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Court : Karnataka

Decided On : Jun-03-2011

Judge : S.N. Satyanarayana

Appeal No. : MFA. No. 1680 of 2009 (CPC)

Appellant : Freny Rustumji and Others

Respondent : M/S. Rustumji Developments a Regd., Partnership Firm, Rep by Its Managing Partner N.H. Rustumji and Another

Advocate for Pet/Ap. : For the Appellants: Aditya Sondhi, Advocate. For the Respondents: R2 - M/s. Komal and Bhanu, Advocates.

Judgement :

(Prayer: This appeal is filed u/Order 43 Rule 1 (R) of the CPC against the order dated 17.1.2009 passed in OS.No.5163/2000 on the file of the V Addl. City Civil Judge, Bangalore City, (SCCH 13), Bangalore, rejecting the IA.XVI filed under Order XXXIX Rule IV 2A of CPC, praying to take action against the 2nd defendant for disobeying the order of this Court below passed on IA.I made on 30.1.2002 in the interest of justice.)

1. The plaintiffs in OS.No.5163/2000 have come up in this appeal impugning the one line order passed by the court below on IA.No.16 filed under Order 39 Rule

2A, CPC.

2. Brief facts leading to this appeal are as under:-

Appellants herein who are plaintiffs in the court below filed a suit in OS.No.5163/2000 seeking specific performance of the agreement dated 31.3.1988 entered in to between them and defendants with reference to suit schedule properties. During the pendency of said proceeding, an order of temporary injunction was granted in favour of plaintiffs pursuant to an application filed by them under Order 39 Rules 1 and 2, CPC, which is not in dispute. It is contended by appellants herein that during the pendency of said interim order defendants herein have disposed off the suit schedule properties in utter disobedience to the order of the court below. Hence, plaintiffs filed an application in IA. 16 under Order 39 Rule 2A.

3. It is an admitted fact that on the said application an independent enquiry is also conducted by the court below. Thereafter, both the parties have addressed their arguments. Strangely, the said application came to be disposed of by the order impugned, which is one line order dated 17.1.2009 reads as under:-

“17.01.09 PRR. D1 and 2 SS Order on IA16.

Parties are absent. Orders pronounced in open court. IA.16 is rejected. P/E on merits. 17/1.”

4. The court below after considering the serious allegation made by the plaintiffs against defendants which is with regard to contemptuous act said to have committed by the defendants against the interim order passed by the court below, after having recorded the evidence on the said application in IA.16 and after hearing the parties, ought to have given appropriate reasons while disposing of the said application either to allow or dismiss the same and whatever be the order it should have been on merits of the case.

5. However, the order impugned clearly discloses that the court below has not applied its mind. It has considered the said application in a very casual manner though the allegations made are quite serious, which virtually amounts to showing

utter disrespect or contempt to the order of the, court which cannot be permitted.

6. It is submitted by the counsel for appellants that subsequent to filing of the present appeal the aforesaid suit filed by them is dismissed for default, in respect of which they have filed an application under Order 9 rule 30, CPC for restoration of the same, which is pending in Misc.No.322/2009. Be that as it may. Though in the instant case the dismissal of the suit is pending consideration in the aforesaid miscellaneous proceedings, it does not come in the way of the court below taking up this matter afresh and to pass orders on the application in IA. 16 on merits taking in to consideration the evidence available on record on the said application and also the submissions made by the parties to suit.

7. In support of that learned Counsel for appellant relied upon the decisions rendered by the Apex Court in the matter of Prithawi Nath Ram -vs- State of Jharkhand and Others, (2004) 7 SCC 261. Wherein it is observed by the Apex Court as under:

“9. In a given case, even if ultimately the interim order is vacated or relief in the main proceeding is not granted to a party, the other side cannot take that as a ground for disobedience of any interim order passed by the court.”

And also in the matter of K.Seshappa -vs- St.Francis Xavier Churc, Chikkaballapur, 1999(5) Kar.L.J 379, wherein it is observed by this Court as under:

“The purport of Rule 2-A of Order 39 is to see that the dignity of Court is not violated. Orders given by the court are to be followed and they are meant to be followed and if anybody tries to take law into his own hands and to act in breach of the order intentionally and purposefully knowing the order fully well, he has to be dissuaded by taking action under Order 39, Rule 2. Majesty of law is to be maintained and if any person commits breach of majesty of law, definitely he has to be dealt with severe hands. The purpose of Order 39, Rule 2-A is to prevent breach of the order of the Court and disobedience of the orders of the Court. This has got nothing to do with final decision of the case. Final decision of the case may stand on a separate footing. But, when Court has ordered parties to maintain status quo and directed the parties not to alienate the suit property in any manner,

if such a case is made out and established, the duty of the court of law is to see that said breach is punished and is not repeated. So, finally what is the decision of the suit is a different matter, but court has to consider the suit separately and the application alleging that the defendant had committed breach of the injunction order that has to be decided on the basis of the evidence led in under Order 39, Rule 2-A application. These two have to be taken to be two distinct proceedings. No doubt, the application under Order 39, Rule 2-A is made in a suit to the effect that party restrained has committed breach of the order, but that is a separate and distinct case. It has nothing to do with the merits of the suit to be finally decided. In support of my observations and view as mentioned above, I may refer to the following observations of Hon'ble Mr. Justice G.P. Mathur of Allahabad High Court in the case of Gyan Chand Jain, supra:

“In my opinion, the mere fact that an order was passed to hear the miscellaneous cases along with the main suit would not mean that the miscellaneous cases should be decided on the basis of the evidence which had been recorded in the main suit and by the same order. A proceeding under Order 39, Rule 2-A, CPC initiated on the ground of disobedience or breach of injunction order, is in the nature of a criminal proceeding as the person against whom such proceeding is initiated is liable to be detained in prison if it is found that he had committed breach of injunction order. Since a punishment is imposed and a person is sent to jail, the principle on which these proceedings are decided are entirely different. Here the principle of criminal law will apply and the plaintiff will have to establish beyond any shadow of doubt that the defendants had committed disobedience or breach of the injunction order even though he had full knowledge of the same. The burden of providing its case in such cases lies entirely on the plaintiff. The principle on which a civil suit is decided are different as here decision on the issues arising out of pleadings is taken on the basis of preponderance of evidence.”

8. After giving anxious consideration to the submission made by the learned Counsel for the appellants and as well as respondents and also on going through the aforesaid decisions, this Court is of the opinion that the impugned order is required to be set aside. The matter should be referred back to the court below for fresh consideration with a specific direction that the court below if necessary

should rehear the plaintiffs and defendants and after giving them sufficient opportunity shall dispose of IA. 16 on merits taken in to consideration the evidence which is already recorded and available on file.

9. Further, it is clarified that though the original suit is dismissed and restoration of the same is under consideration in miscellaneous proceedings, the same will not come in the way of court below in independently hearing the parties on IA. 16 in disposed of suit as it is a totally separate and distinct issue to be decided by the court below, which directly refers to maintaining dignity, decorum and majesty of the court.

10. In view of the foregoing, the appeal filed by appellants is allowed with the aforesaid observations and with a direction that the application in IA. 16 should be reheard and disposed of within 60 days from 1.7.2011. The aforesaid date is fixed in the presence of counsel appearing for plaintiffs, appellants herein and also respondents, defendants in the court below so as to prevent any delay that may arise in issue of notice to parties since original suit is dismissed and the same is pending consideration in the aforesaid miscellaneous proceedings. Both the learned Counsel are directed to inform their parties to make necessary arrangements for their appearance through counsel on 1.7.2011 in disposed of OS.No.5163/2000 on the file of V Addl. City Civil Court, CCH 13, Bangalore and to assist the court below in disposing of the said matter within 60 days from the said date.

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