(1994) 07 CAL CK 0011

Calcutta High Court

Case No: F.M.A.T. 1140 of 1993

State Trading Corporation and Others		APPELLANT
	Vs	
Anjan Banerjee and Others		RESPONDENT

Date of Decision: July 14, 1994

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: 98 CWN 1159

Hon'ble Judges: S.N. Mallick, J; Banerjee, J

Bench: Division Bench

Advocate: V. Parthasarathi, N.P. Sharma, Milan Bhattacharyya and T. Chakra borty, for the Appellant;R.N. Mitra, P.K. Samanta and Gurudas Mitra, for the Respondent

Judgement

Banerjee, J.

The universal application of the principle of law of regard to an opportunity of hearing to a party litigant does find an exception in the event of the party, who claims such a right is in contempt of the Court; but this exception is not an absolute exception or an absolute bar but is itself subject to certain exceptions. As early as 1909 Sir Asutosh Mookherjee in Dharmapal v Mohant Krista Dayal (10; Calcutta Law Journal 631) pointed out that the principle that a party in contempt cannot be board is neither inflexible nor of universal application and the court has a discretion in the matter. Sir Asutosh observed that because a party is found to be in contempt the Court is not bound to deny him all assistance or protection but the court will act in such a manner as will maintain its own dignity and at ther same time subserve the ends of justice. Sir George Jesoel M.R. in Ree Clements and Costa Rica Republic v Enlarger (1877: Lj. ch. 375) stated the law to be; "Applying this principle I of opinion that the fact that a party to a cause has disobeyed the order of the Court is not of itself a bar to his being heard, but his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult

for the court to ascertain the trust or to enforce the order which it may make, then the court may in his discretion refuse to hear him until the impediment is removed or good reason shown why it should not be removed. This principle of law as enunciated by Jessel M.R. has also had its due recognition by the English courts in later decisions. Lord Denning in Hadkinson v. Hadkinson (1952) 2 All ER 567 observed that unless disobedience of a party impedes the course of justice in the case, making it difficult for the Court to ascertain the truth or to enforce its order, it would not be a proper exercise of discretion to refuse the party in contempt any hearing. The decision of this Court in the case of S.S. Roy v Damodar Valley corporation (78 CWN 144) also recorded that the general rule of denial of opportunity of hearing to a party in contempt, cannot be termed to be in any way an absolute proposition of law but only qualified one being subject to various exceptions.

2. This Court further in the case of Debabrata Mukherjee v Gouripur Company Limited (1976 (2) C.L.J. 76) also expressed a view similar to above and observed that the Court is not bound to deny a party, who is found to be in contempt, all assistance or protection but the Court will act in a manner to subserve the ends of justice.

3. The Allahabad High Court in the case of Dr. Madan Gopal Gupta v. The Agra University and others (AIR 1974, Allahabad 39) did also in the similar vein laid down that unless the disobedience of a party impedes the course of justice and making it difficult for the court to ascertain the truth, it would not be proper exercise of judicial discretion to refuse the party in contempt in hearing. In Paragraph 6 of the Report, the Court observed:

6. Under the contempt of courts Act, there is no provision for striking off the defence of a party in contempt, there is, however, a well established principle that a party in contempt should not be heard in the same cause until that party has purged the contempt. This rule has been followed by Courts in England as well as in India, but the rule is not an absolute one. The striking out of defence a denial of hearing to a party is a serious matter which entails serious consequences to a litigant. The Courts have, therefore, applied this rule rarely against a party in contempt. The extreme penalty of striking out of defence or denial of hearing is applied only in those cases in which a party is found in contempt for disobeying the orders of the Court as a result of Which the course of justice is impeded. The court may, in its discretion, refuse to allow the party in contempt to take active proceedings in the same suit or a cause until the impediment caused by the contempt act is removed. This rule is based on the sound principle that no party to a cause or proceeding should be allowed to flout the orders of the court or impede the course of justice in order to take advantage of his mis-deeds before the court of law. In england, this rule was applied for the first time by the accelesiantical courts. Subsequently this rule was made applicable by other Courts also.

4. The further observations of the Court in Paragraph 8 of the Report seem to be also apposite and the same is set out hereinbelow:

8. In our country we have followed the English practice and the law in this respect has developed in the principles enunciated by english courts. In Newit v M Cartney, (1807)13 Ves 560, Lord Eldon did not allow a defendant to appear and defend the cause against him as the defendant was, held guilty of contempt of Court. In Seward v Paterson (1897)1 ch.545, it was pointed out that a distinction must be drawn between a process to assist a party against the opponent who defies the orders of the Court and a process to maintain the dignity of the Court. In Gordon v Gordon, (1904) P.163, it was held that a party was not generally entitled to take a proceeding in a case for his own benefit but these are exceptions to the rule although they are few in number. The case of chuck v Cremer, (1846) L.Co.op. t. cott.205(247) and the case of Kingvs Bravant, (1838) My & Cr.191 were cited. In Morrison v Morrison, (1845)4 Hare 590, it was held that a defendant in contempt for nonpayment of costs was entitled to file exceptions to a report but that was merely a step taken in his own defence. The view taken in the above earlier English cases makes it clear that the principle adopted was that the court would not hear a party in contempt coming himself to the court to take advantage of the proceedings, yet such party was entitled to appear and resist any proceeding against him. It has, however, been stressed by the English Judges that it would be most unjust extension of the rule against the party in contempt to take away an estate without giving him any opportunity of hearing.
5. The law, therefore, seems to be well-settled to the effect that denial of an opportunity of hearing to a party in contempt cannot be had unless the conduct of the party in contempt impedes the course of justice.

6. Having dealt with the law on the subject, the fact of the matter in issue ought to be briefly adverted at this juncture.

7. From the records it appears that the writ petitioner move an application under Article 226 of the Constitution inter alia, for the following reliefs.

a) A writ in the nature of Mandamus cammanding the respondents to act in terms of the provisions of the Income Tax Act 1961 and to deduct income tax in terms of the provisions of income tax Act 1961 and not the Sikkim State Income Tax Manual 1948:

b) A writ in the nature of Mandamus cammanding the respondents to return the amount of tax deducted from the salary of your petitioner''s salary in terms of the provisions of Sikkim State Income Tax, Manual 1948 together with interest;

c) A writ in the nature of Certiorari directing the respondents to transmit the entire records of the case including any order and/or notification relating to implementation of the Sikkim State Income Tax Manual 1948 to the employees

getting salary in India and also the Sikkim State Income Tax Manual 1948 and to certify them and on being so certified quash the same who is a resident of India;

d) Rule NISI in terms of prayers (a), (b) and (c) above:

e) Injunction restraining the respondents 8 to 11 from deducting income tax at source from the officers and employees inside and outside Sikkim including the petitioner under Sikkim State Income Tax Manual 1948;

f) Interim order or direction to be given to the respondents to deduct income tax from the salaries of officers and employees within and outside Sikkim under the provisions of Income Tax Act, 1961;

g) Ad-interim order in terms of prayers (e),(f) and (g) above:

h) costs and incidental to this application be paid by the respondents 8 to 11;

i) And to pass such other and further orders as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case:

8. The learned Single Judge, however, upon hearing the matter finally disposed of the writ petition on 29th March, 1992 with an order in terms of prayers (a), (b) and (c) and the prayer for stay of operation of the judgment was, however, refused. Subsequently, an application for stay was moved before this Court on 15th April, 1993 in the appeal but the petitioner has failed to obtain any order of stay of operation of the order as passed by the learned Trial Judge though the hearing of the appeal was, however, expedited. It is at this juncture that an application for contempt was moved by reason of non-compliance of the order as passed by the Learned Trial Judge and the Learned Judge as appears from the records was pleased to issue a Rule of Contempt which, however, is still pending before this Court.

9. On this factual backdrop when the appeal was taken up for hearing before this Bench Mr. Mitter, appearing for the writ petitioner, raised a preliminary objection as to the hearing of this appeal at this juncture by reason of pendency of contempt proceeding against the appellant herein. Mr. Mitter submitted that it is a salient principle of law that the person in contempt ought not to be heard till such time he purges himself of the contempt as otherwise the magesty and dignity of law Courts would be seriously affected-a situation, according to Mr. Mitter, ought not to be permitted. Mr. Advocate General, however, raised a very pertinent question to the effect that a right to appeal is a right given under the Statute and in the event, the appellant is not allowed to be heard then and in that event, the appellant''s statutory right would be rendered absolutely nugatory and would turn out to be an otiose. Several decisions were cited from the Bar most of which, however, have been noted hereinbefore excepting, however, the judgment of Sir Asutosh Mookherjee reported in 39 CIJ which has been very strongly relied upon by Mr. Mitter in support of his contention that a litigant in contempt has no standing in Court. Be it noted here, that in the case of Dababrata Mukherjees v. Gouripur Company limited (Supra)

Chittatosh Mookherjee, J. has had the occasion to consider the subsequent judgement of Sir Asutosh Mookerjee. Mookerjee, J. while dealing with the Judgement, observed as follows :-

5. The Judgement delivered by Sir Asutosh Mookerjee, J. in Rai Jiu & Ors. v Gati Krishna Chakraborti & Ors. reported in AIR 1924 Calcutta 953: 39 CWN, 217 is clearly distinguishable on facts. In the said case the Court declined to entertain appeal by a party who had committed breach of an undertaking to pay deficit court fees upon his memorandum of appeal filed in the Lower Appellate Court and the Lower Appellate Court acting upon the said undertaking had allowed the appellant to proceed with the appeal before it. this Court, while dismissing the appeal found that the appellant had in fact, gone back on his said undertaking and after the result of his appeal as unfavourable he had failed to pay the deficit Court-Fees which he undertook to pay. Thus, it was found that the appellant was guilty of misconduct amounting to contempt: therefore, he was disentitled to prosecute the Second Appeal in this Court. In the instant case, as already stated, the opposite parties have not yet been adjudged as contemnors and the opposite parties are only seeking to raise their defences to the application for temporary injunction made by the petitioner.

10. We record our concurrence with the observations of Mookerjee, J. The facts in the matter under consideration also does not warrant any such stringent view in regard to locus standi of the appellant for an opportunity of proceeding with appeal by reason of the pendency of the contempt proceeding. We also record that the judgment of Sir Asutosh Mookerjee in Rai Rajeswari Jiu & Ors. vs. Gati Krishna Chakravorti & Ors. (supra) has no manner of application and is clearly distinguishable on facts.

11. Be it noted here that the learned Trial Judge has passed an order allowing the writ petition and the respondents in the writ petition has preferred an appeal against the order and it is the hearing of this appeal which is said to be not in accordance with law by reason of the pendency of the contempt proceeding. It is placed on record that the petition under the Contempt of Courts Act is still pending before this Court, as noted above and as such question of purging of the contempts at this stage before hearing out the appeal does not arise; neither, in our view, question of there being any impediment in the matter of administration of justice in the facts of the matter under consideration does arise. Mr. Bose, appearing for the Attorney General of India, to some extent supported the cause of the writ petitioner but in the view noted above, we cannot land any assistance neither we can record our concurrence with the submissions of Mr. Mitter or Mr. Bose as that would not subserve the ends of justice.

12. In our view, interest of justice demands expeditious disposal of the appeal and as such, we direct that the appeal be heard without least delay. Let this appeal come up for hearing two weeks hence as a Specially Fixed Matter in the List.

S.N. Mallick, J.

I agree.