest in Block No. 5 in Khasra Nos. 1724/1705, 1723/1705, 264, 262, 259, 258, 257 and 256, Ishwar Nagar, New Delhi-110 065.

dusty.

Compliance order 39 Rule 3 be made within 3 days.

September 25, 1997

Sd/-

**Vijender Jain, J.**

3. The said suit was transferred because of change in the pecuniary jurisdiction of this court to the court of learned District Judge and is presently pending in the

court of Ms. Shail Jain, ADJ, Delhi being Suit No. 80/2003. It is the case of the petitioner that respondent Nos. 1 to 6 have carried out unauthorised constructions in Block No. 5 under their occupation and have committed serious violations of the sanctioned plan. It is further averred that the MCD on 17.4.2003 issued an order of demolition with regard to unauthorized construction in Block No. 5. The respondent Nos. 1 to 3 have failed to remove the unauthorized construction and are contesting the proceedings. They are aware of the order dated 25.9.1997 by which they were directed not to create any third party interest. But the said respondents have, somewhere after passing of this order, created third party interest. The allegations have been summed up in paragraph No. 6 of the petition which reads as under:-

Infact, the plaintiff have their offices located in the Tribhuvan Complex. Recently in July-August, 2005 the plaintiff was surprised to find big signboards of 'M/S. HERBALIFE INTERNATIONAL INDIA (P) LTD.' in Block No. 5 Ishwar Nagar, New Delhi being the suit property in question. That staff of the said 'M/S. HERBALIFE INTERNATIONAL INDIA (P) LTD.' are regularly having ingress and egress into said Block No. 5 and the cars belonging to them are also parked in front of Block No. 5 that evidences regular business activities of the said 'M/S. HERBALIFE INTERNATIONAL INDIA (P) LTD.' in Block No. 5. On enquiry the applicant/plaintiff also came to learn that the said 'M/S. HERBALIFE INTERNATIONAL INDIA (P) LTD.' is a distinct legal entity which have no connection whatsoever with the respondents 1 to 3. therefore, the plaintiff have reasonable belief that the respondents 1 to 3 have inducted third party or otherwise parted with possession of block No. 5, Tribhuvan Complex, Ishwar Nagar, New Delhi in favor of third party 'M/S. HERBALIFE INTERNATIONAL INDIA (P) LTD.'. On 10.08.2005, the plaintiff called upon the respondents 1 to 3 to desist from such wrongful and illegal acts and copy of the letter was also sent to 'M/S. HERBALIFE INTERNATIONAL INDIA (P) LTD.'. A copy of the letter dated 10.08.2005, issued by the plaintiff to respondents and Photographs at site are annexed hereto marked 'ANNEXURE C & D'. Such act on the part of respondents 1 to 3 will constitute willful disobedience of the order dated 25.9.1997 passed by this Hon'ble Court. Such act of the respondents 1 to 3 tend to interfere with or obstruct the due course of justice. Such act also prejudices the rights of the applicants/plaintiff who are concerned to

protect their property from any action by the Municipal Corporation of Delhi on account of unauthorized construction in Block No. 5 and withholding of completion certificate as a consequence thereof.

4. On the above premise, it is stated on behalf of the petitioner that the respondents have deliberately and willfully disobeyed the order of the court and have created third party interest in the property besides not removing the unauthorized construction.

5. All the respondents were served except respondent No. 10 initially. But on 9.11.2005, the counsel appearing for all the respondents without prejudice to their rights and contentions raised objections to the very maintainability of the present petition. It was argued that no specific averments have been made in the petition which could constitute contempt of court. The petition is vague and is liable to be dismissed. It was also urged that the suit is pending in the court of Ms. Shail Jain, ADJ, Delhi which was transferred to that court in the year 2003, as such, the application under Order 39 Rule 2A of the CPC alone would be maintainable and that too before that court. On the averments made in the petition, the provisions of Sections 11 and 12 of the [Contempt of Courts Act, 1971](#) are not even attracted.

6. The learned counsel appearing for the petitioner while referring to Section 10 and 2(a) to 2(c) of the [Contempt of Courts Act, 1971](#) contended that even where an order of a subordinate court is violated by a party, the High Court would have the jurisdiction and in fact it would be obligatory upon the High Court to deal with such petition so as to safeguard and preserve the administration of justice. He also relied upon a judgment of this court in the case of *Vir Bhan v. MCD* (1975) 1 Delhi 250 where the court while rejecting the plea taken like the respondents in the present case held as under:-

In the present case not only was the petition admitted but permission was given to file additional affidavits and counter affidavits, and even oral evidence was taken before a learned Judge of this court. After all the time taken and leading evidence it seems to me inappropriate to refuse at this stage to entertain this petition and drive the parties to another round of tortuous litigation involving considerable expense and time. Moreover this court has the solemn duty and obligation cast on

it to safeguard and preserve the administration of justice and any action which has the result of polluting or weakening the fibre of the independence and the strength of the judiciary cannot be permitted to go unnoticed, more especially when the interference and disobedience comes from a quarter like the public officials who are expected to know that the upholding of rule of law requires their respectful and instinctive obedience to the orders of the court not for every person. Such is the scheme of the Constitution which the people of India have given to themselves. This court cannot and will not shirk and abdicate the trust reposed in it. The objection of Mr. Marwah must, therefore, be repelled.

7. On the other hand, the learned counsel appearing for the respondents while relying upon judgments of various courts including this court in the cases of J.R. Jindal v. Family Planning Association of India and Ors. : 80(1999)DLT464 , Rudraiah v. State of Karnataka and Ors. : AIR1982 Kant182 and Harshkumar v. Somadey and Ors. 1997 Cri.L.J. 4615, argued that the remedy provided by the Legislature under Order 39 Rule 2A of the CPC is adequate and enough remedy and it may not be necessary for the High Court to interfere in each and every case under the provisions of Section 2(b) read with Section 10 of the [Contempt of Courts Act, 1971](#). In Rudraiah's case (supra), the court held as under:-The provision there under is obviously based on the principle of contempt of Court. That being so, the general provisions made under the Contempt of Courts Act cannot be invoked by the decree holder, for forcing the party to obey the injunction order. It is a well settled principle of law that when there is special law and general law, the provisions of the special law prevail over the general law and when special procedure and special provision are contained in the C.P.C. Itself under Order 39 Rule 2A for taking action for the disobedience of an order of injunction, the general law of contempt of Court cannot be invoked. If such a course encouraged holding that it amounts to contempt of court, when an order of subordinate court is not obeyed, it is sure to throw open a floodgate of litigation under contempt jurisdiction. Every decree-holder can rush to this court stating that the decree passed by a subordinate court is not obeyed. That is not the purpose of Contempt of Courts Act.

6. The Supreme Court of India in the case *Perspective Publications (Pvt.) Ltd. v. State of Maharashtra* : 1971 CriLJ268 has observed at page 230, inter alia thus:-

The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.' (Per Grover,) Contempt of court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is not also a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed enquiry, it must be left to the court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it (Vide (1964) 68 Cal WN 148, : AIR1951 Pat231 , : AIR1966 Mad21 and : AIR1971 All231 ).7. Hence, we hold that the present petition which is merely directed by way of speedy execution of an interim injunction order, which requires a detailed enquiry with regard to suit land and the scope of the order, which can be entertained and enquired into more properly under Rule 2A of Order 39 C.P.C. can not entertained under contempt jurisdiction and accordingly we dismiss it. Petition dismissed.

8. The similar view was taken by a Division Bench of the Calcutta High Court in Harshkumar's case(supra), where the court held as under:-

2. Learned advocate, appearing in support of the application, strongly replied upon the language of Section 10 of the Contempt of Court Act, nd, on that basis, argued that he has a right to pray that the matter be dealt with in contempt jurisdiction of this Court, although the orders alleged to have been violated had been passed by a subordinate Court. It is to be noted that the order was passed by the learned Judge of the Court below, in connection with a proceeding under Order 39 read wit

Section 151 of the Code of Civil Procedure. The Court below, being a Court of records, has ample jurisdiction to take appropriate steps for violation of its orders, including by invocation of provisions of Order 39 Rule 2-A of the Code of Civil Procedure. If all these available remedies are allowed to be skipped over, the inevitable result will be opening up of flood gate for such application before this Court, which is already over-loaded with litigations, which cannot be proceeded with in other form?, thus materially affecting the disposal of such matters. Similar situation had been taken not of by a Division Bench of this Court, presided over by Mr. Anil Kumar Sen, J. in the case of Calcutta Medical Stores v. Stadmed Private Ltd. reported in (1977) 4 Cal 72 wherein the learned Judges relied upon an observation of Sir George Jessel, M.R. in the case of Clements Republic of Costa Rica v. Erlanger reported in (1876) 46 LJ Ch 375. We feel tempted to requite the said observation in our order:

It seems to me that this jurisdiction of committing for contempt being practically arbitrary and unlimited should be most jealously and carefully watched and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of Judges to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject. I say that a Judge should be most careful to see that the cause cannot be fairly prosecuted to a hearing unless this extreme mode of dealing with persons brought before him an accusations of contempt should be adopted. I have myself had on many occasions to consider this jurisdiction and I have always thought that necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found. The Division Bench also declined to initiate any proceeding in the summary jurisdiction before the High Court on the ground that a specific remedy for such breach is available in terms of the provision of the Code of Civil Procedure and because there was no reason advanced in the said case as to why the Subordinate Court would fail to provide an efficacious and effective relief. According to the Division Bench that would have amounted to by-passing the specific remedy under the law and should not have been encouraged.

3. In respectful agreement with the reasons given in the said Division Bench judgment, which apply with full force in the present case, we dismissed this application. There will, however, no order as to costs.

9. The similar view was expressed in unequivocal terms by a Division Bench of the Gujrat High Court in the case of Shri Nitinkumar Pramodbhai Pandya v. Spenta Colour Lab. Pvt. Ltd. and Anr. 1996 A L H C 2478 where the court held that Rule 2(A) was inserted in Order 39 with effect from 1st of February, 1977 with a view to giving the Court power to take action on account of the breach of the order passed by it. therefore, the appropriate procedure for the alleged non-compliance of an order under Order 39, Rules 1 and 2 is to apply to the Court concerned for orders under Rule 2A of Order 39 and that petition under Sections 10 and 12 of the Contempt of Courts Act would not be an appropriate remedy.

10. In a case where an application under Order 39 Rule 2A was dismissed and an appeal was pending, the court took the view that a contempt petition under Article 215 of the [Constitution of India](#) was not proper remedy. In this regard, reference can be made to J.R. Jindal's case (supra).

11. The power of the High Court under Sections 10 and 11 of the [Contempt of Courts Act, 1971](#) and Article 215 of the [Constitution of India](#) is a power of extraordinary jurisdiction. Certainly under Section 10 of the Act, the High Court is vested with the power and can exercise the same jurisdiction in respect of contempts of courts of subordinate courts as it exercises in relation to itself. This power is to be invoked in the interest of administration of justice. However, where the matter can be more adequately and appropriately dealt with and decided by the court of the competent jurisdiction (subordinate court) for simple violation of an order of injunction particularly in pending proceedings, it may normally be better and more appropriate that, that court alone deals with the matter rather than approaching the High Court for disobedience of the order of the subordinate court. The subordinate court can always, if it is of the opinion that the contempt committed by the contemnor is of the nature which requires to be dealt with by the High Court, recommend initiation of such proceedings before the High Court in appropriate cases. The judgment of this court in the Virbhan's case (supra) relied

upon, is based on the principle where a public body had attempted to over reach the order of the court and is alleged to have flouted the order of injunction and actually demolished a property. This was considered to be interference in the administration of justice and high-handedness on the part of the public authority. Once the violation has a chain impact of undermining the dignity of justice and interferes with the administration of justice, it will be a case which would more appropriately be dealt with by the High Court in exercise of its extra-ordinary jurisdiction rather than a case of violation of an injunction order simplicitor. The introduction of the provisions of Order 39 Rule 2A is definite indication of legislative intent to clothe the court which pass the injunction order to deal with violation thereof. The provisions of Order 39 Rule 2A clearly postulate and explicitly provide a transferee court to deal with such matters. Such an approach would even otherwise be in consonance with the administration of justice and proper progress of the case. In the cases where a suit is pending before the court of competent jurisdiction which is subordinate to the High Court, an application under Order 39 Rule 2A for violation of an order passed under Order 39 Rules 1 and 2 of the Code should normally be dealt with by that court. Violation of injunction order implicate which does not have a larger impact on the administration of justice or undermines the dignity or process of law, would be the case which even in the interest of justice should be dealt with by the same court. The pendency of the suit would be a guiding factor before that court and in some cases the court may even consider it necessary to record evidence for disposing of an application under Order 39 Rule 2A of the Code. As such, it would always be appropriate to try both of them together rather than instituting an independent proceeding under Sections 10 and 11 of the [Contempt of Courts Act, 1971](#) or Article 215 of the [Constitution of India](#) before the High Court. In the present case, the petition besides being vague, has not even made an averment supported by any proper documents that the violation of the order of the court anywhere interferes with the administration of justice. It is more a matter of violation of an order inter se the parties. The suit was transferred to that court in the year 2003 and the allegation of contempt is founded on a bald allegation that somewhere in July and August, 2005, the plaintiff saw some signboards which may indicate that the order has been violated. This petition was filed in September, 2005.

12. As such, the court is of the considered opinion that the High Court need not entertain and decide this petition as it will be appropriate and in accordance with law for the petitioner to file an application under Order 39 Rule 2A of the CPC before the court of competent jurisdiction rather than invoking the jurisdiction of this court under Sections 10 and 11 of the [Contempt of Courts Act, 1971](#).

13. The petition is disposed of with the above observations while leaving the parties to bear their own costs.

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