Rosnan Sam Boyce

Vs

B. R. Cotton Mills Ltd. and Others

Civil Appeal No. 1778 of 1990

(M. H. Kania, Kuldip Singh, R. M. Sahai JJ)

06.04.1990

JUDGMENT

KANIA, J. -

1. Leave granted. The appeal is taken up for final hearing. Counsel heard.

2. The short facts necessary for the disposal of the appeal are as follows :

> The appellant is the owner of a bungalow known as "Villa Hormazd" at 8-A Carmichel Road, Bombay. The suit premises, comprising two floors of the said bungalow, were leased top Mayer Mills Ltd. under a lease deed dated April 16, 1948 for a period of three years from November 1, 1947. At that time, the bungalow belonged to the father of the appellant. On the death of the father of the appellant in 1949, the appellant became landlady of the said bungalow. Respondent 1, B.R. Cotton Mills Ltd., is the successor-in-interest of Mayer Mills Ltd. and at the relevant time was in possession of the suit premises at a tenant. Respondent 2 is the Chairman of respondent 1 and the other respondents are some of the Directors of respondent 1. The appellant filed a suit being R.A.E. No. 763/6563 of 1966 in the Small Causes Court at Bombay for eviction of respondent 1 from the suit premises and for possession on the ground of reasonable and bona fide requirement. During the pendency of this suit, another suit for eviction was also filed by the appellant against respondent 1 for eviction on the ground of default of in the payment of rent for a period of more than six months. The trial court by its judgment dated September 13, 1975 decreed the aforesaid eviction suit R.A.E. No. 763/6563 of 1966 (hereinafter referred to as "the said suit") but the other suit for eviction filed by the appellant was dismissed in view of the eviction decree passed in the said suit. Respondents 1 and 2 filed an appeal against the decree for eviction but the said appeal was dismissed. In February 1986, the husband of the appellant died and after that the appellant is the landlady of the said bungalow. On the other hand, the appeal of the appellant against the dismissal of her other suit, for eviction on the ground of default in payment of rent was allowed and that suit was also decreed against respondent 1. The respondent then filed a writ petition in the High Court at Bombay challenging the decrees for eviction passed by the Court of Small Causes as aforestated. On February 27, 1987, respondent 2 filed a suit in the Court of Small Causes for a declaration that he was the lawful sub-tenant of the suit premises and was not bound by the decrees of eviction passed in respect of the suit premises against the tenant, namely, respondent 1. The said Writ Petition No. 1066 of 1987 filed by respondent 1 Challenging the

decrees for eviction passed against respondent 1 in the said suits and confirmed in appeal came up for hearing before a learned Single Judge of the Bombay High Court on March 5, 1983. The learned Judge by his judgment and order of the same date, dismissed the said writ petition. The relevant part of order of the learned Judge reads as follows :

"The petitioner requests for time eight weeks to vacate the premises. He is granted the said time subject to executing written undertaking that he shall not part with the possession of the suit premises or create third party interests in the suit premises in the meantime in any manner whatsoever."

3. On March 11, 1987, the matter was brought up again before the learned Single Judge by learned counsel for the appellant for pointing out that respondent 1 had not filed the requisite undertaking as directed under the order dated March 5, 1987. It appears that at that stage it was pointed out to the court by Mr. Dalvi, learned counsel for the appellant that respondent 2 had filed a declaratory suit in the Court of Small Causes as aforestated claiming to be the sub-tenant of the suit premises. The order of the learned Judge dated March 11, 1987 shows that the learned Judge stated that he did not wish to take any action at that time on the conduct of respondent 1 but, as a last chance, granted respondent 1 time up to March 17, 1987 for furnishing the undertaking as ordered failing which it would be deemed that the condition was not fulfilled. Respondent 3, as a Director of respondent 1, by his affidavit, affirmed on March 17, 1987, gave an undertaking merely stating that respondent 1 would not commit any act contrary to or in breach of the order dated March 5, 1987 (sic 1983). It was pointed out by the appellant that this undertaking was not in compliance with the orders passed by the learned Single Judge. After some correspondence, respondent 3, by his affidavit affirmed on March 25, 1987 filed an undertaking on behalf of respondent 1 inter alia stating that respondent 1 would not part with the possession of suit premises or create any third party interest in the suit premises in any manner whatsoever. The undertaking did not state that respondent 1 had not, before the undertaking was given, parted with the possession of the suit premises or created any third party interest therein. When the matter came up on March 31, 1987 before the learned Single Judge who had given time to respondent 1 to vacate as aforestated, it was pointed out by learned counsel for the appellant that the undertaking was objected to as it did not state that respondent 1 was in possession. Thereupon Shri R. J. Joshi, learned counsel for respondent 1-company, stated that the undertaking spoke for itself and when it stated that respondent "shall not part with possession" it meant that respondent 1-company was in possession. In view of this the learned Judge did not give any further clarification. Respondent 1 preferred a special leave petition to this Court against the judgment of the learned Judgment dismissing the said writ petition but the said special leave petition was dismissed. Thereafter the suit filed by respondent 2 in the Court of Small Causes for a declaration that he was the lawful sub-tenant of the suit premises was dismissed but he preferred an appeal against the said decision and in that appeal obtained an interim injunction restraining the appellant from interfering with his possession of the suit premises. In view of this, the decree for eviction could not be executed. Thereafter in June 1987, the appellant filed Contempt Petition No. 106 of 1987 in the Bombay High Court setting out the facts and praying that the respondents should be punished under the provisions of the Contempt of Courts Act, 1971. It has been inter alia alleged in the contempt petition by the appellant that in spite of the said undertaking, respondent 2 had filed a suit, being Suit No. 2911 of 1987 in the City Civil Court at Bombay claiming a declaration that the decree for possession was a nullity and for an injunction restraining the appellant from executing the decree and obtained an ad-interim injunction a few days after the summary dismissal of the special leave petitions filed by the respondents in this Court as aforestated. The said suit was thereafter dismissed for non-prosecution but, in the meantime, respondent 2 filed the suit in the Court of Small

Causes for a declaration that he was the lawful sub-tenant of the premises as aforestated. It was submitted by the appellant in the contempt petition that the said undertaking given by respondent 1 clearly implied that on the date of the undertaking, respondent 1 was in possession of the suit premises and in order to defeat the decress for possession, respondent 1 had set up its Chairman, respondent 2, to the file the aforesaid suit in the Court of Small Causes claiming sub-tenancy. It was further submitted by the appellant that although respondent 1 continued to be in possession of the suit premises it had set up respondent 2 to file the suits on the ground that he was in possession of the suit premises as a sub-tenant in his own right and continued to be in possession thereof. The learned Judge before whom the said contempt petition came up for hearing took the view that in the order of the learned Single Judge dated March 5, 1987, he was unable to read any direction to file an undertaking to give possession. He took the view that the aforesaid undertaking given on behalf of respondent 1, that it would not part with possession or create any third party interest in the suit premises, did not imply that respondent 1 was in actual physical possession of the suit premises and that the fact that respondent 2 was claiming an independant title in himself as a sub-tenant by virtue of a resolution of respondent 1 was not sufficient to hold that respondent 1 or the other respondents were guilty of contempt. He took the view that there was no undertaking by respondent 1 to deliver possession of the suit premises and on the basis of these conclusions, he rejected the contempt petition. At the same time the learned Judge did observe that respondent 1 may have indulged in sharp practices but held that it was not guilty of contempt. The present appeal is directed against the order.

4. It was submitted by Mr. Chidambaram, learned counsel for the appellant that respondent 1 and respondent 2 were guilty of contempt and the learned Single Judge was an error when he took the view that no contempt was established in the matter against the respondents. It was submitted by learned counsel that on March 5, 1987 when the writ petition preferred by respondent I was summarily rejected by Justice Puranik of the Bombay High Court, learned counsel for respondent 1, on instruction, made an application to the learned Judge to grant respondent 1 time for eight weeks to vacate the suit premises. This time was granted subject to respondent 1 executing can undertaking that he would not part with the possession of the premises or create third party interests therein as set out earlier. After delaying the matter for some time, respondent 3 filed on March 25, 1987, an affidavit, as a director of respondent 1 wherein she set our inter alia that respondent 1 agreed to give an undertaking as set out earlier as respondent 1 was desirous of approaching the Supreme Court took challenge the order of learned Judge dismissing the writ petition. It was submitted by Mr. Chidambaram that this undertaking clearly implied that respondent 1 was in possession of the premises and was in a position to hand over the vacant and peaceful possession preferred by respondent 1 were dismissed or no interim relief was obtained thereunder. This undertaking was taken note of by Justice Puranik when the case reached before him on March 31, 1987. It appears the ground that it did not state that respondent to the language of the said undertaking on the ground that it did not state that respondent 1 was in possession of the suit premises and thereupon, Mr. R. J. Joshi, learned counsel for respondent 1, stated that the undertaking spoke for itself and that when it stated that respondent 1 shall not part with the possession of the suit premises it meant that respondent 1 was in possession of the premises. It was submitted that this statement must have been made after taking proper instruction and that, by instruction its counsel to make the statement, respondent 1 had clearly attempted to mailed the court and the appellant. It was urged that, in any event, this undertaking clearly implied that if no interim order was obtained by respondent 1 from this Court, respondent 1 would hand over the possession of the premises to the appellant. This assurance/undertaking was false to the knowledge of the appellant, as by that time, respondent 2 had already filed a suit in the Court of Small Causes claiming sub-tenancy from respondent 1 and had

obtained an interim ex parte injunction restraining the appellant from executing the decree in her favour. It was submitted that the record discloses that respondent 1 and 2 were selecting in collusion with a view to defeat the decree obtained by the appellant and to prevent the execution of the decree. It was contended on behalf of the appellant that the resolution of respondent 1 under which respondent 2 was claiming sub-tenancy was fabricated and antedated.

5. It was, on the other hand, contended by Mr. Cooper, learned counsel for respondent 1 that no contempt was made out key the appellant in the matter. He vehemently argued that the case for taking action in contempt, set up by the appellant, was one of civil contempt. Under the provisions of sub-clause (b) of Section 2 of the Contempt, the alleged contemner must be proved to be guilty of wilful disobedience to any judgment, decree, direction, order, wrote or other process of a court or wilful breach of an undertaking given to a court. He drew our attention to the statement contained in Halsbury's Laws of England (Volume 9, 4th edn. at para 66, page 40) that the court will only punish as a contempt a breach of injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms and that breach of the injunction if satisfied that the terms of the injunction are clear and unambiguous, that the defendant has proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt. It was further submitted by him that there is no such thing in law as an implied contempt. Learned counsel urged that, in the present case, there was no mandatory injunction or order given by the court to the effect that respondent 1 must vacate the premises after eight weeks from March 5, when the undertaking was agreed to be given. It was submitted that even if a view was taken that, in these circumstances, respondent 1 must be held to have given an undertaking to give possession of the said suit premises to the appellant after the said period of eight weeks there was no wilful breach on the part of respondent 1 in not complying with that undertaking as it was respondent 2 who was claiming to be in possession of the said premises in his independent right as a lawful sub-tenant and it was he who had obtained an interim injunction from the Small Causes Court. It was urged by learned counsel that so far as respondent 2 was concerned he had not given any personal undertaking to the court. It was submitted by learned counsel for all the respondents that before a court could take any action for contempt it must be strictly established that the contempt had been proved beyond reasonable doubt as an action for contempt was in the nature of a criminal proceeding.

6. Mr. Cooper drew our attention to the decision of this Court in Aligarh Municipal Board v. Ekka Tonga Mazdoor Union ((1970) 3 SCC 98 : 1970 SCC (Cri) 570) wherein it has been held that : (SSC pp. 102-03. para 8)

> "In order to bring home a charge of contempt of court for disobeying orders of courts those who asserts that the alleged contemners had knowledge of the order must prove that fact beyond reasonable doubt ... In case of doubt, however, benefit ought to go to the person charged."

He further relied upon the decision of this Court in Babu Ram Gupta v. Sudhir Bhasin ((1980) 3 SCC 47 : 1980 SCC (Cri) 527 : (1979) 3 SCR 685) wherein a bench of two learned Judge of the Court held that "... it is open to the Court to assume an implied undertaking when there is none on the record."

7. We now propose to examine the facts appearing on the record on light of the aforesaid submissions and decisions. What we do find on the record is that when the writ petitions filed by respondent 1 in the High Court were dismissed by Puranik, J. by his order dated March 5, 1987,

learned counsel for respondent 1 appellant for time for eight weeks to vacate the premises and the learned Judge gave the said time to respondent 1 to vacate the premises subject to its filing a written undertaking that it would not part with the possession of the suit premises or create third party interests in the suit premises. It may be that time vacate was applied for as respondent 1 desired to file an appeal to the Supreme Court. The fact, however, remains that, if the claim of respondent 2 is correct, on that day he was already a lawful subtenant of the suit premises and occupying the same. Respondent 2 was none other than the Chairman of respondent 1-company. It is therefore, inconceivable that respondent 1 could have been unaware of the claim of respondent 2. It is, therefore, apparent that respondent 1 clearly tried to mislead the court when it gave instructions through its learned council appearing for respondent 1 to apply for time to vacate the premises and remained silent when time was given on the condition that a written undertaking as aforestated would be filed, suppressing from the court the fact that respondent 2 claimed to be the sub-tenant of the said premises and we have no doubt that respondent 2 must have been a party to this course of action. After some hesitation, the written undertaking was filed as aforesaid which clearly implied that respondent 1 was in possession of the suit premises to the appellant after the period of eight weeks expired. Respondents 1 and 2 knew fully well that this was not possible unless respondent 2 gave up his claim which he had no intention of doing. Further, on March 31, 1987 learned counsel for respondent 1 appeared in court and stated that the undertaking spoke for itself and when it stated that respondent 1 would not part with the possession of the premises it meant that respondent 1 was in fact in possession thereof. As we have already pointed out respondent 2 was and continued to be the Chairman of respondent 1; his nephew, Prem Kumar Gupta, who was reading in the said premises in 1973, according to the evidence given by him in the Court of Small Causes, was a Director of respondent 1-company. After all, respondent 1 is a company and it can have no knowledge or intention other than the knowledge and intention of the people who control it. We have no doubt at all that it was respondent 2 who, along with some of his family members, was in full charge of the affairs of respondent 1-company. In these circumstances, it appears clear to us that all the section taken by the legal advisors and counsel of respondent 1 including, in particular, the giving of the aforesaid undertaking as well as the clarification given by learned counsel regarding the meaning of that undertaking as aforestated were with the fullest knowledge and consent of respondent 2. It is impossible to maintain this dichotomy, for the purposes of the contempt petition, between respondent 1 and respondent 2. Respondent 2 knew fully well when he authorised the giving of the undertaking on behalf of respondent 1 or consented to its being given that respondent 1 was in no position to hand over opposition of the suit premises in execution of the decree because respondent 2 claimed to be in possession of the said premises and claimed sub-tenancy rights in the same and had no intention whatsoever of giving up the claim. In fact, the entire course of conduct adopted on behalf of respondent 1 was only with one aim in view and that was to frustrate or to at least delay indefinitely the execution of the decree which the appellant had obtained after the lapse of many years and after such sustained and lengthy legal proceedings which must have caused the appellant considerable expenses and anguish. It is significant that till Mr. R. J. Joshi, the learned counsel, who gave the clarification in respect of the said undertaking was alive, no contention was ever raised that the said clarification was given by him without taking instructions or that respondent 1 or respondent 2 were not aware of the same. It was only after the sudden demise of the learned counsel that this contention was first raised by respondent 1. This conduct speaks volumes for the dishonest attitude adopted by respondents 1 and 2. Raising this contention after the death of Mr. R. J. Joshi can only be regarded as one more of the tricks which respondents 1 and 2 have played throughout the case in order to defeat and delay the execution of the decree for possession against respondent 1.

8. In the circumstances set out earlier, although the learned Judge of the High Court might have felt constrained by what he considered to be the limits of his jurisdiction in a contempt proceeding, we feel that our hands are not so tied and, where there is patent dishonesty on the part of respondents 1 and 2 writ large on the face of the record, the law does not require that we should sit back with folded hands and fails to take any action in the matter.

9. We find that under clause (1) of Article 142 of the Constitution, it is provided that this Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before it and any decree so passed or order so made shall be enforced throughout the territory of India in the manner set out therein. In the circumstances which we have already set out earlier, we are of the view that respondent 1 is guilty of misconduct amounting to contempt and must be held to have committed contempt by giving the said undertaking and instructing its counsel to give the clarification of the meaning of the said undertaking as aforestated knowing fully well that it was not in possession of the suit premises and was not in a position to give possession of the suit premises to the appellant in execution of the decree in favour of the appellant or otherwise. It is significant that the claim of sub-tenancy set up by respondent 2 is pursuant to an alleged resolution of respondent 1. We have also no doubt that respondent 2 was a party to this breach of the undertaking being committed and, in fact, it was he at whose instance respondent the of the undertaking as aforestated. We are, of course, quite conscious of the fact that the proceedings in the contempt are quasi-criminal in nature, that the law of contempt has to be strictly interpreted and that the requirements of that law must be strictly complied with before any person can be committed for contempt. However, as we have pointed out, responded 1 gave an undertaking based on an implication nor assumption which was false to its knowledge and to the knowledge of respondent 2. Respondent 2 was equally instrumental in the giving of this undertaking. This implication or assumption was made explicit by the clarification given by the learned counsel for respondent 1 as set out earlier. Respondent 2 was equally responsible for instructing counsel to give this clarification which was false to the knowledge of both, respondents 1 and 2. Both respondent 1 and respondent 2 have tried to deceive the court and the appellant. In view of this, we fail to see how it can be said that they are not guilty of contempt. Even assuming that a view were to be taken that no contempt has been technically established against respondents 1 and 2 (with which view we do not agree), we cannot allow the matter to rest there and fail to take any action and, in particular, we cannot allow respondents 1 and 2 to thwart the execution of the decree in this manner at this stage and continue to remain in possession of the suit premises. We find some support for the course of action which we are taking from the decision of this Court in Noorali Babul Thanewala v. K. M. M. Shetty ((1990) 1 SCC 259 : JT (1989) 4 SC 573) where, on facts which bear some similarity to the facts of this case, a Division Bench of this Court held that "it is settled law that breach of an injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt." At the same time, we are conscious of the fact that we cannot altogether foreclose the claim set up by respondent 2 in the declaratory suit filed by him in the Court of Small Causes to establish that he is a sub-tenant of the suit premises and entitled to the protection of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947. However, we are firmly of the view that by reasons of any interim order obtained in that suit and till that claim is finally established, the appellant can no longer be deprived of the possession of the said premises pursuant to the decree for eviction obtained by her. All the necessary parties to that suit are before us and have had adequate opportunity to be heard.

10. In these circumstances, we allow the appeal and set aside the impugned order passed by the High Court and pass in its place the following order :

The Court Receiver, High Court of Bombay who has already been appointed by our order dated January 25, 1990 shall take possession of the suit premises from the present agent and shall appoint the appellant as his agent in respect of the suit premises and hand over possession to the appellant of the suit premises on such terms and conditions as the Court Receiver may think fit but with the limitation that the royalty for use and occupation of the suit premises shall be limited to the actual outgoings plus a sum of Rs. 200 per month in order to meet unforeseen contingencies. This order shall be compiled with within a period of eight weeks from a copy of this order being served on the Court Receiver. It is clarified that the possession of the premises will be taken from whoever might be in possession thereof and, if the Court Receiver finds any difficulty in obtaining possession, he shall take the necessary assistance from the police authorities. It is further clarified that this order shall supersede any interim orders which might have been passed by the Court of Small Causes or the Bombay City Civil Court or any other court excepting this court. In the event of respondent 2 being able to finally establish his right to the sub-tenancy of the suit premises as claimed by him in the declaratory suit in the Court of Small Causes, it shall be open to him to apply for vacation for variation of this order as he may be advised. Respondents 1 and 2 to pay the appellant the costs of this appeal fixed at Rs. 20,000, the liability for the payment of the said aggregate amount being joint and several as between respondents 1 and 2. As far as respondent 3 is concerned, we do not propose to take any action against him.

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