

(2014) 03 JH CK 0047

Jharkhand High Court

Case No: I.A. No. 961 of 2012 in Misc. Appeal No. 18 of 2003

Dr. Kuldip Narain Jaiswal and
Another

APPELLANT

Vs

Sri Sheo Narain Jaiswal and
Others

RESPONDENT

Date of Decision: March 15, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, Order 39 Rule 2-A, Order 39 Rule 3

Citation: (2014) 2 AJR 422 : (2014) 2 JLR 262

Hon'ble Judges: Dhruv Narayan Upadhyay, J

Bench: Single Bench

Advocate: Ramesh Kumar and Mr. Vikash Kishore Prasad, Advocate for the Appellant; A.K. Srivastava and Mr. D.K. Prasad, Advocate for the Respondent

Judgement

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Dhruv Narayan Upadhyay, J.

I.A. No. 961 of 2012 has been filed under Order XXXIX Rule 2-A of the C.P.C. with a prayer to attach the properties of respondent No. 1 and further to detain him under civil imprisonment for disobedience of order dated 10.10.2006 passed in I.A. No. 2458 of 2006 whereby respondent No. 1 has been directed to maintain status quo till disposal of interlocutory application filed for grant of temporary injunction. The facts, in brief, is that Misc. Appeal No. 18 of 2003 has been filed by the petitioner against the order dated 10.10.2002, passed by the then learned Sub Judge-1, Ranchi in connection with Tide Suit No. 156 of 2002 by which the petition dated 16.09.2002 filed under Order XXXIX Rule 1 & 2 read with Section 151 of the C.P.C. was rejected. The misc. appeal was admitted on 14.07.2006 and notices were directed to be served against respondents. Despite service of notice the respondents did not appear whereafter the appellant pressed interlocutory application being I.A. No.

2458 of 2006 for grant of temporary injunction against respondent No. 1 restraining him from transferring the suit property till the disposal of Misc. Appeal No. 18 of 2003. When respondent No. 1 did not appear, this Hon"ble Court vide order dated 10.10.2006 directed respondent No. 1 to maintain status quo till disposal of interlocutory application filed for grant of temporary injunction. The order dated 10.10.2006 was communicated to lower Court and accordingly incorporated in the ordersheet. The respondent No. 1 was regularly appearing in the Court below for making pairvee and he had also adduced evidence. The order by which status quo was granted was well within the knowledge of respondent No. 1 which is apparent from the ordersheet of lower Court but respondent No. 1, in utter disobedience and showing disregard to the order passed by this Court, executed sale deed dated 03.07.2010 in respect of plot No. 1793 in favour of one Subhash Chandra Bothra which is part of suit property, being subject matter of Title Suit No. 156 of 2002. Thus, respondent No. 1 has deliberately, intentionally and knowingly violated and disobeyed the order dated 10.10.2006 by which he was directed to maintain status quo in respect of suit property and, therefore, he is liable to be punished under Order XXXIX Rule 2-A of the C.P.C. and appropriate order to attach the following property:-

(i) A "B" Type Quarter, Block No. 1 being Holding No. 921B, within Ward No. XII (Old), Ranchi standing on Municipal Survey Plot No. 1141 measuring an area of 0.10 acre (10 decimal).

(ii) Land comprised within Municipal Survey Plot No. 43A, Kehwat No. 3, under Khata No. 153, Ward No. VII (Old), Holding No. 769A, Thana No. 198, area 0.32 situate at Mouza - Konka, Ranchi.

(iii) Land comprised within Revisional Survey Plot No. 896, Khewat No. 2, under Khata No. 97, area 17 decimal situate at Kokar, P.O. & P.S. - Kokar, Ranchi.

(iv) House No. 4, Holding No. 258 A, Ward No. VII-B, at Karamtoli, Ranchi standing on portion of Municipal/Revisional Survey Plot No. 822, measuring an area 5 decimal.

(v) Land comprised within Revisional Survey Plot No. 888, Khewat No. 2, Khata No. 96, area 13 decimal situated at Mouza - Konka, Ranchi.

Besides above, he is also liable to be detained in civil prison for disobedience of Court's order.

2. Respondent No. 1 filed show cause against I.A. No. 961 of 2012 stating therein that Tide Suit No. 156 of 2002 has been jointly filed by his brother and cousin but he has been contesting the suit alone. That portion of Sethia Land is subject matter of Title Suit No. 156 of 2002 in which the appellant has been claiming his 1/10th share. As a matter of fact Sethia Land consisting of 4.63 acres was purchased by respondent No. 1 from his own fund and resources by registered deed in the year 1958 i.e. much after partition of the joint family in 1954 and earlier to this he has

sold portion of that land to different purchasers and it was never objected by any of the parties to Title Suit No. 156 of 2002. Now an area of 105 Kathas in all has remained with respondent No. 1 and he is absolute owner of the said property and therefore, he has every right to sale it. The prayer for grant of injunction made by appellant was refused by the then Sub Judge-1, Ranchi vide order dated 16.09.2002. Till recent past respondent No. 1 had no knowledge about pendency of Misc. Appeal No. 18 of 2003, preferred against the order dated 16.09.2002. Being totally ignorant about pendency of such appeal before this Hon"ble Court or any order by which the parties have been directed to maintain status quo he had in due and open exercise of his rights over the suit property, sold 11 Kathas of land which is small area of the total land area measuring 105 Kathas. The sale was made by registered deed dated 03.07.2010. The respondent was not served with any notice for his appearance in Misc. Appeal No. 18 of 2003. It will be evident from the case record that no notice in I.A. No. 2458 of 2006 was ever issued and order dated 10.10.2006 has been obtained by the appellant by keeping this Court in dark. This Court has also not given reasoning for passing ex-parte order in favour of the appellant. No compliance of Order XXXIX Rule 3 C.P.C. was done prior to passing of said order and therefore, the petition filed under Order XXXIX Rule 2A is liable to be out rightly rejected. In this context he has relied on the judgment reported in [A. Venkatasubbiah Naidu Vs. S. Challappan and Others,](#). He has further made out a case that 18 months after execution of registered sale deed for the first time he could learn about pendency of this Misc. Appeal No. 18 of 2003 preferred against the order dated 16.09.2002 passed by learned Sub Judge-1, Ranchi in connection with Title Suit No. 156 of 2002. It was vehemently argued that the appellant has failed to secure injunction order in his favour by the trial Court and then he preferred an appeal and by keeping the respondent in dark and without bringing it to the knowledge of the respondent No. 1 that Misc. Appeal has been filed, he has secured to obtain an ex-parte interim injunction order by which the parties have been directed to maintain status quo. It is admitted position that no notice in connection with I.A. No. 2458 of 2006 was ever served upon the answering respondent.

3. The appellant has also filed reply to the show cause filed by respondent No. 1 with annexures i.e. Annexure-3 copy of the ordersheet of the lower Court relating to Title Suit No. 156 of 2002, Annexure-4 copy of written statement filed by respondent No. 1 in the Court below, Annexure-5 one photograph, Annexure-6 copy of the order passed in F.A. No. 123 of 1995. The learned counsel for the appellant has relied on the judgments reported in [Samee Khan Vs. Bindu Khan,](#) , [Rajinder Kaur Vs. Sukhbir Singh](#) , [Gurdeep Singh and Others Vs. Jeet Singh and Others](#) , [Surjit and others Vs. Harbans Singh and others etc. etc.,](#) , [Manohar Lal \(D\) by Lrs. Vs. Ugrasen \(D\) by Lrs. and Others,](#) , [Arjan Singh Vs. Punit Ahluwalia and Others,](#) , [Tayabbhai M. Bagasarwalla and another Vs. Hind Rubber Industries Pvt. Ltd. etc.,](#) , [Smt. Savitri Devi Vs. Civil Judge \(SD\) and Others,](#) and [A. Venkatasubbiah Naidu Vs. S. Challappan and Others,](#).

4. I have gone through the case record from which it appears that Misc. Appeal No. 18 of 2003 was admitted on 14.07.2006 and the appellant was directed to file requisites of notices under registered cover and accordingly it was filed. The acknowledgment was also received on 11.08.2006. When the respondent No. 1 did not appear, on 10.10.2006 order in connection with I.A. No. 2458 of 2006 was passed by which respondent No. 1 was directed to maintain status quo till the interlocutory application for injunction is finally heard and disposed of by this Court.

5. The admitted situation which are appearing from the case record is that the appellant was not directed to file requisites for service of notice against the respondents in connection with I.A. No. 2458 of 2006 filed for grant of temporary injunction under order XXXIX Rule 1 & 2 read with Section 151 of the C.P.C. The reply filed by the appellant against the show cause filed by respondent No. 1 is having Annexure-3 i.e. copy of the order passed by the trial Court in connection with Title Suit No. 156 of 2002. The order dated 31.10.2006 indicates that the order dated 10.10.2006 passed by this Court in connection with I.A. No. 2458 of 2006 was communicated vide memo No. 4853 dated 13.10.2006 and the said order find place in the lower Court record. It was submitted by the respondent No. 1 that this order was passed by the trial Court on 31.10.2006 and it was not the date fixed in the case record. On the other hand, it was submitted by the counsel appearing for the appellant that after communication of said order, the respondent No. 1 was appearing personally before the Court below for the purpose of making pairvee and he had also examined witnesses on subsequent dates and therefore, the inference can be drawn that the order dated 10.10.2006 passed by this Court in I.A. No. 2458 of 2006 by which the respondent No. 1 has been directed to maintain status quo was well within his knowledge and intentionally and deliberately he has disobeyed the order and transferred the property by registered sale deed on 03.07.2010.

6. The rival submission of the respondent is that the order dated 10.10.2006 passed in I.A. No. 2458 of 2006 was never brought to his notice and it was never served upon him and therefore, it was not within his knowledge. It was also argued that Order XXXIX Rule 3 C.P.C. was not complied with and thus in the circumstances stated above, he cannot be held liable for disobedience of said order which was never communicated to him and the appellant cannot take advantage of order XXXIX Rule 2-A of the C.P.C. It was contended that an order granting injunction without complying with the requisites envisaged in Rule 3 of Order XXXIX is void.

7. Let us go through Rule 3 of Order XXXIX which reads as under:-

3. The court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its

opinion that the object of granting the injunction would be defeated by delay, and require the applicant-

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

8. Hon"ble Supreme Court in para-15 of the judgment reported in [A. Venkatasubbiah Naidu Vs. S. Challappan and Others](#), has held as under:-

15. What would be the position if a court which passed the order granting interim ex parte injunction did not record reasons thereof did not require the applicant to perform the duties enumerated in clauses (a) and (b) of Rule 3 of Order 39. In our new such an order can be deemed to contain such requirements at least by implication even if they are not stated in so many words. But if a party, in whose favour an order was passed ex parte, fails to comply with the duties which he has to perform as required by the proviso quoted above, he must take the risk. Non-compliance with such requisites on his part cannot be allowed to go without any consequence and to enable him to have only the advantage of it. The consequence of the party (who secured the order) for not complying with the duties he is required to perform is that he cannot be allowed to take advantage of such order if the order is not obeyed by the other party. A disobedient beneficiary of an order cannot be heard to complain against any disobedience alleged against another party.

9. I have carefully gone through the order passed in M.A. No. 18 of 2003. Undisputedly no notice against the respondents in connection with I.A. No. 2458 of 2006 was ever directed to be issued either before passing of order dated 10.10.2006 or even thereafter. Admittedly, the appellant did not perform the duties enumerated in Clause a & b of Rule 3 of Order XXXIX. It is true that this Court before passing said order has taken note of conduct of the respondent No. 1 who did not appear in the main appeal i.e. M.A. No. 18 of 2003 even after service of notice received by one of his staff which is apparent from the acknowledgment. Considering aforesaid conduct of respondent No. 1 said order was passed. The appellant has cited judgments referred to above in order to bring on record as to what would be the consequences if the order of injunction is deliberately and intentionally disobeyed by a party against whom injunction order was passed. The gravity and force

contained under Rule 2-A of Order XXXIX C.P.C. have been highlighted. It was pointed out by referring judgments cited above that even if the injunction order was subsequently set aside, the disobedience does not get erased. It may be a different matter that the rigor of disobedience may be turned down if the order is subsequently set aside [Samee Khan Vs. Bindu Khan,](#) . The principle laid down is squarely followed by Hon"ble High Court of Punjab & Haryana at Chandigarh in the case of Gurdeep Singh & Ors Vrs. Jeet Singh & Ors.

10. In [Surjit and others Vs. Harbans Singh and others etc. etc.,](#) it has been held as under:-

When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, the assignor and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of lis pendens are altogether on a different footing.

11. No doubt, the sanctity and operative force of an order passed by a Court must be maintained and complied with. Willful disobedience of Court's order must be treated with hard hand but then we are having adversarial judicial system in our country in which each and every party to a litigation should be given proper opportunity to prosecute or defend. In civil suits the plaintiff as well as the defendant both should be given equal opportunity to place their respective claim and evidence and document in support thereof.

12. The admitted situation appearing from the record is that reasonings to pass an ex-parte injunction order is missing in the order dated 10.10.2006 and compliance of Rule 3 of Order XXXIX was not done. The appellant did not perform the duties enumerated in Clause (a) and (b) of Rule 3 Order XXXIX of the C.P.C. even before filing present I.A. No. 961 of 2012 and therefore, it would not be just and proper to punish the respondent for disobedience of an order which was never communicated to him as per the procedure contained under Order XXXIX Rule 3 and the finding of Hon"ble Apex Court given in the case of A. Venkatasubbiah Naidu vrs. S. Chellappan (supra) is applicable in the case at hand.

13. Now the order dated 10.10.2006 passed in I.A. No. 2458 of 2006 is well within the knowledge of respondent No. 1 and therefore, he is hereby restrained from disposing of and alienating the suit property which is subject matter of Tide Suit No. 156 of 2002 till further order and he is permitted to file reply, if any, to I.A. No. 2458 of 2006 or if he so chooses, he may also file counter affidavit to M.A. No. 18 of 2003 so that the matter may anally be disposed of. No further notice is required to be

served in relation to I.A. No. 2458 of 2006. To enable respondent No. 1 to file reply/counter affidavit, two weeks time is allowed. With the above discussion and observation I.A. No. 961 of 2012 stands disposed of. List this case on 24th March, 2014 in the first ten cases under the heading "for hearing".