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(2006) 9 ADJ 449 : (2006) 3 AWC 2864 : (2006) 3 AWC 2854

Allahabad High Court

Case No: Contempt Appeal No. 8 of 2006

Anand Prakash Agrawal	APPELLANT
Vs	
Cantonment Executive Officer, Cantonment Board and Others	RESPONDENT

Date of Decision: May 18, 2006

Acts Referred:
Cantonments Act, 1924 â€" Section 185, 274#Civil Procedure Code, 1908 (CPC) â€" Order 39 Rule 2A#Constitution of India, 1950 â€" Article 215#Contempt of Courts Act, 1971 â€" Section 19, 2, 20

Citation: (2006) 9 ADJ 449 : (2006) 3 AWC 2864 : (2006) 3 AWC 2854

Hon'ble Judges: M.C. Jain, J; K.K. Misra, J

Bench: Division Bench

Advocate: Pramod Kumar Jain and Ashutosh Garga, for the Appellant; R.N. Singh, Mohd. Isha Khan, Prashant Mishra and A.K. Sinha and A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

M.C. Jain, J.
The appellant Anand Prakash Agarwal has come up in appeal u/s 19 of the Contempt of Courts Act, 1971. The order

impugned is one dated 1,3.2006, passed by Hon''ble Single Judge in Contempt Application No. 380 of 2001 whereby the appellant has been

directed to appear in person for framing of charge(s) against him in the contempt matter,

2. Shortly put, the relevant facts are these; The appellant contemnor along with others filed Suit No. 581 of 1994 for permanent injunction against

the Executive Officer and President of Cantonment Board, Meerut Cantt (applicants in contempt application pending before the Hon"ble Single

Judge) in the court of Civil Judge, Meerut. An application for interim injunction under Order 39 Rule 1 CPC was also made for restraining the

defendants from demolishing the constructions existing on the land in question. The injunction application was rejected by the trial court against

which First Appeal From Order (No. 202 of 1995) was filed before this Court. This Court passed the following order on 13.4.1995.

Shri A.K. Sinha has accepted notice on behalf of the respondent Nos. 1 & 2. He prays for and is granted 3 weeks" time to file counter affidavit.

Petitioners will have one week thereafter to file the rejoinder affidavit. List this appeal after expiry of the aforesaid period. Meanwhile, parties are

directed to maintain the status-quo with regard to the Bungalow No. 210-B, Western Road, Meerut Cantt, Appellants shall also not raise any

further construction nor respondents shall demolish any construction.

3. So, as is apparent from the above order, the interim injunction also restrained the plaintiffs (appellants) from raising any further constructions. Of

course, the defendants were also restrained from demolishing any construction. The applicants before the Hon"ble Single Judge (Cantonment

Board) have alleged the violation of the said interim order by the plaintiff/appellant Anand Prakash Agarwal (contemnor) that inspite of the restraint

order against him, he continued to make constructions. Notice was issued u/s 185 of Cantonment Act 1924 to the opposite parties as well as to

the subsequent purchasers of the land in question (which was sold by the present contemnor/applicant on the basis of power of attorney of other

plaintiffs No. 1, 2 and 3). They filed appeal u/s 274 of the Cantonment Act which was also rejected. Then Writ Petitions were filed in which

interim order had been passed staying the appellate order. It is not necessary to go into the details of the same as they are not necessary for the

decision of this contempt appeal before us.

4. Before the Hon''ble Single Judge, the plaintiff/appellant Anand Prakash Agarwal (contemnor) contended through a counter affidavit sworn by

one Rajeev Singhal (who professed himself to be the cousin brother of the said Anand Prakash Agarwal) that the opposite party No. 1 had

expired on 14,12.2001 and opposite party No. 3 was living in Denmark. He himself did not violate the interim order passed by the Court, An

application for withdrawal of the the appeal was filed in the year 1999 and it automatically came to an end the moment the application was filed as

per the provision of Order 23 Rule 1 C.P.C. The suit itself was withdrawn on 30.11.2000 and, therefore, the appeal and orders passed in appeal

automatically came to an end including the injunction order passed by this Court. Alternatively, the contempt proceedings were without jurisdiction,

inasmuch as the proper remedy was to file an application under Order 39 Rule 2-A C.P.C. The alleged breach or violation had taken place

between the period 26.4.1996 and 29.9.1999 and the contempt application was filed on 12.2.2001. Therefore, in view of Section 20 of the

Contempt of Courts Act, it was barred by time.

5. Since the Hon''ble Single Judge was prima facie satisfied that a case of wilful contempt was made out against the appellant/contemnor Anand

Prakash Agarwal, he required him to appear in person before the Court for framing of charge(s).

6. We have heard Sri P.K. Jain, learned Counsel for the appellant/contemnor assisted by Sri Ashutosh Garg. Sri R.N. Singh, Sr. Advocate

assisted by Sri Prashant Mishra has been heard for the respondents (Cantonment Board).

7. A preliminary objection has been raised by the learned Counsel for the respondents as to the maintainability of the appeal. It has been urged that

no final order has yet been passed by the Hon''ble Single Judge and as such the appeal u/s 19 of the Contempt of Courts Act does not lie. An

appeal under the said provision of law, it has been urged, lies only against a final order passed in contempt petition. It has been countered from the

side of the appellant/contemnor that the instant appeal is legally maintainable u/s 19 of the Contempt of Courts Act. Reliance has been placed on

the following case law:

1. Purshotam Dass Goel Vs. Hon"ble Mr. B.S. Dhillon and Others,

2. R.N. Dey and Ors. v. Bhagyabati Pramanik and Ors. 2000 .2 AWC 1600.

3. Vijav Krishna Goswami v. Suresh Chand Jain 1993 2 ARC 504.

4. T. George Joseph v. Vijay Kumar Srivastava AIR 2003 SC 737.

8. Assuming and agreeing with the learned Counsel for the appellant that the instant appeal is maintainable for the reason of the contemnor having

responded to the notice issued and having prayed for dropping the proceedings as being not maintainable, we are of the firm opinion that the

impugned order of the Hon"ble Single Judge cannot be faulted. Rather, it is perfectly in tune with the bundle of facts giving rise to the controversy.

The reasons may be stated.

9. Dealing with the contentions raised from the side of the appellant, it would be recalled that the appellant wanted the contempt proceedings to be

dropped on the ground that the interim order in question was alleged to have been flouted between the period 26,4.1996 to 29.9.1999 and the

contempt application was filed on 12.2.2001, i.e., beyond a period of one year stipulated by Section 20 of the Contempt of Courts Act 1971,

which provides that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one

year from the date on which the contempt is alleged to have been committed. It is, however, significant to point out that the alleged contempt was

of continuous nature, inasmuch as the offending constructions complained to have been raised by the appellant/contemnor allegedly existed even till

making of the contempt application. The restraint order dated 13.4.1995 was in force between 24.4.1996 to 29.9. 1999 (during the period the

appellant/contemnor allegedly raised constructions violating the restraint order). To say in other words, the contempt proceeding could be drawn

so long as the offending constructions were there. The contemnor could not claim protection by raising the bogey of the alleged contempt having

been committed more than a year before the making of the contempt application.

10. Secondly, the contempt proceedings in question could be prayed to he dropped only if there was some other legal impediment. That is not the

case here. The submission from the side of the appellant/contemnor is wholly misplaced that the only remedy could be to file an application under

Order 39 Rule 2-A C.P.C. When there is wilful disobedience of any order such as violation of temporary injunction, the High Court can also

exercise powers under Article 215 of the Constitution. As per Article 215 of the Constitution, every High Court is a court of record and has all the

powers of such a court including the power to punish for contempt of itself. It would be recalled that in the instant case, the breach alleged is of an

interim injunction order granted by this Court in First Appeal From Order. The contempt could be proceeded against under Order 39 Rule 2A

C.P.C. as well as under the Contempt of Courts Act 1971. Section 2(b) of the said Act clearly embraces within its ambit a wilful disobedience to

any judgment, decree, direction, order, writ or other process of a court. It matters not whether contempt is dealt with by "X" Bench or "Y" Bench

of this Court . The point of the matter is that the allegation is of violation of an interim injunction granted by this Court wherefor this Court has

ample power to proceed against the contemnor under the Contempt of Courts Act.

11. Factual controversy can not be examined before framing of charge (s) in contempt matters. Framing of charge(s) is prelude to the trial being

held in contempt matter. The defence against the alleged contempt would be examined by Hon"ble Single Judge and he has himself observed that

the effect of the withdrawal of the suit before presentation of the contempt application is a question to be examined after the framing of charge(s)

against the appellant/contemnor. Indeed, defence against the alleged contempt can not be taken up entering into factual aspects, even before

charges are framed.

12. Several important aspects are to be probed and scrutinized in contempt proceedings before the Hon"ble Single Judge. We should say as a

passing reference that the appellant/contemnor Anand Prakash Agarwal has resorted to management by proxy. Before the Hon"ble Single Judge,

he did not swear the counter affidavit himself. Instead, it has been sworn by one Rajeev Singhal who has professed himself to be his cousin. It has

seemingly been done with a purpose so that the contemnor himself may mould his stand at a later stage according to the exigency of the situation.

Conversely, he has chosen to be in the background, not shouldering any responsibility at the present moment.

13. It is also pertinent to observe that it is not a case of blanket denial of the allegation of the applicants (Cantonment Board) that the

appellant/contemnor continued to make constructions inspite of restraint order passed by this Court and committed its flagrant violation. In

paragraph No. 8 of the counter affidavit filed by Rajeev Singhal, it has been averred that the appellant/contemnor only earned out some repairs in

order to make the (sic) inhabitable. It is a matter to be examined as to why he proceeded in this behalf without obtaining modification of the interim

restraint order passed by this Court on 13.4.1995, whereby the direction was to both parties to maintain status quo, meaning thereby that the

appellant had been restrained from raising any further constructions whatsoever. It relates to factual aspect of the matter as to what was actually

done by the appellant/contemnor. He claims to have done only repairs, though admittedly without permission of the court.

14. It is also to be probed and examined as to what necessitated the withdrawal of the suit in the lower court by making application and what were

the contents of the application made therefor, as also for the withdrawal of the appeal which, according to him, was made in 1999 in this Court.

Admittedly, no order has yet been passed by this Court on that application. It is also noted from the counter affidavit of Rajeev Singhal that the

appellant/contemnor had allegedly filed another suit No. 836 of 1999 against Union of India and that suit was decreed by Additional Civil Judge,

Meerut by judgment dated 18.04.2000 against which Union of India filed First Appeal before the lower court which was dismissed on

30.11.2000. A second appeal No. 276 of 2001 is said to be pending before this Court in which no stay order has yet been granted.

15. It is seemingly sought to be stated that in respect of the disputed property, the appellant/contemnor filed another civil suit against Union of India

in which he succeeded. It would require thorough inquiry as to what were the averments made in that suit No. 836 of 1999 and why was

Cantonment Board not impleaded as one of the defendants in that case. All these questions are to be examined by the Hon''ble Single Judge after

framing of charges against the appellant/contemnor as to whether he has proceeded with a design to succeed in his game to defeat the law and the

restraint order dated 13.4.1995 through an artificial cover under a well though of scheme to justify his illegal act of flouting the restraint order

passed by this Court and to get away with impunity. A deep probe of all such factors would beam light for determining the central question

whether appellant/contemnor has wilfully committed breach of the restraint order passed by this Court on 13.4.1995.

16. In view of the above discussion, the impugned order passed by Hon''ble Single Judge is perfect being based on the voice of facts as they are.

Of course, they are subject to close scrutiny subsequent to framing of charges.

17. We see no merit in this appeal. It is hereby dismissed.

18. Let the matter be listed before the Hon''ble Single Judge sitting in contempt jurisdiction on 25.5.2006. The appellant/contemnor shall appear in

person before the Hon''ble Single Judge on that date.