

(1949) 11 AHC CK 0028

Allahabad High Court

Case No: Criminal Miscellaneous No. 32 of 1949

Surendra Nath Koley

APPELLANT

Vs

A.R. Sinclair Day and Another

RESPONDENT

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**Date of Decision:** Nov. 3, 1949**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2
- Contempt of Courts Act, 1971 - Section 1

**Citation:** AIR 1950 All 285 : (1950) 20 AWR 28**Hon'ble Judges:** Malik, C.J**Bench:** Single Bench**Advocate:** K.B. Asthana and G.S. Pathak, for the Appellant;**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Malik, C.J.

This is an application for issue of notice of contempt against Mr. A. R. Sinclair pay, District Magistrate of Banaras, and Mr. Krishna Narain Johiri, Assistant Bent Controller and Eviction Officer, Banaras. There is a house No. D47/192 in Ramapura, "Banaras City; The house had been allotted by the Deputy Town Rationing Officer to one Mr. J. S. Misra, Assistant Engineer, P. W. D. Banaras, on 19th July 1947. The house had been under certain previous orders allotted to other persons but we are not concerned with the orders previous to the order dated 19th July 1947. Mr. Misra was transferred from Banaras and the Assistant Bent Controller and Eviction Officer, Mr. K. N. Johiri, purported to allot the house to Mr. D. Goyal, Assistant Engineer, P. W. D. Banaras, who was probably the successor of Mr. Misra. The landlord, who is the applicant before me, protested against the allotment of the house to Mr. Goyal on the ground that Mr. Goyal was already living with his wife, who was a teacher in the Banaras Hindu University, and on certain other grounds with which we are not

concerned. The landlord applicant followed this up by a Suit No. 346 of 1949 filed in the Court of the City Munsif of Banaras on 25th May 1949. The opposite parties, Messrs. A. R. Sinclair Day and K. N. Johiri, were impleaded in that suit as defendants 1 and 3. It was alleged in the plaint that the United Provinces (Temporary) Control of Rent and Eviction Act (III [3] of 1947), as amended by Act XLV [45] of 1948, was not applicable and the order of allotment was null and void. One of the reliefs claimed in the plaint was that defendants 2 and 3 be restrained by injunction from "interfering in any way by order or otherwise with house No. D47/192, Rampura." On the day that the suit was filed an application was made for the issue of an injunction and the learned Munsif issued a temporary injunction in the words of the relief and restrained defendants 2 and 3 from "interfering in any way by order or otherwise with house, premises No. D47/192, Ramapura, Banaras city." This injunction application came up for final hearing after service of notice on the defendants on 2nd June 1949, and the order was vacated by the Munsif.

2. It is, however, alleged that this order vacating the temporary injunction was passed at 1 P. M. and at 10 O'clock the tenant Mr. J. S. Misra, who had been in occupation of the house from 1947, vacated it and some police constables and the senior inspector of the rent control department immediately locked the house and took possession of the keys. The learned Munsif was moved under Order 39, Rule 2, Civil P. C., to take proceedings for contempt for disobedience of the order of injunction. The Munsif, however, did not take any action and dismissed the application, it is said, on the ground that the injunction application had been dismissed and it was not necessary to take any proceedings. This application has now been filed under Act XII [12] of 1926.

3. Learned counsel for the applicant has urged that the applicant wanted that the house should not be allotted to anyone else and when Mr. Misra vacated the premises the applicant should be able to get possession thereof and the action of the police constables and the senior inspector of the rent control department in locking the house and taking possession of the keys amounted to their taking forcible possession of the house. It is further alleged that the constables and the senior inspector acted under the orders of the opposite parties Messrs. Sinclair Day and Johiri.

4. It may be that the opposite parties may have been better advised to have moved the learned Munsif for directions before they took any action on 2nd June 1949, as it is desirable that when an injunction order has been issued under the orders of a competent Court whether the order is right or wrong it should be implicitly obeyed by all concerned. The difficulty, however, arises in this case by reason of the fact that the order of the learned Munsif was so badly worded that it did not appear what the learned Munsif had actually meant by his order. The injunction was that the defendants were not to interfere in any way with the house. The house was in the possession of a tenant. 2nd June 1949 was fixed for the final hearing of the

application for injunction Neither party seemed to have contemplated, nor had the Munsif in mind the situation that might arise by reason of the tenant vacating while the application was pending. The learned Munsif passed no orders to the effect that the landlord was to get possession. The house had been in the occupation of an officer of the Government and it had been allotted to another officer, before the suit was filed. If the learned Munsif was of the opinion that his injunction order had been interfered with, he had powers to take steps under Order 39, Rule 2, Civil P C. This Court would entertain an application for contempt only if it is of opinion that it is in the larger interest of the administration of justice that such an application should be entertained. A large number of applications for taking proceedings for contempt have been coming up for orders before me during the last few weeks, and I want to make it clear that a writ of contempt is not one of the reliefs that is given to a private party for the vindication of his private rights. He has got his other remedies. Proceedings for contempt should be taken only in cases where a Court is satisfied that some, thing has been done, which it is necessary in the larger interests of the administration of justice, that the Court should take notice of. If the trial of a case has been interfered with, or if an atmosphere has been attempted to be created when a case cannot be properly tried, for example, when witnesses are intimidated or coerced or other influences are brought to bear either on the parties or on the witnesses, or when orders of the Court had been deliberately disobeyed, or when something is said or done, which is likely to lower the prestige of the Court, or shake the confidence off the public, in the administration of justice the Court should not overlook such acts. But where the order issued is a doubtful order, where the order itself has been vacated and where it cannot be said that there is deliberate disobedience of the order, simply because a party considers that he has been aggrieved by some action which he considers high-handed, it would not be proper to issue a notice for contempt to show cause.

5. I have looked into the affidavit carefully and it appears to me that the main grievance of the applicant is that his house, which is described as "a beautiful house" very well furnished, was taken possession of some years back by the executive authorities and has been from time to time allotted to someone or other in spite of his protests. This application was filed merely with the object of having his private grudge satisfied. The Munsif having refused to take steps under Order 39, it does not appear to me to be necessary to issue notice. The application is dismissed.