

Noorali Babul Thanewala Vs Sh. K.M.M. Shetty and others

Court: Supreme Court of India

Date of Decision: Dec. 20, 1989

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 39 Rule 1, Order 39 Rule 2, 151

Citation: AIR 1990 SC 464 : (1990) CriLJ 316 : (1989) 2 SCALE 1426 : (1990) 1 SCC 259 : (1989) 2 SCR 561 Supp

Hon'ble Judges: Sabyasachi Mukherjee, C.J; V. Ramaswami, J

Bench: Division Bench

Advocate: A.K. Sen and V.B. Joshi, for the Appellant; G.L. Sanghi, C.M. Lodha, Shankar Ghosh, H.M. Singh and C.P. Mittal, for the Respondent

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

V. Ramaswami J.

1. In this petition the petitioner has prayed for convicting Respondents 1 and 2 for committing the contempt of this Court by violating the terms and

conditions of the undertaking filed in Civil Appeal No. 2628 of 1980 and for a direction that whosoever is in possession of the suit premises be

handed over to the petitioner. The petitioner as the owner and landlord of the property, Tika No. 3, City Survey House, bearing No. 344/345,

Jambli Naka, Thane, consisting of ground floor, first floor and second floor in which the business of restaurant known as Ramakrishna Hindu Hotel

or Ramakrishna Hotel is carried on, filed Civil Suit No. 213 of 1970 in the Court of Civil Judge, Senior Division, Thane, against the first

respondent and four others, by name, P.A. Dange, V.A. Dange, Haribhan Shivale and Giri Anna Shetty for eviction from the above said premises.

The suit was decreed by the Trial Court. The first respondent who was the first defendant in the suit alone filed an appeal against this decree before

the District Court. The appeal was dismissed confirming the order of eviction. Thereafter, the first respondent filed writ petition No. 354 of 1975 in

the High Court of Bombay and that writ petition was also dismissed. Though defendants 2, 3, 4 and 5 did not file the appeal or take the matter

further to the High Court they were implead as respondents in the appeal and the writ petition filed by the first respondent herein. The first

respondent thereafter filed Civil Appeal No. 2628 of 1980. The said appeal was dismissed by this Court on 18th of August, 1987. However, at

the request of the appellant this Court allowed the appellant to continue to be in possession and carry on the business till 31.3.1989 subject to the

appellant and all those persons who are now occupying the premises as employees or staff and are staying in the premises file an usual

undertaking in this Court within eight weeks from today stating inter alia that they will hand over and deliver over vacant possession of the premises

on the expiry of the period mentioned above and also indicate that they will go on depositing the mesne profits until the possession is delivered. In

default of furnishing or filing the undertaking in the manner indicating within the time aforesaid the decree of execution shall become executable

forthwith.

2. In pursuance of this order the first respondent K.M.M. Shetty filed an undertaking on 5.10.1987. The first respondent through his advocate had

produced the muster roll showing the names of persons employed by him for running the hotel business in the suit premises as well as a list of

persons staying in the said hotel. This list showed 17 persons as being the employees and persons staying in the hotel, and as directed by this Court

the 17 persons also filed an undertaking.

3. Some time in the beginning of 1989 one Raghuram A. Shetty-second respondent in the contempt application filed Civil Suit No. 306 of 1989 in

the Thane Civil Court before the IIIrd Joint Civil Judge, Senior Division, Thane, for a declaration that the decree for eviction obtained in respect of

the suit premises in Civil Suit No. 213 of 1970 cannot be executed against him and for a permanent injunction against the petitioner herein. Pending

the suit he had also filed an application under Order 39 Rule 1 and 2 read with Section 151 of CPC for a temporary injunction from executing the

decree for eviction. By an order dated 5.4.1989, the IIIrd Joint Civil Judge, Thane, granted a temporary injunction against the petitioner herein

restraining him upto the disposal of Civil Suit No. 306 of 1989 from executing the decree for eviction given in Civil Suit No. 213 of 1970.

Thereafter, the petitioner has filed this contempt petition both against his original tenant-K.M.M. Shetty and also against the second respondent

who was the plaintiff in Civil Suit No. 306 of 1989.

4. The second respondent has filed a reply statement in which he has contended that P.A. Dange had taken over the hotel business which was

being carried on by the tenant-K.M.M. Shetty in the name and style of ""Ramkrishna Hindu Hotel"" at the ground floor of the suit premises on

29.11.1986 and under an agreement dated 2nd January, 1967 the said P.A. Dange with the consent of the tenant transferred the said business and

the exclusive possession of the hotel to the second respondent herein. Subsequently there was another agreement executed between the tenant and

the second respondent on 1.8.1972 under which the second respondent was paying royalty to the tenant and that to the knowledge of the

petitioner he was in the occupation of the premises and carrying on the business and that in spite of it he had not been impleaded in the eviction suit

or the subsequent proceeding and that therefore he was not bound by the decree for eviction. A rejoinder has been filed by the landlord-petitioner

to this reply.

5. As stated earlier the Suit No. 213 of 1970 was filed by the petitioner for eviction not only against the original tenant-K.M.M. Shetty but also

against P.A. Dange, V.A. Dange and two others. The case of the petitioner-landlord was that the tenant had sub-let the premises to the said P.A.

Dange-defendant No. 2 and V.A. Dange-defendant No. 3. The tenant filed written statement contending that he had allowed the second

defendant to manage and conduct the said hotel business under the terms and conditions set out under an agreement made and entered into

between them and that Municipal licence for the business had always been and still in the name of the tenant-first defendant. Neither P.A. Dange

nor V.A. Dange ever stated that they had parted with the possession to the second respondent either as a licensee or in any other capacity. Again

in the Writ Petition No. 354 of 1975 filed in the High Court the first respondent had stated that P.A. Dange was permitted to conduct the said

business under an agreement dated 29th February, 1970 on his paying the tenant a sum of Rs. 500 per month by way of royalty, that this

agreement was subsequently renewed on 29th January, 1970 increasing the royalty amount from Rs. 500 to Rs. 600 per month but, however,

during the pendency of the appeal before the learned District Judge, Thane, defendants 2 and 3 had returned the business together with the

premises, stock-in-trade, furniture, fittings and all paraphernalia which were given to them for conducting the said business to the first respondent

herein and that the first respondent had been in sole possession and occupation of the said premises and of the business conducted therein and he

himself had been carrying on the business from that time. Again in this Court when he filed the SLP the first respondent prayed for stay of

dispossession. This Court by an order dated 5th November, 1980 granted stay of dispossession on condition that the respondent will continue to

pay compensation equivalent to rent every month regularly to the petitioner herein and that he shall not induct anybody else in the premises in

question.

6. When the petitioner received notice in Civil Suit No. 306 of 1989 he sent the lawyer's notice dated 14th March, 1987 to the first respondent

inviting his attention to the undertaking given by him to vacate the premises before the 31st of March, 1989 and the consequences that may follow,

if in breach of the said undertaking, he does not hand over possession. In this notice he also brought to the notice of the first respondent that the

suit was filed at the instigation of the first respondent and charged collusion between first and second respondent and stated that the suit is based

on false and fictitious allegations intentionally made to postpone the date of delivery of the premises. The first respondent sent a reply to this notice

on 23.8.1989 stating that he is not at all concerned in any manner whatsoever with the suit filed by the second respondent, and that he would be

filing necessary affidavit in the Suit No. 306 of 1989. The first respondent filed an affidavit in the suit in which also he stated that he had nothing to

do with the suit filed by the plaintiff and denied the claim of the plaintiff and further stated that the suit premises had to be handed over to the

petitioner by 31.3.1989 as per his undertaking given in this Court. He had also prayed the Court to pass "such suitable orders to facilitate

compliance of the orders" of this Court in respect of the suit premises, he had enclosed copy of his reply to the lawyer's notice sent by him to the

petitioner along with this affidavit. However, for the first time in the reply filed to the contempt application the first respondent had stated that "the

petitioner has with ulterior motives deliberately withheld from this Hon'ble Court material facts i.e. the respondent No. 1 has not been (in

landlord's knowledge) in the suit premises since 1967 i.e. even before the suit for eviction was filed in the trial court" and that "at that time of final

hearing of the appeal, it was landlord's duty to bring to the notice of this Hon'ble Court that the answering respondent is not in possession of the

dispute premises." He had further stated that when the undertaking was filed by him he was not in possession of the suit premises and that it was

well within the knowledge of the landlord. He had also stated that the second respondent had been in possession of the suit property. We cannot

now accept this statement of the first respondent that he was not in possession at the time when he gave the undertaking on the facts and

circumstances stated above. If the second respondent is in possession as he claims now, it would mean that the first respondent had been playing a

fraud on the Court, and swearing false affidavits and making false statements and obtaining orders on the basis of such false statements. It may be

noted, however, that there was absolutely no need for making such false allegations and obtain orders which are of no use to him if he had not

been in possession, as stated now. If it is said that he might have been motivated by a desire to spite the landlord and to deprive him of the

possession it would clearly be an abuse of the process of the Court.

7. Throughout P.A. Dange and the first respondent who were stated to have given a licence to the second respondent for carrying on the business

were parties to the proceedings but they never informed the Court about the possession being with the second respondent. As already stated the

learned Counsel for the first respondent produced in this Court at the time of hearing of the Civil Appeal the muster roll for running the hotel as well

as a list of persons who are stated to be staying in the hotel. In that list the second respondent's name did not find a place. Now if the first

respondent states that the second respondent had been in the possession of the suit premises and carrying on the hotel business ever since 2nd

January, 1967 the first respondent is guilty of deliberately suppressing the facts and giving a false undertaking to this Court that he is in possession

of the suit premises.

8. In the Civil Suit No. 306 of 1989, the second respondent had prayed for the injunction on the basis that he was a licensee originally from P.A.

Dange and later under the tenant himself and that though there was no privity between the petitioner and the second respondent, by reason of

certain amendments to the Bombay Rents, Hotel and Lodging House Rates Control Act he had become the tenant directly under the petitioner

herein and entitled to protection. An interim injunction has been granted by the IIIrd Joint Civil Judge, Thane, on the ground that it is necessary, till

the plaintiff establishes his right, to allow him to be in possession. The learned Judge was not well-founded in this view. In the light of the earlier

statements made by the first respondent-K.M.M. Shetty, P.A. Dange and V.A. Dange in the eviction proceedings and in this Court and in the light

of the undertakings given by the first respondent and 17 others the learned Judge should have directed the plaintiff to prove his claim in the suit first

before any relief is given against the defendants pending the suit. It may be mentioned that the argument of the learned Counsel of the petitioner

was that the first respondent had falsely instigated the second respondent to file the suit and obtain an injunction. If this contention is true then the

first respondent is guilty of contempt in not handing over vacant possession as per the undertaking and in fact the second respondent would equally

be guilty as abettor of the breach. However, we are not going into the question of the second respondent's right in Civil Suit No. 306 of 1989 and

that may have to be decided after trial. Suffice it to say that we are of the view that the order of injunction against the petitioner from executing the

decree against the second respondent is not justified in this case. We would like to add that as the facts of the undertaking given and the various

statements made by the tenant in the eviction proceedings were before him, we would have expected the learned Civil Judge, Thane, to have

directed the parties to obtain a clarification from this Court, if there was any doubt as to the executability of the decree passed by this Court.

9. Be that as it may, we now direct that that portion of the order granting injunction against the petitioner from executing the eviction decree against

the second respondent, on the facts and circumstances of this case, shall not be operative and that petitioner is entitled to execute the decree for

eviction against all persons who are in possession of the property.

10. Now coming to the question of relief that is to be granted to the petitioner and the punishment to be imposed on the first respondent, the

learned Counsel for the first respondent contended that his client is an old man of more than 84 years and that in fact though he was willing to hand

over vacant possession, on the facts and circumstances he could not comply with undertaking bona fide.

11. When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in

substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the Court by or on behalf of a

party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the

purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same

consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an

injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course

of action is misconduct amounting to contempt. The remedy in such circumstances may be in the form of a direction to the contemnor to purge the

contempt or a sentence imprisonment or fine or all of them. On the facts and circumstances of this case in the light of our finding that there was a

breach of the undertaking we think that mere imposition of imprisonment or fine will not meet the ends of justice. There will have to be an order to

purge the contempt by directing the first respondent-contemnor to deliver vacant possession immediately and issuing necessary further and

consequential directions for enforcing the same.

12. In the foregoing circumstances, we find the first respondent guilty of committing contempt by wilful disobedience of the undertaking given by

him in this Court and accordingly we convict him and sentence him to pay a fine of Rs. 500 within the period of four weeks, failing which he shall

suffer simple imprisonment for one month, and also direct him to deliver vacant possession of the premises forthwith to the petitioner to the extent

possible by him. We further direct the District Magistrate, Thane, to evict all those who are in physical possession of the property including the 2nd

respondent and his men and if necessary with police help and give vacant possession of the premises to the petitioner forthwith.

13. However, we discharge the rule issued against the second respondent.