

(1965) 08 CAL CK 0016

Calcutta High Court

Case No: Metter No. 237 of 1965 in Suit No. 2024 of 1963

Sri Sri Iswar Nitto Gopal Jew

APPELLANT

Vs

Angur Bala Mullick

RESPONDENT

Date of Decision: Aug. 16, 1965

Citation: 70 CWN 1150

Hon'ble Judges: A.N. Ray, J

Bench: Single Bench

Advocate: S. Banerjee and H.M. Dhur, for the Appellant; S.M. Bose, Advocate-General, M.N. Banerjee and B. Bhattacharyya, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Ray, J.

This is an application for committal of Angur Bala Mullick for contempt of court. It is alleged in the petition that after the suit was filed in the month of November 1963, Mr. P. N. Chowdhury, a member of the Bar, was appointed Receiver and also a Special Referee to take accounts. It appears that the Special Referee made orders requiring the parties to file their respective statements. It is said on behalf of the petitioner that the respondent did not file statements. The matter is within the province of the Special Referee. He should proceed in accordance with the order and if any party is at default, the Special Referee will proceed in accordance with law. I do not wish to express any opinion as to how the Special Referee is to conduct the reference. All that I need say is that this is a matter which should be brought to a speedy conclusion. Mr. Advocate-General contended that the order was not served and therefore there could not be any application for contempt. In my opinion the contention is sound and correct. Mr. Banerjee, counsel for the petitioner; wanted to refer to an application dated the 3rd June 1964 and to extract from that petition certain statements which would show that the respondent was aware of the orders. That petition is not in evidence. This is a proceeding in contempt. No evidence can be used against the respondent in this matter. I am, therefore, unable to hold that

there has been any personal service of the order upon which the application for contempt is founded.

2. The Referee should proceed in the light of the observations made above.

3. It is alleged by the petitioner that there were various orders made by the Special Referee and despite the orders the respondent did not comply with the directions.

4. On the affidavit evidence it appears that the respondent has filed an answer. The propriety or impropriety of the answer can always be impeached by the opponent on such materials as the opponent is advised.

5. In an application for contempt the Court will not concern itself with the validity or invalidity of the answers or the rival contentions between the parties as to whether the answers are justified or answers are incorrect.

6. The foundation of an application for committal is personal service of the order alleged to have been violated. Counsel for the petitioner contends relying on the decision in *Emperor v. Ali Mahomed Adamali*, reported in (1942) 43 Cr.L.J. 667, [Sudhir Chandra Das Vs. Raseswari Chaudhurani](#), and [C.P. Syndicate, Ltd. Vs. K.P. Ghiara](#), that if a person disobeys or violates orders passed with regard to filing of accounts the Court can proceed in contempt against such defaulting party. In *Emperor v. Ali Mohamed Adamali*, (supra), there was an order passed by the Chief Judge of Presidency Small Causes Court u/s 6A of Mussalal Waqf Bombay Amendment Act 1 of 1935 directing the respondent to furnish within 30 days from the date of the order a statement of particulars u/s 3 in the form in Schedule D and a statement of account u/s 5 in the form prescribed in Schedules A and B of the Act. That was an order directing the respondent to do a specific thing within a limited time. It was held that disobedience to that order would result in an order for committal for contempt. In the present case the specific thing ordered is filing of accounts. There has been a compliance with the order. Whether there has been a full or proper compliance with the order is a matter affecting the merits.

7. In the decision in *Sudhir Chandra Das v. R. Chaudhurani*, (supra), a question arose as to when the original order of the Court stated that if the defendant failed to obey a certain order of it, penalty would follow and proceedings in contempt would lie. It was held that a distinction would be drawn between two aspects of contempt viz., a process to assist a party against an opponent who defies the order and a process to maintain dignity of the Court. In the present case, as I have already indicated, the respondent has made some answer. If the petitioner is not satisfied with that answer the petitioner can take such steps as the petitioner is advised.

8. In the Bombay decision (supra) in the presence and with the consent of both parties the Court passed a prohibitory order but the same was not served on the opponents. A question arose as to whether the petitioner could prove to the satisfaction of the Court that notwithstanding non-service of the completed order

personally on the opponent it was his intention to enforce the prohibitive order against the opponent. In the present case the orders are not of the nature as in the Bombay case.

9. The orders in the present case require the respondent to file accounts. I am told by counsel for the petitioner that the Referee has rejected the accounts. If the Referee has rejected the accounts the parties are at liberty to proceed as the parties are advised.

10. The present application is concerned solely with the question whether there has been a contempt of Court. I am unable to hold that there has been any contempt of Court. I have already indicated that there is no service. Mr. Advocate-General relied on the decision *In re: Tuck. Murch v. Loosemore*, reported in 1906 (1) Ch. 692. It was held by Cozens-Hardy, L.J. that the fact that the order was made by consent, and that he was in Court when it was made and initialled one of the briefs would not make personal service unnecessary unless it could be shown that he was evading service. There is no aspect of evasion of service in the present case. Further Mr. Advocate-General relied on the Bench decision in *Tarafatullah Mandal and others v. S. M. Maitra*, reported in 56 C.W.N. 387 and on the observations appearing at page 397 of the Report which indicate that it is of paramount importance to establish first, the service of the order and secondly, the precise act of contempt, and thirdly, the precise responsibility of the contemnor in the act of contempt and fourthly, the date of the alleged contempt. In the present case I am of opinion that there is no service of the order. Costs it is said by counsel for the petitioner are a matter of discretion of the court and discretion should not be used against the petitioner. It is said that the petitioner was justified in coming up to this court with the application. In my opinion if the petitioner had any grievance with regard to the propriety of the order or further directions in the matter the petitioner would have come on such materials as the petitioner was advised for redress of grievances. The petitioner has chosen to come with an application for contempt. This is a serious matter. It imperils the personal liberty of a citizen. It is true that contempt is a matter between the Court and the person who has offended the Court. I find that the respondent has not offended the dignity or propriety of the Court. In my opinion discretion is to be used in a judicious manner. Such discretion in the present case, in my opinion, is to be used in favour of the respondent. I therefore make an order that the application is dismissed with costs. By consent of parties the time to make the report is extended till November 30, 1965. The Referee is directed to act on a signed copy of the minutes.