

Balram Singh

Vs

Bhikam Chand Jain and Others

Criminal Miscellaneous Petition No. 1321 of 1985 in Criminal Appeal No. 95 of 1984

(A. P. Sen, D. P. Madon JJ)

04.09.1985

ORDER

1. This is an application by the respondent Balram Singh in Criminal Appeal 95 of 1984, Bhikam Chand Jain v. Balram Singh, who is inventor of a patented septic tank marketed under the trade name of "Shanker Septic Tank", for committing the appellants Bhikam Chand Jain and others, partners of Messrs Jabalpur Cement Pipe Manufacturing Company, Jabalpur, for contempt of Court. At the hearing of the aforesaid appeal, on February 20, 1984, learned counsel for the contemnors had made a statement assuring the Court that the caption or legend "Design invented by Shri Bhikam Chand Jain" would be deleted forthwith and would not be used thereafter in any of the advertisements, brochures etc. issued in regard to the sale or use of "Balram Septic Tank". On the faith and assurance of the undertaking this Court passed an order dated February 20, 1984 that in view of the said assurance, no useful purpose was likely to be served by allowing the prosecution launched by the respondent against the contemnors to proceed and accordingly quashed the proceedings in Criminal Case 195 of 1980 pending in the Court of the Judicial Magistrate, First Class, Sasaram.

2. This necessarily implied that the contemnors would stop forth-with their objectionable activities in manufacturing and selling the patented septic tank to the prejudice of the respondent Balram Singh. Despite the solemn assurance, although the contemnors deleted the caption or legend "Design invented by Shri Bhikam Chand Jain", they continued their objectionable activities in manufacturing and selling the patented septic tank to the prejudice of the respondent Balram Singh by using the brand name "Balram Septic Tank" and issued advertisements, brochures etc. falsely suggesting that they had the sole and exclusive right to manufacture and sell the same. On being apprised of this the respondent got a trade notice dated April 17, 1984 published in a Hindi daily the 'Desh Bandhu' published from Jabalpur cautioning the public that the contemnors had no right to market the product "Balram Septic Tank" of which he was the inventor.

3. In flagrant disregard of the assurance given to this Court, the contemnors had a notice published in the same Hindi daily the 'Desh Bandhu' dated April 19, 1984 asserting that this Court had not banned Messrs Jabalpur Cement Pipe Manufacturing Company from manufacturing and selling the patented septic tank in the name of "Balram septic Tank", that the respondent was never the owner and inventor of Balram Septic Tank and that the notice issued by him was only to mislead the public and to take commercial advantage out of it. Again, on June 7, 1984 the contemnors got published an advertisement in a Hindi daily the 'Sagar Saroj' published from Sagar claiming their exclusive right to manufacture and sell the same in violation of the undertaking given to this Court.

4. In response to the show cause notice issued by this Court twice, the contemnors have now

appeared and filed a counter-affidavit. They plead inter alia that :

- (1) They have not after February 20, 1984 used the caption or legend "Design invented by Shri Bhikam Chand Jain" in any of their advertisements, brochures etc.
- (2) They had never given any undertaking or assurance to delete forthwith and not to use the name "Balram Septic Tank". A mere perusal of the Court's order would make the position clear.
- (3) The respondent had never manufactured any septic tank under the trade name of "Balram Septic Tank" which is the name given by Messrs Jabalpur Cement Pipe Manufacturing Company to the septic tank manufactured by them. He used to manufacture and advertise his septic tank under the name "Shanker Septic Tank Latrine", and got the design duly patented and registered in his own name.
- (4) It was the grievance of the respondent that the advertisements, brochures etc. issued by them showed that it was the "Design invented by Bhikam Chand Jain", managing partner of the firm. It was in those circumstances that an assurance was given by their counsel that they would delete the caption or legend "Design invented by Shri Bhikam Chand Jain".
- (5) Nothing in the order of this Court dated February 20, 1984 prevented them from manufacturing and selling "Balram Septic Tank" the design of which was quite different from the design patented by the respondent or from using the name "Balram Septic Tank" in their advertisements, brochures etc.

5. On the material placed before us and having heard learned counsel for the parties and given the matter our anxious consideration, we are satisfied that the contemnors instead of mending their ways and conforming to the spirit of the order passed by this Court dated February 20, 1984 on the solemn undertaking given by their counsel have been guilty of contumacious conduct and their act in publishing the said notice dated April 19, 1984 in the Hindi daily the 'Desh Bandhu' in contradiction of the notice dated April 17, 1984 published in the same newspaper by the respondent Balram Singh asserting that they had the sole and exclusive right to manufacture and sell their product registered under the name "Balram Septic Tank", amounts to a gross violation of the said undertaking on the basis of which this Court by its order dated February 20, 1984 quashed the pending criminal proceedings.

6. Learned counsel for the contemnors had given an undertaking assuring the Court that the caption or legend "Design invented by Shri Bhikam Chand Jain" would be deleted forthwith and would not be used thereafter in any of the advertisements, brochures etc. issued in regard to the sale or use of "Balram Septic Tank". As the respondent rightly complains, this necessarily implied that the contemnors would stop forthwith their objectionable activities of manufacturing and selling the patented septic tank to the prejudice of the respondent. Their further act in publishing the said advertisement in the Hindi daily the 'Sagar Saroj' on June 7, 1984 was in breach of the said undertaking given by them. The respondent had in his trade notice dated April 17, 1984 cautioned the general public that some people and agencies had flooded the market in the State of M.P. with septic tanks under the name "Balram Septic Tank" invented by him and got its design patented, and that Bhikam Chand Jain had been given permission under the agreement of 1973 to manufacture and sell such septic tanks conforming to the above design and process on payment of royalty, but

when the said firm did not adhere to the terms and conditions of the agreement the agreement had been cancelled on the expiry of the period of the same in 1979. Despite this, the firm did not stop the work of manufacturing and selling "Balram Septic Tank" of his patented design and process. He also drew attention to the fact that the firm gave an assurance to the Supreme Court that they would have no connection with the manufacturing process or design of the septic tank of the respondent in future. It was perfectly legitimate on the part of the respondent, who was the inventor of the septic tank, to warn the trade of the alleged infringement and passing off.

7. We must take serious view of the conduct of the contemnors in committing a breach of the undertaking in view of the growing tendency to trifle with the Court's orders based on undertakings with impunity. Learned counsel for the contemnors strenuously contended that there was no undertaking given that the contemnors would stop forthwith the manufacture and sale of their "Balram Septic Tank" which they have got patented under their name, and all that they had assured was that they would delete forthwith the caption or legend "Design invented by Shri Bhikam Chand Jain" and this, according to him, had been done. He further contended that the respondent Balram Singh was only entitled to manufacture and sell "Shanker Septic Tank" under which his design was patented. The contemnors along with their counter-affidavit have filed a trade notice issued by the respondent bearing out their assertion that the septic tank patented by the respondent was under the name "Shanker Septic Tank". They have also filed an affidavit dated June 20, 1979 together with an annexure by one Dev Shri Prasad, Designs and Trade Mark Consultant, making a declaration on their behalf that the contemnors were the exclusive owners, inventors and adopters of the trade description "Balram Septic Tank" and that no one had any right to make use of or deal with the said trade description, as also an extract from the register of copyrights dated February 3, 1981 showing that the trade description "Balram Septic Tank" has been registered with the Copyright Office in the name of the said firm. The annexure to the affidavit showed a design of "Balram Septic Tank" which more or less corresponds with the patented design of "Shanker Septic Tank" of the respondent. The contemnors have also filed a copy of an application dated March 19, 1982 showing that they have made an application before the Registrar of Trade Marks, Bombay, claiming that they have been manufacturing and selling their septic tank under the trade description "Balram Septic Tank" continuously since September 5, 1973.

8. All this is of no avail and does not exonerate the contemnors nor relieve them of the undertaking. We refrain from expressing any opinion on the question whether there is infringement of any patent or trade mark or whether the ingredients of an offence punishable under Section 420 of the Indian Penal Code, 1860 are made out. Nor should we be taken to have expressed a view upon the question whether the contemnors have any right to the user of the trade description "Balram Septic Tank" or to manufacture and sell their product under that description. These are not the questions before us. The only question is whether the breach of the said undertaking amounts to contempt. To go beyond that might come into the field of discussion of the merits of the case. It is true that the contemnors have deleted the caption or legend "Design invented by Shri Bhikam Chand Jain" from the advertisements, brochures etc. issued by them, but instead they have prominently printed the photograph of Tikam Chand Jain, partner of the said firm. Prima facie a reading of the advertisement, brochure etc. issued by the contemnors is bound to mislead the public. Faced with this situation, learned counsel for the contemnors in sheer desperation offered that the contemnors would drop the trade description "Balram Septic Tank". As a last resort, he contended that even if they are committed for contempt, they should be sentenced to pay a fine. It would be a travesty of justice if the Court were to allow such gross contempt of Court to go unpunished, without an adequate sentence and we find no mitigating circumstances whatever not to pass a sentence of imprisonment. We accordingly commit the contemnors for contempt of Court and sentence each of

them to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 1000 or in default, to undergo simple imprisonment for a further period of one month.

9. In the facts and circumstances of the case, we recall the order passed by this Court dated February 20, 1984 granting special leave. We dismiss the special leave petition. The judgment and order of the High Court dated January 5, 1983 refusing to quash the proceedings in the Court of the Judicial Magistrate, First Class, Sasaram are restored. The bail bonds of the contemnors stand cancelled and they shall be taken into custody forthwith to serve out their sentence.

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