
Electro Appliances and Others Vs Ramesh L. Vadodaria and Others

CCP. 162/95 in S. 2622/95

Court: Delhi High Court

Date of Decision: Oct. 7, 1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 22 Rule 10, Order 22 Rule 9

Citation: (1998) 47 DRJ 274

Hon'ble Judges: K. Ramamoorthy, J

Bench: Single Bench

Advocate: Ajay Sahani and H.P. Singh, for the Appellant; Maninder Singh and K. Pratibha, for the Respondent

Judgement

K. Ramamoorthy, J.

The petitioners have filed this contempt petition against three respondents. The respondents are:-

1. Mr.Ramesh L.Vadodaria,

S/o Shri Laxman Bhai Vadodaria,

IInd Floor, Chandan Bldg.,

23, Swastik Society,

Juhu Scheme, 2nd Road,

Vile Parle (West),

BOMBAY-400 056.

and also C/o

M/s.Crystal Kitchenware"s

Private Limited,

Mittal Industrial Estate,

Unit No.2, Building No.2,

Andheri Kurla Road,

BOMBAY.

2. Mr. Amit J.Patel

S/o Jairam Bhai Patel,

IInd Floor, Chandan Bldg.,

23, Swastik Society,

Juhu Scheme, 2nd Road,

Vile Parle (West),

BOMBAY-400 056.

and also C/o

M/s.Dynapack,

Ansa Industrial Estate,

Gala No.E-116,

Saki Vihar Road,

Sakinaka, Andheri(East),

Bombay.

3. Shri Rupesh Gandhi

C/o M/s.Dynapack,

Ansa Industrial Estate,

Gala No.E-116,

Saki Vihar Road,

Sakinaka, Andheri(East),

Bombay.

2. On the 13th of November, 1995, this Court appointed the Local Commissioners and they were directed to visit the premises of the third and

fifth defendants in S.No.2622/95. On the 16th of November, 1995 at about 11.45 a.m. the Local Commissioners reached the premises and

commenced to implement the order passed by this Court. The petitioners have referred to the report of the Local Commissioner, Mr. G.D. Gupta,

who visited the premises of the fifth defendant in S.No.2622/95.

3. It is stated in paragraph 6 of the contempt petition:-

That on a perusal of report filed by Mr.G.D. Gupta, Local Commissioner who visited the premises of the defendant No.5, it is clear that one Mr.

Amit J.Patel and Mr. Rupesh Gandhi wilfully obstructed the said Local Commissioner from executing the orders of this Hon"ble Court and in fact,

the said persons were responsible to remove from the custody of the Court the infringing goods which had been inventoried by the Local

Commissioner. The said Shri Amit J.Patel showed no respect and regard for the orders of this Hon"ble Court and in fact, the said Shri Amit

J.Patel ""started shouging at the top of his voice and not even a single piece would go out from this factory, he also mentioned that he did not care

for any court orders."" In fact, so serious was the interference in the working of the Local Commissioner in executing the commission that the Local

Commissioner Shri G.D.Gupta had to seek police aid for the execution of the commission which eventually could not be executed due to the

obstructive and non-cooperative attitude of the above mentioned persons.

4. The Local Commissioner, Mr.G.D. Gupta, had stated in his report:

The undersigned was appointed as Local Commissioner by this Hon"ble Court vide order dated 13th November, 1995 to visit the premises of

defendant No.5, M/s.Dynapack, Ansa Indl. Estate, Gala No.E-116, Saki Vihar Road, Saki Naka, Andheri East, Bombay.

In compliance of the above said order of this Hon"ble Court, the undersigned along with Mr. Hemang Patel and Mr. S.G. Khadilkar representatives of the plaintiffs went to the above premises of the defendant No.5. We reached the said premises at 11.45 A.M. on 16.11.95. On

reaching the premises I met Mr. Rupesh Gandhi, an employee of defendant No.5 to whom I showed the order of this Hon"ble Court and

explained the purpose of my visit. Mr. Rupesh Gandhi went through the order and thereafter permitted me to take an inventory of the various

infringing goods bearing the trade mark ""Crystal"". At a single glance around the premises, I saw huge stock of table forks, desert spoons, table

knives bearing the trade mark ""Crystal"" and also saw huge quantity of packing material on the mezanine floor inside the premises. I proceeded to

inventoried the said infringing goods bearing the infringing trade mark ""Crystal"". The said inventory was signed by Mr. Hemang Patel but Mr.

Rupesh Gandhi refused to sign the same as he said ""I am not the owner"". The said list of inventory, duly signed by Mr. Hemang Patel, is annexed

as Annexure A to this Report.

All the inventoried items thereafter were put in gunny bags and cartons (numbering total 36) and the same Were taken into possession by me for

handing on superdari to the representative of the plaintiffs, as directed by this Hon"ble Court. On my instructions, the said gunny bags and cartons

were removed from the premises of defendant No.5 to the outside verandah. While I was in the process of handing over the above said gunny

bags and cartons on superdari to Mr. Hemang Patel and in fact one gunny bag containing 1900 spoons (without handle) bearing trade mark

crystal"" had been handed over to Mr. Hemang Patel one Mr. Amit J.Patel came at the site at about 12.50 p.m. He started shouting at the top of

his voice that not even a single piece would go out from this factory. He also mentioned that he did not care for any court orders and he did not

allow me to hand over the balance inventoried goods to the representative of the plaintiffs. On reaching of Mr. Amit J.Patel, Mr. Rupesh Gandhi

also joined him and obstructed in my working and did not permit me to execute the commission. On seeing the atmosphere being tensed, I was left

with no alternative but to seek police aid for the execution of the commission. I personally went down to the police station at Saki Naka and met

the police authorities there and showed them the order of this Hon"ble Court. On request of the police authorities, I made an application, copy of

which is annexed as Annexure B to this report. Four policemen accompanied me to the spot and on reaching the spot I found that the gunny bags

and cartons, which I had taken in my possession, were not lying at the spot where I had left them. A large crowd had gathered there and I came to

know that Mr. Hemang Patel and Mr. Sanjay Patel had been manhandled by the said Mr. Amit Patel and one Mr. Ramesh L. Vadodaria and the

said material had been transferred back into the premises by Mr. Amit J. Patel, Mr. Rupesh Gandhi and Mr. Ramesh L. Vadodaria and their

labourers and they had pulled down the shutters and locked the premises and gone away. For this reason, the balance inventoried goods could not

be handed over to the representative of the plaintiffs. One bag containing 1900 spoons (without handle) bearing the trade mark ""Crystal"", as

aforementioned, was sealed and handed over on superdari to Mr. Hemang Patel, representative of the plaintiff. The said super adginama is hereby

annexed as Annexure C.

In the above mentioned circumstances, the execution of this commission could not be completed due to the obstruction and non cooperative

attitude of above mentioned persons. The Report is submitted along with Annexures.

5. Regarding the visit by the Local Commissioner of the premises of the third defendant, the petitioners have referred to the report of the Local

Commissioner, Mr. Balram Chopra. In paragraph 7 of the contempt petition, it is stated:-

That as regards the execution of the commission at the premises of the defendant No.3 the report of the Local Commissioner Shri Balram Chopra

has been filed and is on record. The said Shri Balram Chopra has also clearly indicated in his said report that the orders of this Hon"ble Court

could not be executed due to the non-cooperative and obstructive attitude of Shri Ramesh Vadodaria and in fact the representative of the plaintiffs

who was permitted to accompany the Local Commissioner vide order of this Hon"ble Court was pushed out of the premises by the said Shri

Ramesh and was later slapped by the watchman employed by the defendant No.3 in the presence of the Local Commissioner, the lawyer of the

plaintiffs and the said Mr. Ramesh.

6. The report of the Local Commissioner, Mr. Balram Chopra reads as under:-

The undersigned was appointed as a Local Commissioner to visit the premises of defendant M/s. Crystal Kitchenware"s Pvt. Ltd. at Mittal Indl.

Estate, Unit No.2, Building No.2, Andheri Kurla Road, Bombay.

In compliance with the aforesaid order of the Hon"ble Court the undersigned along with Mr. H.P. Singh, counsel for the plaintiff, and Mr. K.G.

Khiwani, Management Consultant of the plaintiff reached the aforesaid premises of the defendant at 11.45 A.M. on 16.11.95. On reaching the

above premises the undersigned met Mr. Amit J.Patel, who was sitting in the office on the first floor of the aforesaid premises. The order of the

Court was shown to the said Mr. Patel and the purpose of my visit was also told to Mr. Patel .On this Mr. Patel informed the undersigned that

Mr.Ramesh L.Vadodaria, who was the owner of the said firm, will be arriving in about 10 minutes" time and it will be only thereafter that the

proceedings can be started by the Local Commissioner. As Mr. Ramesh L. Vadodaria did not come even after waiting for about 20 minutes the

undersigned went to the factory premises of the said defendant located on the ground floor of the above said premises with the aforesaid two

persons. There it was noticed that large quantity of kitchenware as also empty boxes and wrappers etc. were lying there bearing the mark Crystal.

Details of another said articles lying there are given in the inventory prepared at the spot which is annexed as Annexure "A" to this Report. The

undersigned has also taken into possession one User"s Manual and one wrapper, which are annexures B and C respectively. The said inventory is

duly signed by Mr. H.P. Singh Advocate. About 50 minutes thereafter i.e. at about 12.35 p.m. Mr.Ramesh L.Vadodaria arrived there. He was

shown the order of this Hon"ble Court dated 13.11.1995. He was also given a photocopy of the order but he insisted for the original certified

copy, which was given to him by the undersigned. After going through the order Mr. Ramesh Vadodaria told another undersigned to show him my

identity card on which I showed my High Court Identity Card to the said Mr. Ramesh Vadodaria. Mr.Ramesh objected to the presence of Mr.

H.P. Singh and Mr. K.G. Khiwani there. On this I brought the order of the Court to the notice of Mr.Ramesh wherein it is clearly written that ""The

Local Commissioners shall be accompanied by the representative (s) of the plaintiff and counsel, if any"". The said Mr. Ramesh refused to recognise

Mr. H.P. Singh on which Mr. H.P. Singh showed his I.Card issued by Delhi Bar Council but Mr.Ramesh insisted that unless the photocopy of the

I.Card is left with him he will not allow Mr. H.P. Singh to be present in the premises. I offered Mr.Ramesh to identify Mr. H.P. Singh as I knew

Mr. H.P. Singh for last many years. Then Mr.Ramesh asked Mr. K.G. Khiwani to get out of the premises as he did not recognise him as the

representative of the plaintiff. Mr. Khiwani left with aforesaid office portion and while going out he was pushed by Mr.Ramesh from the door to go

out of the premises. While Mr. Khiwani was going towards his car, a watchman of the said firm slapped Mr. Khiwani in my presence and in the

presence of Mr. H.P. Singh and Mr. Ramesh.

I then requested Mr. H.P. Singh not to come inside and also requested Mr. Ramesh to hand over the infringing goods bearing the mark Crystal to

me so that I could deliver possession of the same to the plaintiff on Superdari. On this Mr.Ramesh told that he has to consult his advocate who has

to come all the way from Bombay Central and it will not be possible for another 2 to 3 hours and it is only if his advocate consents for the delivery

of the goods, then he will do so. Seeing the attitude of the said Mr. Ramesh that he is not willing to hand over the possession of the aforesaid

articles to the undersigned and it will be an exercise in futility to wait there for another few hours, the undersigned left the premises, in the aforesaid

circumstances.

As the accounts books maintained by the said, firm were not shown to me, Therefore, none could be signed by the undersigned.

As is apparent from the aforesaid report only an inventory of the articles lying in the aforesaid premises bearing the mark "Crystal" has been

prepared and possession of the goods could not be taken and no registers could be signed by the undersigned. The commission was executed only

to this extent. Possession of the above items and signing of the books could not be done because of the non-cooperative and hostile attitude of Mr.

Ramesh purported to be the owner of the aforesaid firm.

The report is submitted please.

7. A perusal of the reports of the Local Commissioners would show that the respondents had acted in gross violation of the order passed by this

Court. The respondents have filed their replies. The first respondent had filed a detailed reply dealing with the merits of the case and also denying

what is stated by the Local Commissioners in their reports. It is stated in paragraph 38 of the reply filed by the first respondent:-

That while denying the allegations made in the report of the learned Local Commissioner Shri Balram Chopra, it is respectfully submitted that there

was no occasion for any inspection of M/s.Crystal Kitchen ware Pvt. Ltd., at Mittal Industrial Estate, in Bombay. It is M/s.Elegance Tableware

which is situated at Mittal Industrial Estate, Unit No.2, Building No.2, And heriKurla Road, Bombay. There was no occasion for preparation of

any inventory of the goods. Firstly there is no Crystal Kitchenware Pvt. Ltd. at Mittal Industrial Estate and in any case, no ""Kitchenware"" for which

this Hon"ble Court had passed an order is manufactured at the said premises. It is respectfully submitted that there was no occasion for

preparation of any inventory. It is further respectfully submitted that a perusal of the alleged inventory shows that every item is shown in an

indefinite number. All the items are shown either as "approximately" or "about" etc. Had there been any occasion for preparation of any inventory

the exact numbers would have been given.

8. The first respondent Mr.Ramesh Vadodaria, further stated in paragraph 39 of the reply:-

It is respectfully submitted that it is an established practice that whenever any inventory is prepared, it is duly countersigned by all the parties

concerned and specially the parties at whose premises such an inspection is carried out. Admittedly, neither the alleged inventory was presented

for signature nor it has been got signed from any one present on behalf of the defendant No.3. The report of the learned Local Commissioner is

also conspicuously silent about whether any refusal was made by anybody on behalf of the defendant No.3 to sign the alleged inventory prepared

by the learned Local Commissioner.

9. The first respondent had gone to the extent of saying that the report of Mr. Balram Chopra, the Local Commissioner, should not be taken as a

report within the purview of the Order 22 Rules 9 & 10 of the CPC. The attitude of the first respondent clearly shows utter disregard for process

of law. His deponent with the Local Commissioner is far from satisfactory. Whenever there is an order of Court, it is expected from every citizen

to act in accordance with the tenor of the order. If a party feels aggrieved, it is always open to that party to file an appeal or apply to the Court to

vacate the order. Before doing so, there shall be implicit obedience to an order passed by a court of law. If that is not done, the effectiveness of

rule of law could be defeated by the parties. IA.2574/96 and IA.2575/96 filed by the third defendant stand dismissed.

10. Respondents 2 & 3 have also taken the same stand and it is not necessary to advert them in detail. They had only followed the instructions of

Mr. Ramesh Vadodaria.

11. Mr. Maninder Singh, the learned counsel for respondents, relied upon the judgment of the Supreme Court in M/s. Bengal Waterproof Limited

Vs. M/s. Bombay Waterproof Manufacturing Company and Another, . A perusal of the judgment would show that it has absolutely no relevance

to the facts of the instant case.

12. I am very clear in my mind that the respondents are clearly guilty of contempt of orders passed by this Court and they are liable to be dealt

with in accordance with law. Having regard to the relationship of the parties, I impose a fine of Rs.2,000/- on each of the respondents. The fine

shall be deposited in this Court within four weeks from today. If the respondents fail to deposit the fine, each of the respondents shall undergo

simple imprisonment for a period of two weeks.

13. The CCP stands disposed of.