

Pratibha Negi Vs Chandra Prakash

Court: Uttarakhand High Court

Date of Decision: Aug. 7, 2019

Acts Referred: Code Of Civil Procedure, 1908 " Order 39 Rule 2A

Hon'ble Judges: Lok Pal Singh, J

Bench: Single Bench

Advocate: Pushpa Joshi, Chetna Latwal, Pradeep Hairiya

Final Decision: Allowed

Judgement

Lok Pal Singh, J

1. This civil revision is directed against the judgment and order dated 14.10.2014 passed by Additional District Judge, Almora in Misc. Civil Appeal

No.19 of 2012 Chandra Prakash vs. Km. Pratibha Negi, whereby the first appellate court while allowing the misc. civil appeal, has set aside the order

dated 01.12.2012 passed by the trial court and has awarded two months " civil imprisonment to the revisionist.

2. Factual matrix of the case is that respondent/plaintiff instituted original suit no.4 of 2007 in the court of Civil Judge, Junior Division, Ranikhet,

District Almora for permanent injunction against the revisionist/defendant. Trial Court, vide order dated 20.02.2007, granted ex-parte injunction in

favour of the respondent/plaintiff, thereby restraining the revisionist/defendant from interfering in the gallery of shop no.827 as mentioned in the plaint.

Revisionist/defendant filed her reply in the suit. On 21.04.2007, respondent/plaintiff filed an application under Order 39 Rule 2A of C.P.C. for

summoning and punishing the revisionist/defendant for willful disobedience of the order dated 20.02.2007. In the application, the respondent/plaintiff

pleaded that inspite of service of the copy of the interim order dated 20.02.2007, the revisionist/defendant is creating interference over the property by

placing temporary wooden stairs. On the application, revisionist/defendant filed her reply stating that the respondent/plaintiff has obtained injunction by

concealing the material facts. In support of his application, respondent/plaintiff filed some documentary evidence and in oral evidence, he filed

affidavits of P.W.1 Chandra Prakash, P.W.2 Chandan Singh Bisht, P.W.3 Yateesh Tiwari, P.W.4 Yogesh Joshi and P.W.5 Gopal Dutt.

Revisionist/defendant also filed some documentary evidence in support of his case.

3. After hearing the learned counsel for the parties and on perusal of the material available on record, Civil Judge (J.D), Ranikhet, rejected the

application under Order 39 Rule 2A of C.P.C. on the ground that in spite of sufficient time granted, the respondent/plaintiff did not produce the

witnesses for cross-examination and hence affidavits on oath are not admissible in evidence. On the selfsame day, Original Suit No.4 of 2007 was also

dismissed on merits. Feeling aggrieved, the respondent/plaintiff preferred appeal before the District Judge, Almora being numbered as Misc. case no.3

of 2007. The appellate court, vide judgment and order dated 14.10.2014, allowed the misc. appeal and held that the revisionist/plaintiff is guilty of

willful disobedience of order of injunction dated 20.02.2007 and accordingly imposed a punishment of two months' civil imprisonment.

4. I have heard learned counsel for the parties and have perused the entire material available on record.

5. Learned counsel for the revisionist would submit that the ad interim injunction order dated 20.02.2007 had merged into the judgment dated 1.12.2012

wherein the revisionist/defendant was not found guilty besides dismissal of original suit as well. It is further argued that over the staircase, the P.C.O.

of the defendant was allegedly founded in the year 2006 i.e. prior to passing of interim order by the court below.

6. On the other hand, learned counsel for the respondent would support the impugned judgment passed by the appellate court. He would place reliance

on a judgment of this Court rendered in the case of Deepak Kumar Gupta & Ors. V. Nandan Kumar Mittal & Ors., 2012 (1) U.A.D. 227 wherein it

has been held that the contempt proceedings are summary in nature and that the procedure for cross-examining the witnesses as provided under the

C.P.C. is not applicable in these summary proceedings. Such procedure is normally done through affidavits.

7. It is true that proceedings under Order 39 Rule 2A of C.P.C. are summary in nature but the fact remains that once the trial court has granted time

to the plaintiff/applicant to produce the witnesses whose affidavits have been filed in evidence, and the respondent/plaintiff despite time granted did not

produce those witness, the Court shall draw an adverse inference against such party. After a direction of the court, it was incumbent upon the

plaintiff/respondent to produce the witness for cross-examination. Not making compliance of the order of the Court disentitles the person from

obtaining any order from the court, more particularly in a contempt matter. In the case at hand, since the respondent/plaintiff failed to produce the

witnesses for cross-examination despite time granted, the trial court having considered this fact, has rightly rejected the application moved under Order

39 Rule 2A CPC and observed that the applicant could not prove the contents of the application by oral evidence.

8. A perusal of the application and the ex-parte order dated 20.02.2007 as well as evidence available on record would show that the ex-parte interim

order, for which contempt application was filed by the plaintiff/respondent, was not communicated to the revisionist. Contempt is a serious matter

between the alleged contemnor and the Court. Application moved by the plaintiff or aggrieved person to initiate contempt proceeding against the

alleged contemnor is just intimation to the court. In the present case, the plaintiff could not prove that the revisionist/defendant has committed willful

disobedience of the ex-parte order passed by the Court by producing the witness for cross-examination, inspite of sufficient time granted. It was the

satisfaction of the trial court to direct the plaintiff/respondent to produce the witness for cross-examination so that the veracity of their statement may

be examined by cross-examining them, but the respondent did not produce the witness for cross-examination. Thus, the trial court had rightly drawn

adverse inference against them and had rightly rejected the application moved under Order 39 Rule 2A CPC .

9. On the other hand, a perusal of the order passed by the appellate court would reveal that the appellate court has exceeded its jurisdiction and has

acted like a trial court. The jurisdiction of the appellate court is only to see whether there is any illegality or perversity in the order of the trial court.

The trial court has acted in accordance with law in permitting the respondent applicant to produce the witnesses for cross-examination. Such

procedure adopted by the trial court should not have been overlooked by the appellate court. Furthermore, the appellate court while allowing the

application of the plaintiff/respondent, has not assigned any reasons and has not set aside the findings recorded by the trial court.

10. In view of the foregoing reasons, this Court is of the firm view that the order passed by the appellate court suffers from gross illegality.

Accordingly, civil revision is allowed. Impugned judgment and order dated 14.10.2014 passed by Additional District Judge, Almora in Misc. Civil

Appeal No.19 of 2012 Chandra Prakash vs. Km. Pratibha Negi, is hereby set-aside.