

SUPREME COURT OF INDIA

Welset Engineers

Vs.

Vikas Auto Industries

C.A.No.5127 of 2005

(Mrs.Ruma Pal and Dr. AR. Lakshmanan JJ.)

17.08.2005

JUDGMENT

Ruma Pal, J:-

1. Leave granted.

2. This appeal has been preferred from an order of the High Court of Bombay dismissing the petition filed by the appellant against the respondents for contempt of an interim order passed by the High Court. The petition was dismissed on basically three grounds:-

“(1) That there was a disputed question of fact involved where it would be necessary to give sufficient opportunity to the parties to lead evidence and cross-examine witnesses in order to come to a definite conclusion whether the interim order had in fact been violated;

(2) That order XXXIX Rule 2(a) of the Civil Procedure Code (referred to as the Code) was a specific provision to meet the contingency of breach of injunction orders and when such remedies were available, the person complaining of the breach of the injunction order should not be allowed to take up proceedings of contempt of Court;

(3) The injunction order was passed at an interim stage and the rights of the parties were still to be adjudicated finally.

All three grounds are wholly erroneous.”

3. With regard to the first ground; as Section 22 of the Contempt of Courts Act, 1971 provides the right to proceed under the Act is an additional right.

4. Further the High Court has overlooked Section 122 of the Code which provides:

“Sec. 122: Power of certain High Courts to make rules: High Courts not being the

Court of a Judicial Commissioner may, from time to time after previous publication, make Rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such Rules annul, alter or add to all or any of the Rules in the First Schedule.”

5. Therefore, if there is any conflict between the provisions of the code with the Rules framed by the High Court, the latter will prevail.

6. Chapter LVIII of the Bombay High Court (Original Side) Rules contains the *Contempt of Courts (Bombay High Court) Rules, 1994* which pertain to proceedings for contempt under Art. 215 of the Constitution of India as well as the *Contempt of Courts Act, 1971*. These Rules lay down the specific procedure for dealing with cases under the Contempt of Courts Act. The provisions of the Order XXXIX Rule 2(a) do not override the provisions of these Rules.

7. Besides the power of the High Court stems not only from the contempt of Courts Act, 1971 but also from Art. 215 of the Constitution of India. As has been held by this Court in *Pritam Pal v. High Court of Madhya Pradesh, Jabalpur through Registrar*, at p. 544 the constitutionally vested right in the Supreme Court and the High Court under Arts. 129 and 215 of the Constitution of India cannot be either abridged by any legislation or abrogated or cut down, nor can there be control or limitation on this right by any statute or by any provision of the Code or any Rules.

8. As far as the second ground is concerned, Chapter LVIII Rule 1049 of the 1995 Rules further provides that for determining the matter of the charge in a contempt petition the Court may rely either on the affidavits filed or may decide after taking such evidence as it deems fit. Therefore, merely because disputed questions of fact are involved, it would not preclude the Court from exercising its jurisdiction under the Contempt of Courts Act, 1971.

9. Finally, a party in breach of any order of Court whether interlocutory or final is subject to being proceeded against in contempt. Orders are meant to be obeyed and a person, acting in breach of the order does so at that person's peril.

10. For all these reasons the decision of the High Court is set aside and the matter is remanded back to the High Court for disposal of the contempt petition on merits. It is requested that the High Court may dispose of the matter as soon is conveniently possible within a period of three months.

11. The appeal is disposed of.