SUPREME COURT OF INDIA

In the Matter of Anil Panjwani

Vs.

Ms. Inklee Barooah and Sunil Kumar Jain

(R.C. Lahoti and Brijesh Kumar JJ.)

05.05.2003

JUDGMENT

R.C. Lahoti, J.

1. The main matter, i.e., Civil Appeal No. 7919/2001 stands disposed of by the judgment separately pronounced by us today. An unsavoury off-shoot of that litigation wherein the respondent in Civil Appeal is facing a charge under Section 14 of *Contempt of Courts Act, 1971*, because of scurrilous attack against an eminent brother judge of ours in this Court made through irresponsible, unfounded and reckless allegations contained in his affidavits filed during the course of proceedings, remains to be disposed of, which we hereby do.

2. The plaintiff-respondent in the Civil Appeal, the contemnor herein, served with the charge sheet, has shown cause. We have heard him at length and with patience. Fortunately, at the end good sense has prevailed upon the contemnor. He has felt genuinely apologetic, and said so with folded hands regretting all that has happened leading to initiation of proceedings of contempt. He has, during the course of hearing, posed and reposed, expressed and re-expressed his ful faith in this Court and tendered apology without any reservation. Not only he expressed so to us, he also volunteered to make a request seeking permission to withdraw his two affidavits. He, on a piece of paper, wrote out in the Court, in his own hand in vernacular an apology and prayer for leave of the Court to withdraw the insinuating affidavits. We have taken his writing on record. In view of what is stated hereinabove, we do not propose to deal with factual and legal aspects in very many details as the same is unnecessary. The bare essential facts to give an overview of the case and a few such features as are prevailing with us in formulating the operative part of this judgment, are noticed and stated hereinafter.

3. On 1.12.1985 the contemnor entered into an agreement to purchase the suit property, an open plot belonging to a Cooperative Housing Society, allotted to one of its members. He entered into peaceful possession of the property under the agreement to sell and raised a boundary wall so as to protect the property and construct a house thereon for himself at some later point of time. On 9.2.1987 he noticed a stranger attempting encroachment on the property and proposing to raise some construction thereon. He protested on the spot and rushed post-haste to the Court seeking protection under the arm of the Court and preventing

the enroachment in its process of commission lest it should ripen into permanency. What transpired thereafter is a harrowing tale of laws' delays and the trespasser withholding the progress of legal process. To a simple suit involving the least issues and almost nil complications, either on facts or in law, the written statement to a plaint (running into a short five pages) was not filed inspite of little less than 40 adjournment cost having also been imposed on the erring defendant at times. During these adjournments the Civil suit witnesses three transfers in different courts. At the end the defendant and his counsel absented resulting into ex-parte proceedings. A belated attempt for setting aside the ex-parte proceedings failed in the Trial Court as also in the High Court. Several delaying tactics were then employed. A belated application for cross-examination of the witnesses examined ex-parte which were not cross-examined in spite of opportunity being available, a belated application for examining his own witnesses though there was no written statement and no positive plea taken in the defence, a highly belated application to place on record a pleading by way of a counter-claim though there was no written statement filed by the defendant, were tried and vigorously pursued. All such attempts failed in the Trial Court. Each of the adverse orders was put in issue by the recalcitrant defendant filing successive civil revisions in the high Court, which were all firmly dealt with by the High Court and the defendant gained no success. The only advantage gained by the defendant was to drag on the proceedings. At one stage the defendant in the suit had approached quasi-judicial forum under the Cooperative Law where too he failed. The suit filed by the plaintiff on 9.2.1987, crossing all the hurdles, ended in an ex-parte decree dated 8.1.2001, allowing all the reliefs sought for by the plaintiff to him. The First Appeal filed by the defendant, and an application under Order 41 Rule 27 of CPC seeking to reopen the evidence, were dismissed. The Second Appeal filed by the defendant was dismissed in-limine on 16.4.2001. The defendant filed a petition in this Court seeking leave to file an appeal under Article 136 of the Constitution. The plaintiff entered a caveat. On 16.7.2001, the Court, after hearing the learned counsel for the petitioner and caveator in person (contemnor herein), directed notice to issue returnable in 4 weeks and "status quo as of today" to continue. The respondent was allowed liberty to file counter-affidavit which he did. On 28.2.2001 when the matter came up for hearing an adjournment was sought for on behalf of the petitioner (i.e. the defendant), which was allowed on payment of Rs. 1000/- by way of costs. The order of status quo was allowed to continue. On 17.9.2001 the matter was directed to be placed for final disposal on 20.11.2001. On 20.11.2001 after hearing the learned counsel for the petitioner as also the respondent (contemnor) the Court granted leave and also directed the interim order to continue. In one of the affidavits filed the contemnor sought for an early - out of turn - hearing of his matter which could not have been allowed and so was rejected. On 16.8.2002 the contemnor had filed an affidavit which contains reckless and irresponsible assertions against the Presiding Judge of the Bench which had passed the interim order earlier. A different Bench which heard the matter on September 9, 2002 formed an opinion that the contents of the said affidavit were grossly contemptuous. The contemnor present in person was allowed an opportunity of withdrawing the allegations made so that the main matter could be heard and disposed of on merits. The contemnor unfortunately, and ill-advised as he seems to have been, did not avail the benefit of gesture shown by the Court and chose to stand by the allegations contained in the insinuating affidavit. The Court formed an opinion that there was gross contempt committed in the presence of the Court and, therefore, directed action under Section 14 of the Contempt of

Courts Act, 1971, to be initiated. The contemnor was taken into custody and directed to be lodged in Tihar Jail. Charges were directed to be framed so as to afford the contemnor an opportunity of defending himself. On 13.9.2002, the contemnor was ordered to be released on bail. The charge sheet was served on him whilst he was in custody. The contemnor filed a reply wherein he still chose to continue by the stand taken by him earlier and claimed a trial. Initially, he had expressed his desire for being heard by the Bench which took cognizance of the contempt. However, later he expressed his desire to be heard by another Bench. This is how the matter has been placed for hearing before us.

4. Though the proceedings for contempt are between the Court and the contemnor, we allowed the learned senior counsel for the appellant to remain present during these proceedings so as to assist the Court if needed.

5. We took up the main appeal and the contempt proceedings for analogous hearing. The learned senior counsel for the appellant, submitted, at the commencement of the hearing in appeal, that the respondent being in contempt should not be heard unless the contempt is purged. We declined that request and made it clear that we would like to hear the appeal and the contempt matter analogously and simultaneously inasmuch as that course, in the facts and circumstances of the case we formed an opinion, would better serve the ends of justice. The contemnor, on the other hand, made a request diametrically opposed to the one made by the learned senior counsel for the appellant. The contemnor submitted that the main appeal be heard and decided before the contempt proceedings are taken up for hearing. His prayer too we declined.

6. It is no rule of law, and certainly not a statutory rule that a contemnor cannot be heard unless the contempt is purged. It has only developed as a rule of practice for protecting the sanctity of the Court proceedings and the dignity of the Court that a person who is prima facie guilty of having attacked the Court may be deprived of the right of participation in hearing lest he should misuse such opportunity unless he has agreed to disarm himself. The Court would not be unjust in denying hearing to one who has shown his lack of worth by attacking the Court unless he has agreed to beat a retreat and the Court is convinced of the genuineness of such retreating. It would all depend on the facts and circumstances of a give case and the nature of contempt under enquiry which would enable the Court exercising its discretion either way.

7. The leading English authority on the subject is *Hadkinson v. Hadkinson*[1]. Under a decree of divorce the custody of the child born out of wedlock was given to the wife with an undertaking that the child should not be taken out of the court's jurisdiction except by its leave. The wife defied the court's order. In an appeal against the order of custody preferred by the wife she was refused to be heard unless she purged the contempt by returning the child. Lord Denning stated the rule by observing that disobedience with an order of the Court is not itself a bar to be heard but "if his disobedience is such that, so long as it continues, it impedes the course of justice and the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make" - the Court may form opinion for exercise of court's discretion in favour of refusing to hear the contemnor. Romer J. with

whom Somervell LJ agreed, held that the contempt committed by the wife was one of the grossest kind and stated as a general rule that no application to the Court by such a person would be entertained until the contempt had been purged. In our opinion, the view taken by Denning LJ is more acceptable being less rigid. The *House of Lords X Ltd. v. Morgan-Grampian Ltd.*[2] chose to follow the view taken by Denning LJ and observed that in a case where a contemnor not only fails wilfully and contemptuously to comply with an order of the Court but makes it clear that he will continue to defy the court's authority if the order should be affirmed on appeal, the Court must have a discretion to decline to entertain his appeal against the order.

8. In *Dr. H. Phunindre Singh and others v. K.K. Sethi and anr.*[3] the Court has observed inter alia - "In our view, in the facts of the case, particularly when the order passed by the learned Single Judge of the High Court was not stayed by the Division Bench, the contempt petition should have been disposed of on merits instead of adjourning the same till disposal of the appeal, so that question of deliberate violation of the subsisting order of the Court is considered and enforceability of the Court's order is not permitted to be diluted."

9. To our mind, the rule as to denying hearing or withholding right of participation in the proceedings to the contemnor may briefly be summed up and so stated. It lies within the discretion of the Court to tell the contemnor charged with having committed contempt of Court that he will not be heard and would not be allowed participation in the Court proceedings unless the contempt is purged. This is a flexible rule of practice and not a rigid rule of law. The discretion shall be guided and governed by the facts and circumstances of a given case. Where the Court may form an opinion that the contemnor is persisting in his behaviour and initiation of proceedings in contempt has had no deterrent or reformatory effect on him and/or if the disobedience by the contemnor is such that so long as it continues it impedes the course of justice and/or renders it impossible for the Court to enforce its orders in respect of him, the Court would be justified in withholding access to Court or participation in the proceedings from the contemnor. On the other hand, the Court may form an opinion that the contempt is not so gross as to invite an extreme step as above, or where the interest of justice would be better served by concluding the main proceeding instead of diverting to and giving priority to hearing in contempt proceeding the Court may proceed to hear both the matters simultaneously or independently of each other or in such order as it may deem proper.

10. the present one is not a case where we cannot effectively, hear the appeal unless the contempt is purged. Undoubtedly the contemnor has been guilty of casting scurrilous aspersions on a very esteemed and learned brother of ours known for his firmness, objectivity and patience apart from his learning and erudition. And, no secret, we do feel hurt on his having been attacked for no justification yet we have to dispense justice and in accordance with law. The dignity of the ocean lies not in its fury capable of causing destruction, but in its vast expanse and depth with enormous tolerance.

11. Accordingly, the hearing in both the matters proceeded analogously and has come to an end.

12. The Contemnor, arguing the matter in person, took pains to take us through the bulky record of the case with a view to demonstrate the sense of frustration he suffered by reason of the fact that the appellant (defendant) in this Court had not placed the record straight and on the basis of incomplete and incorrect documents succeeded in obtaining the order of a status quo which came in the way of the Contemnor to enjoy the fruits of the decree in his favour obtained after near about 15 years of long litigation. Some examples, as indicated, we may narrate, without getting into much details of the same.

13. According to the Contemnor, the appellant filed 14 documents in this Court accompanied by an application for permission to file the same endorsing that they formed part of the record "in this Court and the courts below". The appellant (defendant) did not participate in the proceedings in the trial Court which was ex-parte. No order was passed by this Court permitting those documents to be taken on the record. They did not form part of the record of the courts below but they were freely referred to and used at the time of arguments in the Special Leave Petition and in obtaining the interim order of status quo. We may indicate that an effort was made to refer those documents by the appellants before us also during the course of the hearing, but we could not permit it since no such order was passed giving permission to bring those documents on the record. Next it is pointed out that in the list of dates an averment has been made by the appellant that the "trial court had stayed the execution proceedings against the petitioner on the application filed by him". It is also incorrect. No stay was granted on the application of the petitioner (defendant). Yet again, the report of the Advocate Commissioner was filed in this Court as a part of the SLP paper book but without the site plan which had very material bearing on the merit of the matter, though the document was certified to be a true-copy of the report of the Advocate Commissioner. The subsequent report of the Advocate Commissioner dated 25.2.1987 was suppressed and not placed on the record. Similarly, a copy of the order dated 8.8.2001 passed in Civil Revision No. 842 of 2001 by Ms. Justice Gyan Sudha Mishra was not placed by the petitioner before this Court. It contained a direction to proceed with the execution proceedings and for issuance of a warrant of possession. A list of members of the co-operative society was also filed but without the endorsement in the original list that it was not for the purposes of proceedings in the court but for the use of the members. The Contemnor submitted that it was also material suppression of fact on the part of the appellant. Yet another fact brought to our notice is that after the objections of the appellant (defendant) were rejected by the Execution Court an outsider Rajendra Kumar Tiwari filed objections under Order 21 Rule 97 of the Code of Civil Procedure with an allegation that he was residing in the premises as a tenant since 1982. According to his objection he took some additional accommodation in his tenancy in 1986. These objections were rejected. The stand was contrary to the report of the Advocate Commissioner as the property was only an open piece of land till then. Some other similar contradictory facts and circumstances were pointed out by the Contemnor.

14. May be, the Contemnor felt frustrated finding himself stuck up again after a prolonged litigation of 15 years, on basis of such unworthy and unreliable record as indicated above. But we feel that such sense of frustration could not have given way to the kind of remarks

and aspersions thoughtlessly made in the counter affidavits filed by the Contemnor. The inaccuracies, as pointed out by the Contemnor, could only be dispelled, by bringing the correct facts to the fore by filing affidavit in reply. It was though done, but it might obviously have taken some time to be considered, meaning thereby some more delay but it would be inevitable. He seems to have also taken care to file a caveat but of no avail. These circumstances could, if at all, evoke some sense of sympathy with the Contemnor but it could not provide any justification for such unfounded scurrilous outbursts in the affidavits against a Judge of this Court.

15. In the above background, however, we find that not too late in the day better sense prevailed in the saner moments under which he genuinely expressed regrets before us within folded hands and pleaded for permission to withdraw such of the two affidavits filed by him containing the objectionable averments made therein. We have given our due consideration to the request made, in the light of the facts and circumstances enumerated above and particularly the fact that initially he was arrested and sent to jail in connection with the contempt matter where he was lodged for four days before being released on bail. These factors, in our view, weigh in favour of accepting the request allowing him to withdraw the objectionable affidavits, rather than to continue with this matter and send him again to jail, though repentant he is, a little late undoubtedly.

16. For the above reasons, we allow the request to withdraw the affidavits and drop the proceeding with a note of caution that in future he must be careful and may not give rise to any such occasion again. If he does so, this order can always be taken into consideration as a background material.

17. This Contempt Petition thus stands finally disposed of in the manner indicated above.

[1]*(1952) 2 All ER 561*
[2]*1990(2) ALL ER 1*
[3]*1998(8) SCC 640*