

MADHYA PRADESH HIGH COURT

Ram Juwan

Vs.

Devendra Nath Gupta

Civil Misc. Case No. 14 of 1958

(A.H. Khan, J.)

13.01.1960

ORDER

A.H. Khan, J.

1. The facts giving rise to this Miscellaneous Petition are that the non-petitioner (Devendra Nath Gupta), who is a tenant of the petitioner Ramjiwan, filed a suit before the Rent Controller, under Section 8 of the Madhya Bharat Accommodation Control Act of 1955 (Act No. 23 of 1956), alleging that the landlord, had, without sufficient cause cut off the tenant's electric connection and prayed that the landlord be directed to restore it. This was resisted by the landlord on the ground that because the tenant had not paid electric charges, the Electric Company had cut off the connection of the whole house, including the portion in dispute. The Rent Controller ordered the landlord to restore the electric connection within 2 days from the order and, awarded compensation for the inconvenience caused to the tenant at the rate of Rs. -/8/- per day. Both the parties went in appeal before the District Judge, who rejected the appeal of the landlord but allowed the appeal of the tenant, and raised, the amount of compensation from annas eight per day to Rs. 2/- per day, the maximum amount that he could have awarded under the Act. As the order of the District Judge was final, the landlord, Ramjiwan filed a petition under Article 227 of the Constitution of India. In the course of the hearing of the petition before the High Court, the parties arrived at a compromise and the petition instead of being considered on merits was disposed of according to the terms of the compromise.

2. This is an application of the landlord, complaining that the tenant did not observe the terms of the compromise and that in the circumstances the landlord was entitled to the eviction of the tenant from the premises according to the compromise. The prayers

made in the present petition are in the main two :

One : That contempt proceedings may be taken against the opposite party for not obeying the order of the Court and not acting according to the compromise.

Two : That the tenant Devendra Nath Gupta be directed to vacate the premises and pay up the arrears due.

3. In respect of the first contention, namely, that contempt proceedings may be taken against the tenant, it is argued by Mr. Hariharniwas Dwivedi, that the tenant, in not carrying out the terms of the compromise (a compromise is as undertaking to the Court) has committed contempt of the Court and must therefore be punished for it. He relies upon two authorities :

(1) *Bajranglal Gangadhar v. Kapur Chand Ltd.*,¹

(2) *Suretennessa Bibi v. Chintaharan Dass*,²

4. In both these cases it has been held that when the terms of compromise are not carried out by any party then that party is guilty of a deliberate breach of the personal undertaking given by him to High Court and that this misconduct amounts to contempt.

5. I propose to examine both the rulings separately.

6. I shall first deal with the Bombay case AIR 1950 Bombay 336. In a suit filed by the plaintiff for specific performance, the parties compromised the action and the consent terms were reduced to writing and a decree was passed in terms of the compromise. The defendant failed to observe the terms of the compromise whereupon a motion was taken out by the plaintiff for contempt of court. A Single Judge of the Bombay High Court ordered that the defendant should carry out the undertaking within one month from the date of the order, otherwise a warrant would issue for the committal of the defendant to prison. An appeal, was filed against the order of the Single Judge before a Division Bench.

In the Division Bench Chagla, C. J., as he then was, took the view that the compromise between the parties recorded by the Court was also an undertaking to the Court, and this undertaking can be enforced by proper committal proceedings. In adopting this view Chagla, C. J. referred to Oswald on Contempt from which the following passage was also reproduced in the judgment :

"An undertaking entered into or given to the Court by a party or his counsel or solicitor is equivalent to and has the effect of an order of the Court, so far as any infringement thereof may be made the subject of an application to the Court to punish for its breach."

With great respect and much deference to the learned Judges of the Bombay High Court, I beg to differ. Chapter IV of Oswald on Contempt deals with disobedience to order or breach of undertakings. I have no doubt that when an order or an undertaking is given to the Court, a breach of it is contempt of court. The question is, what is meant in this context by the order of the Court or undertaking given to the Court? Is a decree passed on compromise an undertaking to the Court as decided in AIR 1950 Bombay 336 and AIR 1955 Calcutta 182?

7. The undertaking referred to in Oswald refers to an undertaking given to the Court which is quite different from what the parties have agreed between themselves. A compromise is an agreement between the parties and not an undertaking to the Court that parties would observe its terms. As for orders disobedience to which is contempt of the court punishable by committal, are meant orders relating to injunctions requiring a person to do an act or abstain from doing it. Other kinds of orders, which fall in this category are orders such as the failure of a party to comply with an order to answer interrogatories, or discovery, or inspection of document.

8. Sir Dinshaw Mulla in his commentary of the Code of Civil Procedure (1953 Edition) page 683 under Order 11 Rule 10 (sic) C. P. C. has stated that apart from the fact that if a party does not comply with the order of the Court, penalty is provided, in that if the disobedience is by the plaintiff, his suit is liable to be dismissed and if it is by the defendant, his defense will be struck off, a party is also liable to be committed for contempt. I venture to suggest that the orders referred to in Oswald are such orders.

9. The learned Judges of the Bombay High Court have treated a compromise as if it was an undertaking to the Court. An undertaking contemplated by Oswald is an undertaking given by any person when during the pendency of the suit, the court is assured by the party that it will not do a particular thing. On such an assurance being given, the court does not pass an order which it would have otherwise passed. For

instance in a dispute about the building of a wall, the defendant may give an undertaking to the Court that till the final decision he would not build the wall any more. On such assurance or undertaking being given, the Court would not issue an injunction against the defendant, restraining him to continue building the wall. The undertaking referred to in Oswald is of this kind. But in a case of compromise arrived at between the parties, I am afraid, no undertaking is given to the Court. In Halsbury's Laws of England (3rd Edition) Volume 8 page 29 para 51, it is said

"that the breach of an undertaking given to the Court by a person or corporation, in pending proceedings, on the faith of which, the court sanctions a particular course of action or in-action, is misconduct amounting to contempt." This passage from Halsbury bears me out that the undertaking is in pending proceedings. Such an undertaking at the conclusion of the case, ceased to exist.

10. In a compromise which is embodied in a Court's decree the parties as between themselves agree to do certain things. No question of any undertaking to the Court is involved in a compromise. Where an action is compromised the Court is bound under Order 23 Rule 3, C. P. C. to record it and pass a decree in terms of it. All that the court is concerned before passing a decree in terms of the compromise is to see whether the compromise is a lawful agreement or not. Once it finds the agreement between the parties to be lawful (the parties may agree to any terms) the court is bound to record it. If a compromise is an undertaking to the Court, then the Court is a free agent to act or not to act, and the court may accept the compromise or reject it. But under Order 23 Rule 3, the Court has no choice but to record the agreement and pass a decree in its terms.

11. The Bombay High Court in taking the view it did relied upon an English case, *Cotton v. Heyl*,³ But I am afraid that the facts of the English case, (to which I shall refer in the next paragraph) were not properly appreciated.

12. In coming to the conclusion that a compromise was an undertaking to the Court, the learned Judges of the Bombay High Court after referring to the above English case said that it "goes to show that even if an undertaking was given in an action which was compromised the undertaking could be enforced by contempt proceedings."

13. The facts of the English case in brief are that an action for the grant of proprietary

interest in an invention was compromised by an order on certain terms. The order so far as is material was in the following terms :

"The defendant George Edward Heyl by his solicitor's undertaking in the terms of paragraphs 1 and 2 of the Schedule hereto and both defendants undertaking by their solicitors in the terms of paragraph 5 of the schedule hereto It is observed that all further proceedings in this action be stayed except so far as may be necessary for giving effect to the said terms....."

One of the terms was an undertaking to pay the plaintiff a sum of - 1,000/- forthwith (which was duly paid and a further sum of #, 4,000/- was to be paid out of the first moneys received by the defendant on a future sale of his rights in the invention to the plaintiff. The sum of # 4,000/- was not paid as stipulated.

14. Now there are two things which were overlooked by the Bombay High Court. First, that it was an undertaking given in a pending case as the words of the order "that all further proceedings in the action be stayed except so far as may be necessary for giving effect to the said terms (of compromise)" show. Secondly and it is the most important fact which somehow or other escaped the notice of the learned Judge of the Bombay High Court, that in the English case contempt proceedings were taken because the case fell within the third exception to the Debtor's Act of 1869, Section 4. It seems that the English Debtor's Act of 1869, specifically provided that in certain cases parties on committing default may be imprisoned. A breach of a term was an offence under the exceptions to Debtor's Act, 1869. Oswald on Contempt page 113, has dealt with the Debtor's Act in detail and for the purpose of this case it is unnecessary to deal with the Act any further. Thus it would appear that in the English case (1930-1 Ch 510), referred to above, committal proceedings were ordered on the basis of a statute, which enabled a court to do so. But in India, we have no such statute.

15. In the Calcutta case, AIR 1955 Calcutta 182, the learned Judges have not given any reason for holding that a compromise between the parties amounts to an undertaking to the Court, beyond observing that

"it is settled law that breach of an undertaking given to a Court by a person in a particular course of action is misconduct amounting to contempt."

But I have been unable to find authorities, which the learned Judges had in their mind. The learned Judges seem to be of the view that in recording a compromise and passing a decree in accordance therewith, "the court sanctions a particular course of action." But with respect, I submit that where a case is adjusted by a lawful agreement or compromise, then it is the bounden duty of the Court to record it and pass a decree in accordance with it. No option is left to the Court to examine the terms of the compromise beyond seeing whether the agreement is lawful or not. The learned Judges of the Calcutta High Court in saying that the Court "sanctions a particular course of action" imply as if a court may or may not record the compromise.. But the use of the language "shall order such agreement to be recorded and shall pass a decree" are mandatory and no question of any sanction of the Court arises. Order 23 R. 3 Civil Procedure Code makes it obligatory on the court to record a compromise duly entered into by the parties to a suit and it also makes it obligatory on the Court to pass a decree in terms of a compromise. Thus no question of any sanction of the court arises.

16. For reasons stated above, I hold that a compromise between parties on the basis of which a decree has been made, is not at all an undertaking to the court, and, on breach of terms of compromise embodied in the decree, no committal proceedings can be initiated. The first question is, therefore, decided against the applicant (landlord).

17. With regard to the second question, namely, that I should order the tenant to vacate the house and pay up arrears and for that purpose send the case to the lower court for execution of this part of the order, I find that the consent decree embraced matters that did not relate to the suit. The suit in the instant case was for ordering the defendant (landlord) to restore the electric connection which he was alleged to have cut off. The consent decree inter alia was for payment of arrears and for vacating the premises in case a default was made. Thus the consent decree included matters not relating to the suit.

18. Where a consent decree contains terms that do not relate to the suit, there is a conflict of opinion whether such terms can be enforced in execution. While Allahabad and Madras High Courts have held that such terms can be enforced in execution, the High Court of Bombay in *Vishnu Sitaram v. Ramchandra Govind*,⁴ and the High Court of Calcutta in *Jasimuddin Biswas v. Bhuban Jelini*,⁵ have laid down that such terms cannot be enforced in execution of the decree but they may be enforced as a

contract by a separate suit. I find myself in respectful agreement with the Bombay and Calcutta views, because according to Order 23 Rule 3 C. P. C., it is the adjustment of compromise of the suit before the Court that has to be recorded and a decree has to be passed according to it. Any reference in the compromise to matter extraneous to the suit would be an agreement and not a compromise in the suit and the proper thing for the parties in such circumstances is to enforce the agreement by a separate suit.

I, therefore, hold that that part of the order which did not relate to the suit cannot be executed and that the applicant shall have to bring a separate suit for it. The second question is also decided against the applicant.

19. In result, the application is dismissed. The parties shall bear their own costs of this application.

Application dismissed.

Cases Referred.

1. AIR 1950 Bom 336
2. AIR 1955 Cal 182
3. (1930) 1 Ch 510
4. 139 Ind Cas 830
5. ILR 34 Cal 456