

Firm Ganpat Ram Rajkumar

Vs

Kalu Ram and Others

Civil Miscellaneous Petition No. 1103 of 1989 in SLP 5597 of 1987

(Sabyasachi Mukharji, B. C. Ray JJ)

22.09.1989

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This application is by Kalu Ram and another, who were the respondents in Special Leave Petition No. 5597 of 1987. The petitioner in the special leave petition was the firm, namely Ganpat Ram Rajkumar. It appears that the applicants had filed proceedings for eviction against the firm in respect of the property in Narnaul in the State of Haryana under Section 13(3)(c) of the Haryana Urban (Control of Rent and Eviction) Act, 1973. An order of eviction was passed against the said firm. Ultimately the High Court upheld the said order of eviction. The said firm came in special leave petition to this Court. This Court found that there was nothing to interfere with the order of eviction and on August 24, 1987 passed the following order :

"In view of the finding that the landlord has made out a case for eviction under Section 13(3)(c) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 the special leave petition is dismissed. The order of eviction shall not be executed for a period of six months on the petitioners filing usual undertaking in this Court within four weeks from today. The dismissal of the special leave petition should also not prevent the petitioner to the benefit of putting back into possession in the equivalent accommodation in the reconstructed building provided the court lays down such condition while interpreting the provisions of the Act. We are informed that the question is pending consideration before this Court in some other cases i.e. W.P. Nos. 13385, 9921-24 of 1983 etc."

2. From the aforesaid, it is apparent that the said firm wanted time to vacate the premises within six months from the date of the order and representation must have been made on behalf of the said firm that the 'usual undertaking' will be filed in this Court. Upon that, this Court restrained eviction for a period of six months from the date of the said order. This Court, further preserved the right of the said petitioner to the benefit of being put back in possession in the equivalent accommodation in the reconstructed building provided the court laid down such condition while interpreting the provisions of the Act.

3. This Court recorded that the aforesaid question was pending consideration in this Court. However, it appears that the said firm did not file any undertaking, usual or otherwise. The usual undertaking to this Court means, inter alia, a statement that the party giving the undertaking is in possession of the premises and that it will further deliver vacant and peaceful possession to the landlord or the respondent. As mentioned hereinbefore, the petitioner did not file the undertaking

though it had obtained time from this Court on that plea. Furthermore, the petitioner did not vacate the premises in question. It appears that Sanjay Kumar and Lala Ram sons of Rajkumar and Ved Prakash who as sons of Ganpat Ram filed a suit in the Court of Senior Sub-Judge, Narnaul for permanent injunction, restraining the present applicants from ejecting Sanjay Kumar and Lala Ram. It may be mentioned that Ganpat Ram and Rajkumar are Lala Ram are the partners of the petitioner-firm M/s. Ganpat Ram Rajkumar. The said firm and the partners thereof were bound in law to comply with the order dated August 24, 1987. In the said suit Sanjay Kumar and Lala Ram obtained an order of temporary injunction dated November 3, 1988. The learned Senior Sub-Judge, Narnaul, by an order in an application under Order 39, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure in Civil Suit No. 121 of 1988 filed in the Court of Senior Sub-Judge, Narnaul, by Sanjay Kumar, Lala Ram - minor sons of Rajkumar and Ved Prakash, son of Ganpat Ram as partners in the said firm, made the order of injunction.

4. The said suit was instituted against Kalu Ram and Puran Chand sons of Roshan Lal and also against Ganpat Ram. In the order passed on February 12, 1988 in the said suit, the learned Senior Sub-judge, Narnaul had stated that the present plaintiffs had claimed right of tenancy to the premises in question independently and as such the decree of eviction passed by this Court in Special Leave Petition No. 5597 would not bind the plaintiffs therein. He, therefore, issued an injunction restraining the parties who were Kalu Ram, Puran Chand and Ganpat Ram, partners of the petitioner-firm. As mentioned hereinabove, both Sanjay Kumar and Lala Ram are sons of Rajkumar and Ved Prakash respectively, who is a partner of the firm, Ganpat Ram Rajkumar. Rajkumar was a partner, Ganpat Ram was a partner and their sons and grandsons were claiming in the suit in Narnaul. On the date of the order of this Court dated August 21, 1987 in the said special leave petition, the petitioner therein had obtained time on the implied assurance and representation that they were in possession of the premises in question and were capable of delivering the vacant possession to the applicants herein. The effect of the said order of this Court, as we have set out hereinbefore, is that the applicants would have vacant possession from the firm, Ganpat Ram Rajkumar. It is not clear from the order of the learned Senior Sub-Judge, Narnaul dated November 3, 1988, how since the order of this Court dated August 24, 1987, the plaintiffs in the suit in Narnaul court could have a possession of the premises in question. Having regard to the relationship between the parties and having regard to the undertaking promised to be filed in this Court upon which time was obtained from this Court, it appears to us that there is a clear non-compliance of the order. The order stated that vacant possession was to be given.

5. In the aforesaid view of the matter, the question that requires consideration is how will this order of eviction passed by the High Court and confirmed by this Court by dismissing the special leave petition on the terms mentioned hereinabove on August 24, 1987 is to be enforced or implemented? In our opinion, the said order must be implemented and cannot be allowed to be defeated by the dubious methods adopted by the partners of the said firm of Ganpat Ram Rajkumar. The whole conduct betrays a calculated attempt to defeat the order of this Court and to mislead this Court. If that is the position, in our opinion, parties cannot be allowed to do so and get away by misleading this Court. This application was made for contempt. It may or may not be appropriate to pass any order punishing the wrongdoers. But there is no doubt that the order of this Court dated August 24, 1987 is being sought to be defeated and frustrated. Sons and grandsons of the partners or erstwhile partners of the firm cannot be allowed to frustrate the order of this Court.

6. Mr. Ashri, learned counsel for the respondents submitted that the respondents could not be held guilty of contempt of court. It was further submitted by him that no undertaking had, in fact, been given, as such there is no question of breach of any undertaking by anybody. Mr. Ashri was right. In

fact, no undertaking was given. It is also true that the parties who instituted suit in Narnaul and obtained the order of injunction dated November 3, 1988 were not parties before this Court when this Court passes the order on August 24, 1987 nor are those parties successors-in-interest, according to law, of those who were bound by the order dated August 24, 1987, as such. As we look at it, the order of this Court is an order of the High Court with a sanction of this Court and the applicants were entitled to have it executed. It has been interfered, interfered by the firm along with the plaintiffs in the said suit at Narnaul. Mr. Ashri referred to certain observations of this Court in *Babu Ram Gupta v. Sudhir Bhasin* ((1980) 3 SCC 47 : 1980 SCC (Cri) 527 : AIR 1979 SC 1528 : (1979) 3 SCR 685), wherein pending decision of a dispute between the parties referred to an arbitrator, the High Court passed with the agreement of the parties a consent order appointing a receiver. The court directed that the receiver should take charge of the property forthwith from the appellant therein and submit periodical reports to the court regarding the running of the business. Without making an express direction to the appellant, that the properties in its possession should be handed over to the receiver, the High Court directed the appellant not to interfere with the receiver in the running of the business and that the appellant should give the receiver all cooperation that the receiver might require. In the petition filed before the High Court in that case, the respondent alleged that by failing to hand over possession of the property to the receiver, in terms of the consent order the appellant had committed breach of the undertaking given to the court and thereby committed an offence punishable under Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act'). The High Court held the appellant to be guilty of contempt of court and sentenced him to undergo civil imprisonment. This Court held that the act of the appellant in not complying with the terms of the consent order did not amount to an offence under Section 2(b) of the Act, however improper or reprehensible his conduct might be. It was further held that when a person appearing before a court files an application or affidavit giving an undertaking to the Court or when he clearly and expressly gives an oral undertaking which is incorporated by the court in its order and fails to honour that undertaking then a wilful breach of the undertaking would amount to an offence punishable under the Act. An undertaking given by one of the parties should be carefully construed by the court to find out the nature and extent of the undertaking given by the person concerned. It is not open to the court to assume an implied undertaking when there was none on the record, this Court said. As mentioned hereinbefore, the facts of that decision is significantly different from the facts in this case. The parties by no conduct, overt or otherwise, herein misled this Court. Indubitably, in the instant case, the decree of eviction was passed by the learned Senior Sub-Judge, Narnaul and upheld by the High Court of Punjab & Haryana. This Court dismissed the special leave petition and granted time of six months on the plea that the petitioner firm would file an undertaking. All this could not have happened if the present plaintiffs in the Narnaul suit had not consented or allowed it to be passed or stood by. It is difficult to accept the position that they did not know. In the facts of this case, we are of the opinion that they deliberately did not object to this Court passing the order and thereby allowed the firm to mislead this Court. They are, therefore, bound to see that the order of this Court is complied with. Though, contempt is a serious matter and it interferes with the right of those who are found guilty of contempt, no court should allow any party to mislead the court and thereby frustrate its order. In the aforesaid view of the matter, we are of the opinion that though perhaps the respondents could not be found guilty of violating any undertaking as there was none, in the facts and circumstances of the case, this Court should ensure compliance with its order dated August 24, 1987 and see that vacant and peaceful possession is given to the applicant in the interest of justice. Mr. Sanghi, learned counsel for the applicant drew our attention to an order of this Court in *Thacker Hariram Motiram v. Balkrishan Chatrabhu Thacker* (1989 Supp 2 SCC 655 JT (1988) 3 SC 18). That decision was, however, on the question of entertaining a special leave petition or not. Special leave was not entertained in that case because the

petitioner therein had obtained time from High Court in respect of decree of eviction. In this case also the special leave petition was dismissed but out of consideration for the difficulties of the petitioner-firm in the said petition, this Court was induced to grant some time on certain considerations. It appears that this Court was misled. It further appears that the respondents, all of them, were guilty of acts which led to the situation and thereby frustrate the order of this Court.

7. Another point was taken about limitation of this application under Section 20 of the Act. Section 20 states that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from date on which the contempt is alleged to have been committed. In this case, the present application was filed on or about November 3, 1988 as appears from the affidavit in support of the application. The contempt consisted, inter alia, of the act of not giving the possession by force of the order of the learned Senior Sub-Judge, Narnaul dated November 3, 1988 (sic February 12, 1988). Therefore, the application was well within the period of one year. Failure to give possession, it amounts to a contempt in a situation of this nature is a continuing wrong. There was no scope for application of Section 20 of the Act.

8. In the aforesaid view of the matter, we direct the learned Senior Sub-Judge, Narnaul (Haryana) to cause to deliver up the vacant possession of the shop situated at Sabji Mandi, Narnaul, Distt. Mohindergarh (Haryana), if necessary with the help of police forthwith. The learned Senior Sub-Judge, Narnaul is also directed to report compliance immediately, Save as aforesaid, there will be no order on this application, but we direct that the respondents, namely, firm Ganpat Ram Rajkumar, Ganpat Ram, Rajkumar, Sanjay Kumar, Lalu Kumar and Ved Prakash should pay and bear the costs of this application to the applicant, which is quantified and assessed at Rs. 2500 (Rupees two thousand five hundred only). Save as aforesaid, there will be no further orders on this application. This order will not prevent or prejudice the applicants from taking any step for recovery of arrears of rent and mesne profit as they are entitled to in accordance with law.

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