

Kanta Gupta (Smt)

Vs

VIII Additional District Judge, Meerut and Others

Contempt Petition No. 17 of 1990 in Civil Appeal No. 2950 of 1987

(M. N. Venkatachaliah, K. N. Saikia JJ)

05.09.1990

ORDER

1. The dispute relates to the tenancy of an accommodation in the first floor of Property No. 125 A, Purva Suthi Ganj Begum Bridge Road, Meerut City. Complainants are the owners of the premises. The contempt complained of is the alleged wilful disobedience and breach of an undertaking given to the court by the contemner, Kanta Gupta, pursuant to a consent order made on December 17, 1987. The said undertaking is in the following terms :

"(1) That I will continue in possession of the premises in dispute for a period of two years from December 17, 1987 and will hand over vacant and peaceful possession of the suit premises to the respondent-landlords punctually on the expiry of the said period of two years.

(2) That I will pay to the said respondent all arrears of rent within two months from December 17, 1987.

(3) That I will pay to the respondents further compensation for use and occupation of the suit premises at the rate of Rs. 2500 per month with effect from January 1, 1988, month by month before the 7th of the month for which the rent is payable.

(4) That I will induct any other person in the suit premises."

2. On December 1, 1989 complainant issued a notice calling upon the contemner to vacate and to yield up vacant possession on the expiry of December 16, 1989. Instead of agreeing to comply with that undertaking the contemner sent a reply referring to certain antecedent litigation between the parties and set up a case that Bhagwandas, her husband, was actually in possession pursuant to those earlier transactions and asserted her non-liability in law and inability in fact to surrender vacant possession. Thereupon the present contempt proceedings were initiated.

3. The proceedings in the appeal before this Court which culminated in the undertaking arose out of the order dated May 21, 1985 made by the Rent Controller, Meerut, allotting the said accommodation in favour of the contemner under the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. On May 23, 1985 the contemner acknowledged in writing before the Rent Controller that she had obtained actual possession of the allotted premises. The complainants challenged the allotment before the revisional authority under the statute which by its order dated March 23, 1987 set aside the allotment. The order of the revisional authority was challenged by the contemner in W.P. No. 6762 of 1987 before the High

Court of Allahabad. The High Court dismissed that writ petition. Against that dismissal the contemner preferred by special leave, C.A. No. 2590 of 1987 which, as stated earlier, culminated in the consent order dated December 17, 1987 followed by the aforesaid undertaking by the contemner.

4. The stand of the contemner as manifest from her written statement is that the accommodation in question was initially the subject matter of a partnership entered into on April 19, 1983 between her brother Trilok Chand on the one hand and the complainants on the other for purposes of a business of restaurateurs under the name and style "Marwari Bhoj"; that, thereafter, on June 20, 1984 a fresh partnership came into existence between the complainants and Bhagwandas pursuant to which Bhagwandas was in possession of the premises and that the allotment proceedings did not really touch the actual possession which was already with Bhagwandas. It is alleged that the complainants had, indeed, admitted that position in their memorandum of Criminal Revision 157 of 1989. Contemner says she can comply with and fulfil the undertaking only symbolically by disclaiming any interest under the order of allotment. In particular the case of the contemner is that while she is willing to do and carry out such acts and deeds consistent with her obligations under the undertaking she is physically disabled from doing so as possession has always been, and still is, with her husband. The husband, of course, says he is not bound to act in aid of the wife's undertaking as each of them is a separate legal entity and his possession, in any event, is not one derived from the wife. Smt Indra Jaisingh, for the contemner submitted that the factual antecedents as to possession and the unequivocal admission made by the complainants from time to time clearly detract from any possibility of the contemner being in a position to comply strictly with the undertaking and that the ends of justice would be met by placing on record her declaration that on and subsequent to December 17, 1989 she had ceased to have any interest in the accommodation under the order of allotment dated May 21, 1987. Similar is the submission of Sri Shorawala, learned senior counsel for Bhagwandas.

5. In these proceedings Bhagwandas sought and was permitted to implead himself. He claims that physical possession has been with him pursuant to the alleged partnership of June 20, 1984 and that his own independent rights as well as his actual possession should not be impaired and prejudiced in these proceedings. It was contended both by Bhagwandas and the contemner that having regard to the conduct of the complainants themselves and their previous admissions in several earlier proceedings that they are in joint possession with Bhagwandas, the court should hold it inexpedient to entertain the complaint, leaving the parties to work out their remedies in appropriate separate proceedings.

6. The circumstances of the case, no doubt, disclose certain antecedent events pertaining to the accommodation in question which, perhaps, enable the contemner and her husband to venture on these defence. The complexity of those earlier transactions are such as to enable each party to rely upon what it calls the admissions of the other.

7. But the question yet remains whether these averments are sufficient to exonerate the contemner from her obligations under the unequivocal and solemn assurance which was given to the court after securing the benefits of the order dated December 17, 1987. The matter also turns on the question whether Bhagwandas is an innocent stranger to and is without notice of the proceedings culminating in the undertaking furnished by his wife and whether the facts and circumstances of the case and the conduct of the couple are such as to incur and justify the criticism that they have together tried to flout the undertaking after consciously and calculatedly availing themselves of the benefit of the order of this Court. The facts of the case render the conclusion inescapable that Bhagwandas cannot

be said to be unaware of the proceedings leading up to the undertaking. On the contrary there is material to hold that he was aware of the proceedings to which his wife was a party and had stood by. He cannot now be permitted to invoke the technicality of the husband and wife being separate entities in law. The couple cannot be allowed to hold up the proceedings of the court culminating in the undertaking to ridicule.

8. There are several circumstances which render the claim of Bhagwandas as to his own possession of the disputed premises unacceptable. In respect of the earlier partnership between the complainants and Trilok Chand the latter had instituted a suit, O.S. No. 496 of 1984 on the file of the Civil Judge, Meerut, seeking an injunction against the complainants against forcible dispossession which he apprehended. In the suit Trilok Chand described Bhagwandas as his manager. Trilok Chand is no other than contemner's bother. The allotment of the premises was made on May 21, 1985. On June 16, 1985 Trilok Chand withdrew the suit. The sequence of events indicates the withdrawal of the suit was not unconnected with the allotment order in favour of the contemner who is stated to be his own sister. The complainants themselves instituted O.S. No. 841 of 1984 in the Civil Judge's court at Meerut for recovery of possession impleading thereto Bhagwandas as defendant 3. In the written statement filed by Bhagwandas on January 23, 1987 - this date is crucial as it is long subsequent to the alleged partnership dated June 20, 1984 - he disclaimed all interest in the premises. He asserted :

"21. That defendant 3 has no concern with management and working of business of Marwari Bhoj. As defendant 3 is the real brother-in-law (jeeja) of defendant 2, therefore the plaintiffs have unnecessarily made defendant 3 as party, which is illegal and the suit is barred by the principle of misjoinder of necessary party."

9. That suit was for the recovery of possession and for dissolution of partnership. When the suit was going on the contemner and Bhagwandas, perhaps, thought that one of the ways to ensure continuance of their occupation was to obtain an allotment order respecting the premises from the Rent Controller. They appear to have succeeded in that attempt. There are also other crucial circumstances against the claim put forward by Bhagwandas. His case, as could be anticipated from person in a difficult situation of this kind, is that he was not aware of the proceedings culminating in the undertaking, given by his wife and that at all events he is not bound thereby. It is, no doubt, true that in the eye of law husband and wife, by reason alone of the relationship, do not incur the obligations of each other. But in W.P. No. 6762 of 1987 filed by the contemner challenging the decision of the revisional authority in which the contemner had asserted her exclusive possession of the premises pursuant to the said allotment, Bhagwandas had, on April 1, 1987, filed supplementary supporting affidavit of his own. This clearly establishes the unity of interest and the common purpose between the couple in that litigation. It takes a lot of nerve on the part of Bhagwandas now to say that he was unaware of the proceedings to which his wife was a party in which the undertaking was filed. As referred to earlier, in the suit filed by Trilok Chand Bhagwandas was described as Manager of the hotel. In the returns to sales tax filed by the contemner in respect of the business "Marwari Bhoj" Bhagwandas was described as the Manager of the business.

10. The undertaking given to the court is unconditional, category and unqualified. It requires to be held that, as on the date of the undertaking the contemner was in actual physical possession and was capable of complying with the terms of the undertaking. Bhagwandas, having regard to the facts and circumstances appearing against him, cannot also be heard to the contrary. The contemner had undertaken not to induct any third person into possession. Both of them are bound to act in aid and compliance of the undertaking. They have, purposefully and with a clear intention to flout the

undertaking, put up an untenable defence. We find there is a wilful breach of the undertaking. The court has not only the power but in appropriate cases the duty to exact obedience the terms of the undertaking given to it.

11. Smt Indra Jaisingh submitted that throughout the course of the very proceedings from which the appeal arose and in which the undertaking was recorded, the complainants' own case was that there had been no vacancy as such which could enable and be susceptible of an allotment, a stand which militated against their present assertion that the contemner was inducted into possession pursuant to the allotment and should, therefore, yield up possession. What is to be noticed is that the person who claimed to be in possession prior to the allotment was Bhagwandas. The material on record strengthens the view that the allotment was at the instance of Bhagwandas himself though his wife was put up as the beneficiary of the allotment. But the parties agreed to resolve the dispute finally in the appeal and the order dated December 17, 1987 should be held to conclude the matter.

12. It was then submitted that Bhagwandas has been carrying on the business of "Marwari Bhoj" for several years now and that it would cause immense hardship if immediate forcible dispossession is ordered. We think that having regard to the peculiar circumstances and the antecedent history of the litigation, we should afford the contemner and her husband Bhagwandas an opportunity to purge themselves of the contempt by delivering vacant physical possession to the complainants on or before October 30, 1990. If that is not done, upon a motion being made by the complainant before the Additional District Magistrate, Meerut, the Magistrate will immediately take steps to evict Smt Kanta Gupta, Shri Bhagwandas, their servants and agents or whomsoever they or either of them might have inducted into the premises and deliver vacant possession of the first floor accommodation in Property No. 125 A, Purva Suthi Ganj, Begum Bridge Road, Meerut City to the complainants within one week from October 30, 1990, if necessary with requisite police assistance and to report to this Court the fact of such delivery of possession.

13. We further direct Smt Kanta Gupta and Shri Bhagwandas to pay to the complainant costs of Rs. 2000. They shall also pay all arrears at the rate of Rs. 2500 per month from December 17, 1987 to October 30, 1990. This shall be paid within one month from today. Contemner and Bhagwandas say that they have already deposited with the prescribed authority amounts due up to August 1990. If that be so, the amount may be withdrawn by the complainants. The balance shall be deposited within one month from today with the prescribed authority.

14. We must, however, leave open the question of the alleged rights of Bhagwandas under the alleged partnership dated June 20, 1984 for whatever they may be worth. But that will not come in the way of the possession in terms of the undertaking being delivered as directed. It is quite possible, and that is the specific case of the complainants, that the arrangements of successive partnerships and the later allotment were all intended to enable the contemner and Bhagwandas to carry on business in the premises; that the allotment order dated May 21, 1985 was intended by the couple to be last of such transactions and that with the merging of the rights and obligations arising from the allotment in the order dated December 17, 1987 of this Court followed up by the undertaking, no rights and obligations inter se between the parties on any account would survive at all. These questions will have to be decided if Bhagwandas initiates any action on the basis of the alleged partnership dated June 20, 1984.

15. These proceedings shall be brought up in the month of November 1990 after the delivery is effected and if the contemner and Bhagwandas do not yield up vacant possession on or before October 30, 1990, necessitating coercive steps by the Additional District Magistrate, the question of

further action against them shall be considered.

16. Ordered accordingly.

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