

Ram Pyari and others

Vs

Jagdish Lal

Contempt Petn. No. 57 of 1991 In Spl. Leave Petn. (Civil) No. 10620 of 1985

Dr. T. K. THOMMEN AND S. MOHAN, JJ.

05.12.1991

JUDGEMENT

S. MOHAN, J.:-

1. The special leave petition was filed by the respondent against the order of eviction passed in the Suit No. 368 of 1969 on the file of the Additional Munsif, Shahjahanpur. That was appealed against before the learned III Additional District and Sessions Judge in Civil Appeal No. 24 of 1974. By the judgment dated December 11, 1974 the decree of eviction was confirmed. Aggrieved by the concurrent judgments, Second Appeal No. 4 of 1975 was preferred to the High Court of Allahabad which was also dismissed.

2. S.L.P. (C) No. 10620/ 85 was preferred to this Court. In order dated February 11, 1986 this Court passed the following directions :

"Upon hearing counsel, the Court dismissed the special leave petition but directed that the order of eviction shall not be executed on or before three months from today on the condition that the petitioner files an undertaking in this Court within three weeks from today to the following effect:

1. That the petitioner will hand over vacant and peaceful possession of the suit premises to the respondent on or before three months from today.
2. That the petitioner will pay to respondent arrears of rent, if any, within one month from today.
3. That the petitioner will pay to respondent future compensation for use and occupation of the suit premises month by month before the 10th day of every month.
4. That the petitioner will not induct any other person in the suit premises.

The Court further directed that in default of compliance with any one or more of these conditions or if the undertaking is not filed as required within the stipulated time, the decree shall become executable forthwith."

3. For the disobedience of the above order, in neither filing the undertaking nor paying the rent and failure to hand over the possession, the present petition for contempt has been preferred. Notice was ordered on the contempt petition on 6th May, 1991 returnable on 24-7-91.

4. The counter-affidavit has been filed inter alia contending that the remedy of the applicant in the contempt petition (respondent in the special leave petition) would be to execute the decree and not come by way of contempt. Besides, an order under the U.P. Public Premises Act had been passed against the applicant. Therefore, the owner of the premises is Municipal Board of Shahjahanpur. Hence the applicant has no locus standi to maintain the petition.

5. Before us the same arguments as raised in the counter are reiterated.

6. The short question, therefore, is whether the respondent is guilty of contempt of court. We have already extracted the order passed by this Court on February 17, 1986. No doubt there is no violation of any specific direction contained in that order. Nevertheless we cannot agree with the respondent that the remedy will be only to execute the decree for eviction. He was granted three months' time on condition that he will file an undertaking and pay the arrears of rent as well as future compensation. In so far as he derived specific advantages under the order, we are of the view, the proper course will be to issue such directions as were issued in an identical case reported in *Firm Ganpat Ram Rajkumar v. Kalu Ram*, AIR 1989 SC 2285. It was observed at page 2288 as under:

"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 the 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 24th August, 1987 and see that vacant and peaceful possession is given to the applicant in the interest of justice."

"In the aforesaid view of the matter, we direct the learned Sr. Sub-Judge, Narnaul (Haryana) to cause delivery 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 Sr. Sub-Judge, Narnaul is also directed to report compliance immediately."

7. Similar direction in the present case would meet the ends of justice. Therefore, we hereby direct learned Additional Munsif of Shahjahanpur to cause delivery of vacant possession of the Shop No. 289 situate in Bazar Bahadurganj, Shahjahanpur under City Board Shahjahanpur to the applicants, if necessary, with the help of police on or before 15th December, 1991. The learned Munsif is also directed to report compliance immediately. We make it clear that this order will not prevent or prejudice the applicants from taking any steps for recovery of rent and mesne profits as they are entitled to in accordance with law. In the circumstances of the case we make no order as to costs.

Order accordingly.

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