

Ramlal Vs. Shivpal

Ramlal Vs. Shivpal

SooperKanoon Citation : sooperkanoon.com/919232

Court : Madhya Pradesh

Decided On : May-05-2011

Judge : Sushil Harkauli, J.

Acts : Contempt of Court Act, 1971. - Section 12; Code of Civil Procedure (CPC) - Order 39 Rule 2-A; Madhya Pradesh Rules, 2008 - Chapter 2 Rule 7; [Constitution of India](#) - Article 215

Appeal No. : Cont.1646/2007

Appellant : Ramlal

Respondent : Shivpal

Advocate for Pet/Ap. : Shri. Manish Dubey

Judgement :

1. Shri Manish Dubey, learned counsel for the petitioner.
2. Alleging violation of an injunction issued in a 'Second Appeal', this contempt petition was filed and registered as an independent case titled "Contempt Petition (Civil)" under Section 12 of the Contempt of Court Act, 1971. Subsequently, upon an application made by the petitioner it was allowed to be converted to an application under Order 39 Rule 2-A of the Code of Civil Procedure, and accordingly the section under which the case had been filed namely section 12 was altered to Order 39 Rule 2-A. Thus it remained an independent case.

3. According to proper procedure, the petition under Section 12 should have been dismissed or should have been allowed to be withdrawn with liberty to file an application under Order 39 Rule 2-A of the Code of Civil Procedure in the Second Appeal. Had that proper procedure been observed, perhaps it might have been easier to decide the factual dispute raised herein, by examining the pleadings and evidence lead in the suit out of which the Second Appeal arose, in which appeal the injunction of status quo has been granted.

4. Under Chapter 2 Rule 7 of The High Court of Madhya Pradesh Rules, 2008 a petition (i) either under Article 215 of the [Constitution of India](#), and/or (ii) under section 12 of the Contempt of Courts Act 1971 is to be registered as a Contempt Petition (Civil), and such a case is to be heard by the Judge to whom such jurisdiction of hearing civil contempt cases is assigned in the Roaster made by the Chief Justice. Applications under Order 39 Rule 2-A are not specifically dealt with under the High Court Rules, but are dealt with by C.P.C. Under Chapter 2 Rule 10(8) of the High Court Rules any application not falling under any of the specified categories are to be registered as a 'Miscellaneous Civil Case'. Order XXXIX Rule 2-A C.P.C. provides the consequences of disobedience or breach of an injunction. It expressly provides that the order of attachment or detention in "civil prison" is to be passed by the Court granting the injunction or to the Court where the suit or proceeding (in which injunction was granted) have been transferred.

5. A comprehensive over-view of these provisions make it clear that an application under Order 39 Rule 2-A is to be a miscellaneous application or a miscellaneous case in the suit or appeal, and in a case like the present is to heard by the Judge to whom Second Appeals are assigned in the Roaster. No procedure can be adopted which is in conflict with the procedure prescribed by The Code of Civil Procedure, which is a Central Legislation.

6. In view of the above and also to avoid the necessity of obtaining the same evidence for deciding this contempt case, I am of the opinion that now the error of procedure which has crept in should be rectified by allowing the petitioner to withdraw the contempt petition with liberty to file a miscellaneous application under Order 39 Rule 2-A of Code of Civil Procedure in the pending second appeal.

Order accordingly.

7. A copy of this order will be sent to the Scrutiny Assistant (Checker) mentioned in Chapter 11 Rule 5 of the High Court Rules for his future guidance.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com