Nalla Senapathi Sarkarai Manradiar. Vs Sri Ambal Mills (P) Ltd. and Others

Court: Madras High Court

Date of Decision: Feb. 3, 1965

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 151, 20
Contempt of Courts Act, 1971 â€" Section 3, 4

Citation: AIR 1966 Mad 53 : (1966) CriLJ 146 : (1966) ILR (Mad) 143 : (1965) 78 LW 437

Hon'ble Judges: Anantanarayanan, O.C.J.; Natesan, J

Bench: Division Bench

Judgement

Anantanarayanan, Offg. C.J.

(1) This proceeding is sought to be filed under Ss. 3 and 4 of the Contempt of Courts Act against the respondents on record, of whom the first

respondent is Sri Ambal Mills (Pvt.) Ltd., a company in Coimbatore, the second respondent is the Managing director of the company, the third

respondent is another director, and the eleventh respondent is an Advocate who is the legal adviser of the company. The facts essential for an

appreciation of the scope of this proceeding are simple, and, for the most part, not in controversy. It appears that the petitioner, who is a

shareholder in this company, holding 2001 shares, instituted O. S. 1441 of 1964 in the court of the District Munsif, Coimbatore, against

respondents 1 and 2 for a permanent injunction, restraining them from convening or conducting an extraordinary general meeting which was to be

held on 14th December 1964, in pursuance of a notice issued by the second respondent. Along with the plaint, the petitioner filed I. A. No. 1840

of 1964 for an interim injunction pending disposal of the suit, restraining respondents 1 and 2. The learned District Munsif, Coimbatore, made an

order in open court for an interim injunction and notice returnable on 16-1-1965.

(2) At 4 p.m. on that date, 11th December 1964, the 11th respondent, viz, the advocate and legal adviser of this company, appeared in court,

presented a vakalat and also an unnumbered application, requesting the court to advance the hearing of the application in which interim injunction

had been directed to the 14th instant.

(3) It appears from the record that the extraordinary general meeting, the holding of which was inhibited by the interim injunction, had been

convened for 9.30 a.m. on 14th December 1964. The Court had issued two telegrams on 11th December 1964 to respondents 1 and 2, informing

them of the prohibitory orders. It is stated that learned counsel for the petitioner also sent similar telegrams. The petitioner himself went to the

notified place of meeting at 9.30 a.m. on 14-12-1964. He found several shareholders and directors present, including respondents 3 to 6.

Respondents 7 to 10 were also alleged to have been present. The third respondent (Sri. V. Ayyaswami Naidu, director) occupied the chair, and

the 11th respondent, the legal adviser, was by his side. The petitioner then informed those present of the ex parte interim injunction directed by the

orders of court, and pointed out that holding and passing the contemplated resolution would amount to flouting the orders of court, and to

contempt of court. In spite of this apparently due to an earlier written legal opinion furnished by the 11th respondent, concerning the validity and

legal effect of the interim orders of injunction, the meeting was actually held, and the resolution passed. On these facts, and on the further fact that

the petitioner himself entered his objections in writing in the minutes book on the occasion of the meeting, the petitioner claims that all the

respondents have been guilty of contempt of court, since they deliberately flouted orders of court, being very well aware of the facts of the

prohibitory orders, that they should be suitably punished for their contumacy, and that the resolution passed at the extraordinary general meeting

held on 14-12-1964, has to be set aside as void.

(4) These facts are adequate for a disposal of the proceedings, as far as the merits are concerned. We shall very briefly refer to the counter-

affidavits of certain of the respondents. As far as the first respondent (Sri Ambal Mils (P) Ltd.) is concerned, the statement is that, in view of the

furnished legal opinion that the orders of court were null and void, the meeting already convened was held in spite of the orders. In the counter-

affidavits of respondents 2 and 3, there are further particulars. The second respondent did not attend the meeting, and he disclaims the averments

that he deliberately permitted the meeting to be convened, and, at the same time, refrained from attendance; he did not, directly or indirectly,

advise the holding of the meeting. The third respondent (Sri V. Ayyaswami Naidu) admits the facts, broadly speaking, that we have set forth

earlier. He concedes that he was the Chairman elected at the meeting; but he participated in the meeting, because he was genuinely of the view

that, in the light of the written opinion of the legal adviser (11th respondent) the order of injunction was without jurisdiction, and the meeting could

hence be held. He tenders an unconditional apology for any unwitting contempt of court that he might have committed. We are not referring to the

counter-affidavits of respondents 4 to 7, 9, 10 and 12 to 17 (respondent 8 having been subsequently exculpated) since they are upon an identical

pattern, and, very tersely stated, all these counter-affidavits explain the circumstances under which the meeting occurred, and these persons who

participated therein, claim bona fides, and make an unconditional apology for any unwitting contempt of court that they might have committed.

(5) The counter-affidavit of the 11th respondent (legal adviser) alone requires some separate comment. The document is to the effect that the 11th

respondent had a letter from the company for the examination of the matter of the interim injunction, along with the relevant documents, and he

made a scrutiny, and found that the court would have no territorial jurisdiction to pass any order, as the first respondent-company was not within

the jurisdiction of the court, and leave of court had not been obtained under S. 20(b) C. P. C., assuming that the second respondent (defendant)

was within the territorial jurisdiction of the court ; nor had there been any acquiescence by the concerned defendant. The advocate refers to certain

authorities that he consulted, including the decision of the Full Bench in Sultan Ali v. Nur Hussain, AIR 1949 Lah. 131 ; he came to the bona fide

and considered view that the order was without jurisdiction, and was hence void and a nullity. He communicated this view to the persons

authorised to represent the company. The advocate concedes that he did attend the meeting, though he was neither a shareholder not a director,

but he did not participate in the actual meeting. However, he did not retract his opinion that the orders of injunction were null and void, since he

bona fide thought so, and it is clear enough that he permitted the meeting to proceed without voicing any apprehension that the persons

participating might, thereby, be guilty of contempt of court. He disclaims all intention to disobey orders of court, or to connive in any manner at the

flouting of an order of court. Finally, we may state that he was enrolled in 1957, and that his standing at the Bar dates from that year.

(6) Under these circumstances, and, as the matter was argued before us by learned counsel, several questions would appear to arise for our

determination. Firstly, assuming that the ex facie particulars in the plaint showed that the first defendant-company was not within the territorial

jurisdiction of the court of the District Munsif, and that neither leave of court had been granted under S. 20(b), C. P. C., nor had the first defendant

acquiesced in the assumption of jurisdiction by court, would the order of interim injunction passed by court thereby become void and a nullity ?

Could such order be flouted, with impunity, by parties upon whom it had been served ? Could the legal adviser of the company, on the strength of

his opinion that the order was a nullity, assist in the holding of the meeting in infringement of the order, at least to the extent of being present, and of

not voicing a protest of apprehension that the holding of that meeting might amount to contempt of court ? Would the second respondent, who did

not participate in the meeting at all, be guilty of contempt ? Are the other respondents guilty of contempt, and is the 11th respondent guilty of

contempt, though not a party to orders of court, because he abetted the commission of such contempt by others ? Finally, what would be the

appropriate action to be taken if all or any of these respondents must be held guilty to contempt of court ?

(7) We have been at some pains to examine the law on this aspect of the flouting of an order of court, which may be passed without territorial

jurisdiction, for, it seems to us that this is of some importance, and cases might arise frequently in actual judicial administration. It seems to be

abundantly clear that the question whether a court has territorial jurisdiction or not, when one defendant indisputably resides within such jurisdiction

and the other ex facie, does not, is primarily a question of fact for the court to decide. For instance, it may depend on such a matter of evidence, as

the location of a particular mile-stone in relation to a house of business, or the house of a private individual. Even if such jurisdiction were altogether

lacking, it could be easily cured under S. 20(b) C. P. C., either by an order of special leave of court, or by the acquiescence of the concerned

party. Where neither of these elements is available, we may assume, that, prima facie, the court has no territorial jurisdiction to exercise its powers

over the concerned defendant, including a power to inhibit the acts of the defendant by an interim injunction. But we do think that it is very

important that a distinction should be made between a lack of jurisdiction which does not go to the root of the powers of court, such as an absence

of territorial or pecuniary jurisdiction, or an alleged absence in these respects, and a lack of jurisdiction which is basic to the very organisation of

court, or to the scope of its powers. Authorities are available for the view that a mere absence of territorial or pecuniary jurisdiction, does not

proceed to the root of the matter of jurisdiction, and is capable of cure by acquiescence by order of court, or, in other respects as provided for by

law.

In Kiran Singh and Others Vs. Chaman Paswan and Others, , their Lordships had to deal with the matter of pecuniary jurisdiction and the

jurisdiction being affected by overvaluation or under-valuation; this was not to be treated as an assumption of jurisdiction which was null and void,

and this is the principle underlying S. 11 of the Suits Valuation Act, 1887. The matter was considered at some length by Venkatasubba Rao J. in

Katamberi Chuzhali Bhagavati Amma''s owner, Uralan and Manager Samanthan Karakkattitathil Kammaran Nambiar (since deceased) and

Another Vs. Valia Ramunni, Karnavan and Manager now the Santikkaran of Parachinikkatavath Mattappurakkal Muthappan Deity, styled as

Matayan"" and Others, a Bench decision of this court. The learned Judge has observed :

The principle that they (the provisions) appear to embody is that these defects of jurisdiction are not fundamental in character, and are no more

than ''irregularities in the exercise of jurisdiction''.

The specific point whether flouting such an order of court, though it may be lacking in pecuniary jurisdiction, with knowledge of the order and

deliberately, would amount to a contempt or otherwise, was dealt with in State of Uttar Pradesh Vs. Ratan Shukla, where Desai J. Said:

It is not the law that a court dealing with a matter which is beyond its jurisdiction can be contemned with impunity or that the liability of a person to

be punished for contempt of a court depends upon whether the court was acting within its jurisdiction at the time when it is alleged to have been

contemned.

Again, in the decision of the Supreme Court in Seth Hiralal Patni Vs. Sri Kali Nath, , their Lordships pointed out that objection as to local

jurisdiction was different from an issue of competence of a court, which is an inherent lack of jurisdiction. Objection as to local jurisdiction can be

waived, and a decree passed under such circumstances of a possible absence of local jurisdiction cannot be challenged in execution proceedings

as to its validity ; only where inherent jurisdiction was lacking, could the decree be challenged in that manner.

Another interesting decision which throws some light on the subject is Padam Sen and Another Vs. The State of Uttar Pradesh, . That was a case

in which the court passed an order under S. 151 C. P. C. appointing a Commissioner to seize account books in the possession of the plaintiff, on

an application by the defendant, in a suit on a negotiable instrument. The Supreme Court pointed out that the court of trial had no such inherent

power at all and that such a Commissioner appointed without a jurisdiction was not a public servant under S. 21 of the Indian Penal Code.

Obviously, this is an instance of an inherent lack of jurisdiction, and it has to be segregated from the quite different case of a mere lack of pecuniary

or territorial jurisdiction, which does not proceed to the root of the power of the Court.

(8) In our view, therefore, and without expressing any final opinion upon the liability of the first defendant to be sued in the court of the District

Munsif, Coimbatore, without recourse to the procedure under S. 20(b) C. P. C., even on the assumption that territorial jurisdiction was ex facie

lacking, the interim order of injunction could by no means be flouted with impunity, by a party thereto, having knowledge of that order. On the

contrary, such conduct would amount to deliberate contempt of court, and render that party liable for a contempt which affects the administration

of justice. Of course, we refrain from making any observation upon other cases, where there might be an absence of inherent where there might be

an absence of inherent jurisdiction, in the court, or such a point of view could be pleaded for; without expressing any final opinion, we might state

that we are not here rejecting the argument of learned counsel that, where inherent jurisdiction itself is lacking, the order of court is a nullity, so that

no contempt can be committed by the disregard or disobedience of such an order. But it is interesting to note that the following observation occurs

in Oswald on Contempt, 1910 Edn. page. 107 :

An order irregularly obtained cannot be treated as a nullity, but must be implicitly obeyed, until, by a proper application, it is discharged"".

We might immediately dispose of the case of the second respondent, before proceeding to the other instances. Since he was not present at the

meeting, did not participate therein, and disclaims all intention to disobey the order of court by instigating such a meeting, he has necessarily to be

discharged in the absence of any ex facie record proving his instigation. He is discharged accordingly.

(9) With regard to all the other respondents, including respondent 3, the fact is indisputable that they participated in the meeting, except the 11th

respondent, whose case we shall consider separately; and that they had knowledge of the prohibitory orders of court. It is not in dispute that a

contempt of court might be committed even by a party who is not a party on record, in the order which is the subject of contempt. It is sufficient to

refer here to Halsbury"s Laws of England, 3rd Edn., Vol. 8, part I, Sec. 3, sub-section 39, (also see Oswald on Contempt 1910 Edn. page 106)

which runs thus :

A stranger to an action who aids and abets the breach of a prohibitory order obstructs the course of justice, and this contempt is punishable of

committal or attachment.

There are several English cases cited in the books in support of this authority. Hence, as far as these other respondents are concerned, they are

undoubtedly guilty of contempt, whether they were parties to the order or otherwise, so long as it was brought to their notice that the meeting was

prohibited, and, nevertheless, they participated in it.

In M.Y. Shareef and Another Vs. The Hon"ble Judges of The High Court of Nagpur and Others, , their Lordships have emphasised that, in

response to a notice for contempt, there cannot be both a justification and an apology, merged together. The two things are incompatible, and an

apology is not a weapon of defence to purge the guilty of their offence.

In the present case, we are satisfied on the following matters. We are satisfied that these respondents, though guilty of contempt, acted bona fide in

participating in the meeting, apparently because of the legal opinion tendered by the 11th respondent, and again reinforced by his presence at the

meeting without the utterance of any protest. We are satisfied that these respondents had no intention, or shadow of an intention, to deliberately

flout the orders of court, or to show any disrespect to judicial authority. We are further satisfied that those portions of their affidavits which relate

to the actual details, are explanatory of their conduct, and not a mere piece of justification in any of these cases. We are also satisfied that their

apology is unconditional and sincere, and that has been re-inforced by the arguments of learned counsel for these parties. In this view, we have

come to the conclusion that the appropriate action, as far as these respondents are concerned, will be to accept the unconditional apology and to

discharge them. No further action is called for, in the interests of justice with regard to their conduct. But most certainly, the proceedings of the

meeting were void, the meeting itself having been conducted in disobedience of the interim injunction, and that will equally apply to the resolution or

resolutions passed therein. We make a record to that effect, this situation at law has not been disputed by any of the learned counsel.

(10) Finally, we shall deal with the case of respondent 11, the Advocate who was the legal adviser of the company. The legal advice that he

tendered was in writing, and in response to a written request. We are fully satisfied that it was tendered by him bona fide, after a study of the

papers and such authorities as he was able to consult. We do not think that it would be fair to tax this respondent with greater liability in the form of

any possible acquiescence by the defendant-company in jurisdiction under S. 20(b) C. P. C. merely because he (counsel) tendered a vakalat on

the date of the order of interim injunction and filed an application for the advancement of the hearing. We may here add that the meeting to be held

at 9.30 a.m. on 14th December 1964 had been already notified, more than a month previously. Had matters stopped there, the 11th respondent

would deserve an immediate discharge forthwith from these proceedings, without any further comment. But the fact remains that he did attend the

meeting, and did not raise any voice of protest against the conduct of the meeting; nor did he express an apprehension that the meeting might

amount to contempt of court, and that it would be in the interests of the Company and persons present that it was not held at all.

The 11th respondent is a young man with a comparatively short experience at the Bar, and learned counsel have testified to his general sincerity

and earnestness in the practice of his profession. We are fully satisfied that his somewhat imprudent conduct in not having advised those persons

present against the holding of the meeting, must be attributed to his inexperience with regard to the running of such a hazard by his clients or others,

and that he was entirely innocent of any intention either to flout the orders of court, or to show any disrespect of any kind to judicial authority. We

are sure that the advocate has now learnt, by this incident, a lesson or experience, which, we hope, will be of great value to him in future. With

these observations, and accepting his unqualified apology also, we direct that he be discharged from these proceedings.

(11) The petitioner will have his costs, under the circumstances from the funds of the first respondent-company.

(12) Order accordingly.