

Court No. - 8

Case :- CONTEMPT APPLICATION (CIVIL) No. - 3264 of 2023

Applicant :- Mustaqeem Ahmad And Another

Opposite Party :- Jaykar Pandey

Counsel for Applicant :- Mohammad Aslam Khan

Counsel for Opposite Party :- Suneel Kumar Khare

Hon'ble Rajeev Singh,J.

1. On 25.5.2024, following order was passed:-

1. On 24.5.2024, following order was passed:-

1. On 14.05.2024, following order was passed:

"1. Heard Shri Mohd. Arif Khan, learned Senior Advocate assisted by Shri Mohd. Aslam Khan learned counsel for the applicants and Shri S.K. Khare, learned counsel appearing for the respondent.

2. On 26.04.2024, following order was passed.

"1. Heard learned counsel for the applicants and learned counsel for the respondent no. 1.

2. This application under Section 12 of the Contempt of Courts Act has been filed alleging wilful disobedience of the judgment and order dated 31.05.2023 passed on Petition under Article 227 No. 879 of 2023.

3. Learned counsel for the applicants submits that The Petition under Article 227 No. 879 of 2023 (supra) was filed seeking a direction to the competent authority for enforcement of the release order dated 23.02.2019 passed in proceedings under Section 16 of the U.P. Act No. 13 of 1972. The said petition was disposed of vide order dated 22.02.2023 with liberty to the applicant-petitioners to approach Upper Ziladhikari, Nagar (Purvi), Lucknow by preferring an application with the further direction to the authority concerned to pass appropriate direction and also to ensure compliance of the order dated 17.01.2023, by which, the S.H.O. concerned was directed to comply the direction issued in order dated 23.02.2019, within a period of eight weeks from the date of production of a certified copy of the order.

Order dated 22.02.2023 reads as under:

"Heard Mr. Mohd. Arif Khan, learned Senior Counsel assisted by Mr. Mohd. Aslam Khan, learned counsel for petitioners and learned State counsel appearing for opposite parties no.1 to 3.

In view of order being proposed to be passed, notices to opposite parties no.4 to 7 stand dispensed with.

Petition under Article 227 of the Constitution of India has been filed seeking a direction to the opposite party no.1 for enforcement of release order dated 23.02.2019 passed in proceedings under section 16 of the U.P. Act No.13 of 1972.

Learned counsel for petitioners submits that with regard to property in question being house no.177/67 Gwynne Road, Near Jhau Lal, Police Station Wazirganj, City and District, Lucknow, vacancy was declared for which purpose the private opposite parties had filed an application for allotment while the petitioners' had filed an application for release. It is submitted that by means of order dated 23.02.2019, the petitioners release application was allowed while rejecting the application for allotment preferred by private opposite parties. It is submitted that due to aforesaid fact, Forms C and D were thereafter issued by the competent authority in terms of rules framed under the Act of 1972 with Form D being issued on 19.03.2019 but thereafter revision under section 18 of the Act was preferred by the private opposite parties which was dismissed by means of judgment and order dated 07.04.2022.

Learned senior counsel on the basis of instructions submits that the revisional order dated 07.04.2022 has become final since till date no challenge there against has been preferred. It is further submitted that in pursuance of aforesaid proceedings, opposite party no.1 thereafter

passed order dated 17.01.2023 for execution of Form D with directions being issued to the Station House Officer of the police station concerned but till date no proceedings in pursuance thereof have been initiated and the benefit of release order dated 23.02.2019 has not yet percolated to the petitioner and as such relevant directions are required to be passed.

Considering submissions advanced by learned counsel for petitioner, it appears that release application preferred by petitioners has been allowed vide order dated 23.02.2019 while rejecting the allotment application preferred by private opposite parties. It also appears that revision preferred against the aforesaid release order has also been dismissed on 07.04.2022. It has been specifically stated by learned counsel for petitioners upon instructions that the aforesaid order has become final since the same has not been challenged before any competent court as yet.

It also appears that opposite party no.1 has also issued directions dated 17.01.2023 (Annexure No.10 to the writ petition) directing the Station House Officer for effecting steps to comply with the directions dated 23.02.2019.

In such circumstances, liberty is granted to petitioners to approach opposite party no.1, i.e. Upper Ziladhikari, Nagar (Purvi), Lucknow. In case any such application is preferred by petitioners, opposite party no.1 is directed to pass appropriate directions and ensure compliance of the order dated 17.01.2023 within a period of eight weeks from the date a certified copy of this order is brought on record of the proceedings.

With the aforesaid direction, the petition stands disposed of."

4. Thereafter, application for recall of the order along with delay condonation application was filed by Shri Akash Dixit, Advocate on behalf of respondent no. 1. During the course of argument, on the basis of instructions received from respondent no. 1, Shri Akash Dixit requested before the Court that he does not want to press the recall application. An affidavit of undertaking was also filed along with the application of respondent no. 1, stating that he is the sole tenant of the premises in question and had given undertaking that he shall vacate the said premises on or before 31.07.2023 and shall handover vacant possession to the petitioner-applicants. On the said application, order dated 31.05.2023 was passed by the writ Court, in which, it was also observed that said order shall be part of the order dated 22.02.2023.

Order dated 31.05.2023 is as under:

"(Applications No.2 and 3 of 2023)

Applications have been filed seeking condonation of delay and recall of order dated 22nd February, 2023.

Mr. Akash Dikshit learned counsel for applicant does not wish to press these applications on the basis of instructions received. The applications as such are dismissed as not pressed.

(Application No. 1A/4/23)

An affidavit of undertaking has been filed along with application sworn by one Jaikar Pandey (opposite party No.4) stating that he is sole tenant of the premises in question. Undertaking has been given that he shall vacate the suit premises on or before 31st July, 2023 and shall hand over possession of the vacant premises to the petitioner/land lord. It is further stated that in case of violation of aforesaid undertaking, the petitioners/land lord would be at liberty to initiate contempt action against him. The aforesaid application is taken on record.

Mr. Mohd. Arif Khan learned Senior assisted by Mr. Mohd. Aslam Khan learned counsel for petitioner do not have any objection to the aforesaid affidavit of undertaking.

The petition has already been disposed of by means of order dated 22nd February, 2023 and this undertaking has been filed subsequently which is however being taken on record in view of consent of learned counsel for parties. It is therefore directed that aforesaid undertaking filed today shall form a part of the order dated 22nd February, 2023."

5. Shri Akash Dixit, Advocate, who appearing for respondent no. 1 before the writ Court, is present before this Court and informs that after passing of the order dated 31.05.2023, the entire record related

to the case was taken back by respondent no. 1. Respondent no. 1 also accepts this fact that the entire record was taken back by him. However, respondent no. 1 states that he was not aware about the order dated 31.05.2023 and no instruction was given by him to Shri Akash Dixit for giving such statement before the Court and neither any such affidavit was filed by him.

6. The record reveals that one application for dismissal of the contempt application dated 12.01.2024 was filed by Shri S.K. Khare, Advocate on behalf of respondent no. 1. In the said application, it is averred that one application dated 11.01.2024 was also filed for recall of the order dated 31.05.2023 passed in Petition under Article 227 No. 873 of 2023. It is further averred therein that about the misconduct of Shri Akash Dixit, Advocate, one application was also given to the Bar Council of U.P. on 10.01.2024.

7. It is also evident from the record of the present contempt application that notice was issued vide order dated 27.09.2023 to respondent no. 1, but he did not turn up, on which, bailable warrant was issued and thereafter when the Commissioner of Police was directed to ensure the presence of respondent no. 1, he appeared before this Court.

As Shri S.K. Khare appearing for respondent no. 1 submits that Shri Akash Dixit was neither instructed to give any affidavit nor he was asked for filing any affidavit, which he placed before the writ Court on 31.05.2023 and, therefore, respondent no. 1 is not bound by the said undertaking.

8. I have considered the arguments of the learned counsel for the parties and gone through the contents of the application, orders dated 22.02.2023 and 31.05.2023 passed in Petition under Article 227 No. 819 of 2023.

Shri Akash Dixit, who was conducting the case of respondent no. 1 is present before this Court and states that undertaking was given by him on the basis of instructions of his client, i.e., respondent no. 1 and on the basis of the same, the affidavit was also filed.

9. In view of above, the affidavit filed today by respondent no. 1 is hereby rejected.

10. List this case on 14.05.2024 at 11.30 a.m.

11. By the next date of listing, respondent no. 1 shall file fresh affidavit of compliance, failing which, he shall appear before this Court for framing of charges."

3. Today, Shri S.K. Khare, learned counsel for the respondent, while placing an application for deferment along with the affidavit duly sworn by Mr. Jaykar Pandey-respondent, submits that the contempt proceedings may be deferred till the decision of Writ-A No. 771 of 2024 (Jaykar Pandey & 2 Ors. Vs. Mustaqeem Ahmad & Anr.).

4. Learned counsel for the applicants, on the other hand, submits that the respondent challenged orders dated 22.02.2023, 31.05.2023 and 31.01.2024 passed in Petition under Article 227 No. 879 of 2023 before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No. 14171 of 2024, which was dismissed on 06.05.2024. Submission of the learned counsel for the applicant, thus, is that as the Hon'ble Supreme Court has dismissed the petition filed against the orders of the writ Court, the respondent is willfully disobeying the order of the writ Court by not vacating the premises in question.

5. I have considered the arguments advanced by the learned counsel for the applicants, learned counsel appearing for the respondent and also gone through the record.

6. This Court, while passing the order dated 26.04.2024, had also gone through the orders dated 22.02.2023, 31.05.2023, which are also quoted in the aforesaid order. Later on, a recall application was moved by the respondent for recall of the order dated 31.05.2023 before the writ Court, which was dismissed vide order dated 31.01.2024, which is as under:

"Order on Application for condonation of delay

1. Application has been filed seeking condonation of delay in filing application for recall of order dated 31.05.2023.

2. No objections to application have been filed till date. Cause shown in the affidavit filed in support of the application is sufficient and

therefore delay in filing the recall application is condoned.

Order on Application for recall of order

1. Heard learned counsel for applicant-opposite party and learned counsel for writ-petitioner.

2. Application has been filed seeking recall of order dated 31.05.2023 whereby orders were passed on affidavit of undertaking along with application sworn by one Jaykar Pandey (opposite party no.4). The undertaking stated that he was the sole tenant of the premises in question and that he would vacate the suit premises on or before 31st July, 2023 and shall hand over possession of vacant premises to the petitioner/land lord, failing which the petitioners/land lord would be at liberty to initiate contempt proceedings against him.

3. Learned counsel for applicant has submitted that no such affidavit of undertaking was ever filed by the said Jaykar Pandey and in fact he had approached the erstwhile lawyer, namely Mr. Akash Dikshit only to provide papers for the purposes of raising challenge to revisional order dated 07.04.2022, release order 23.02.2019 as well as to file application for recall of order dated 22.02.2023 but instead of filing any writ petition, Recall Applications numbered IA No. 2 of 2023 and IA No. 3 of 2023 were filed on which orders were passed on 31.05.2023. It is submitted that fraud had been perpetuated upon deponent/applicant and that he had never intended to give such an undertaking. It is also submitted that the applicant has already sent a complaint to Bar Council of U.P. against erstwhile counsel. It is also submitted that the applicant is a person of advanced age of 75 years and disputes the fact that petitioners are Landlord of the property in question. It is submitted that in fact, the petitioners have nothing to do with the property in question due to which there was no occasion for the applicant to have filed such an application regarding consent.

4. Learned counsel for applicant has relied upon the following decisions to buttress his submissions:-

(i) Shiv Kumar Pandey v. State of U.P. and others; reported in (2021)ILR 10All671 (rendered by a coordinate Bench of this Court);

(ii) Sahabuddin v. State of U.P. and others[Writ C. No.30425 of 2023 decided on 11.12.2023]; reported in MANU/UP/4123/2023 (rendered by a coordinate Bench of this Court); and

(iii) Ashok Kumar v. New India Assurance Co. Ltd., reported in 2023 LiveLaw (SC) 587 (rendered by Hon'ble the Supreme Court).

5. Learned counsel for writ petitioners has opposed the application with submission that the order dated 31.05.2023 has in fact been passed on an affidavit of compliance filed by applicant who is admittedly the tenant of the premises in question. It is submitted that sanctity of judicial proceedings are required to be adhered to and the applicant cannot be permitted to resile from the undertaking given before this court in the form of an affidavit.

6. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is admitted between the parties that with regard to the property in question, an application for release had been filed by petitioners which was allowed vide order dated 23.02.2019 whereagainst revision was filed by the present applicant which was also dismissed on 07.04.2022. It is also admitted that till date the aforesaid revisional order has not been challenged due to which the order allowing the release application has attained finality. It is in such circumstances that order dated 22.02.2023 was passed after noticing these relevant facts although it is submitted by learned counsel for applicant that aforesaid revisional order has now been challenged in a petition filed two days prior to today.

7. The record reveals that against aforesaid order dated 22.02.2023, applications for condonation of delay and recall were filed, registered as Applications numbered 2 of 2023 and 3 of 2023 respectively. Subsequently, an application dated 31.05.2023 along with an affidavit of undertaking was filed purportedly at the behest of one Jaykar Pandey, aged about 74 years, son of late Prem Ballabh Pandey introducing himself as opposite party no.4 to the writ proceedings. The Affidavit clearly bears a photograph-verification which indicates a photograph of the person who filed the affidavit of undertaking.

8. In pursuance thereof, order dated 31.05.2023 has been passed wherein the applications for condonation of delay and recall were not pressed and thereafter the order records the undertaking given by deponent of the said affidavit.

9. It is therefore quite evident that as on 22.02.2023, admittedly the revisional order dated 07.04.2022 had attained finality without any challenge thereto. In such circumstances, liberty was granted to petitioners to approach the Additional District Magistrate who was directed to pass appropriate directions and ensure compliance of order dated 17.01.2023 within a period of eight weeks from the date a certified copy of the order was brought on records of proceedings.

10. It also appears that subsequently due to non-adherence to order dated 31.05.2023, contempt proceedings had been initiated by writ petitioners against tenant of the premises in question whereafter the present application has been filed.

11. It has been submitted that affidavit filed in support of the Recall Application states that the applicant had in fact provided papers to erstwhile counsel for challenging the release order as well as revisional order along with raising challenge by means of a Recall Application but the counsel concerned has in fact filed the affidavit of compliance although he also filed Applications for Condonation of delay along with Application seeking Recall of Order dated 22.02.2023 but erred in not pressing the same.

12. The documents on record however clearly bear out the fact that the recall application dated 25.05.2023 filed by erstwhile counsel is duly accompanied by Vakalatnama issued in favour of the said counsel who has also filed the Affidavit of undertaking dated 31.05.2023.

13. The only case set up by applicant is that although he had engaged the erstwhile counsel but he had provided papers only for the purposes of raising challenge to revisional order as well as to file Application for Recall of order dated 22.02.2023 but, in the considered opinion of this Court, sanctity of judicial proceedings is required to be maintained particularly when Applications and Affidavits are filed and are on record which are duly notarized and verified in accordance with Rules of this Court and particularly when duly supported by an affidavit and phototograph of verification.

14. Even keeping aside the aspect of Recall of order dated 31.05.2023, since it also transpires and as is admitted by applicant himself that the order allowing Release Application was challenged by him in Revisional proceedings but the rejection order was never challenged by him till 22.02.2023, there was no other option before this Court but to pass the order which was actually passed on 22.02.2023. In that respect also there was no occasion to have entertained Application for Recall of order dated 22.02.2023.

15. So far as the present Recall Application is concerned, it is quite evident that the order dated 31.05.2023 has been passed as a result of an affidavit filed by Jaykar Pandey, son of late Prem Ballabh Pandey, which is duly verified as per Rules of this Court.

16. So far as the judgments relied upon by learned counsel for applicant are concerned, it is quite evident that in Shiv Kumar Pandey(supra), the aspect pertained to hearing of a case when the counsel had withdrawn the Vakalatnama without notice to the client.

17. In Sahabuddin(supra), the aspect was with regard to default or mistake on part of the counsel whereas the present one is not a case of default or mistake but a considered affidavit said to have been filed by the applicant.

18. In Ashok Kumar v. New India Assurance Co. Ltd.(supra), the issue again was of withdrawal of complaint by an Advocate without specific directions for such withdrawal. Again in the present case, the compliance has been filed on an affidavit duly sworn in as per the Rules of this Court and not merely on oral instructions provided by the counsel.

19. In view of aforesaid, the aforesaid decisions would not be attracted to the preset dispute.

20. In such circumstances, this Court does not find any occasion to recall the order dated 31.05.2023. The Recall Application as such is rejected."

7. As on the last date, i.e., on 26.04.2024, Shri Akash Dixit, Advocate, who was earlier appearing for the respondent, was present before this Court and informed that the undertaking to vacate the premises in question by 31.07.2023 was given by him on the basis of instructions received from the respondent. Admittedly, aforesaid orders, i.e., orders dated 22.02.2023, 31.05.2023 and 31.01.2024 were challenged by the respondent before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No. 14171 of 2024, which has also been dismissed on 06.05.2024. It is undisputed that till today, the premises in question has not been handed over by the respondent to the applicants.

8. In view of above facts and circumstances, the application for deferment is hereby rejected and following charge is framed against the respondent/contemnor under Section 12 of the Contempt of Courts Act, 1971.

Why the respondent/contemnor, Jaykar Pandey be not punished for willfully flouting the order of the writ Court dated 31.05.2023 passed in Petition under Article 227 No. 879 of 2023, by not vacating the premises in question.?

9. List this case on 23.05.2024 at 11.30 a.m. for order on sentence.

10. On the next date, respondent/contemnor shall appear before this Court. In the meantime, respondent/contemnor may file response on the point of sentence. "

2. In pursuance of earlier order, reply/response to the charge filed by the opposite party, namely, Jaikar Pandey, S/o Late Prem Ballabh Pandey, R/o 177/67 Pul Jhaulal, Gwynne Road, Aminabad, Lucknow is taken on record.

3. Learned counsel for the applicants submitted that the Special Leave Petition (Civil) Diary No.14171/2024, in which, all the pleas mentioned in the reply filed by the opposite party are already mentioned, has been dismissed by the Hon'ble Apex Court vide order dated 06.05.2024. He also submitted that order dated 14.05.2024, by which charge was framed, was challenged by the opposite party in Special Appeal No.122/2024 and the same was also dismissed on 23.05.2024. He further submitted that the undertaking of learned counsel for the opposite party was recorded by this Court on 31.05.2023 that the opposite party shall vacate the premises of the applicants on or before 31.07.2023 and hand over the possession of the same to the applicants and it was also undertaken that applicants would be at liberty to initiate contempt action against him if the aforesaid direction is not complied with and the aforesaid order has already been challenged before the Hon'ble Apex Court but the same has been upheld.

4. Considering the submission of learned counsel for the applicants as well as reply filed today, it is undisputed fact that till today, the possession of the premises has not been handed over to the applicants, therefore, it is crystal clear that the opposite party has deliberately violated the undertaking given by his counsel before this Court on 31.05.2023. Therefore, I am of the view that the opposite party is guilty of deliberate contempt of the order of this Court.

5. List this case tomorrow i.e. on 25.05.2024 at 11:30 for passing the order for sentence.

6. On the next date, opposite party shall again appear in person before this Court.

2. The charge was framed on 14.5.2024 and after considering reply of the respondent, he was held guilty vide order dated 24.5.2024, and today, he is present before this Court but he is not willing to comply the order. As per the Article 215 of Constitution of India, High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. As per the affidavit filed by the respondent, he is aged about 74 years, therefore, this is a fit case for issuing direction to the District Magistrate as well as Commissioner of Police to ensure eviction of the respondent in terms of his undertaking, which was given before the learned Single Judge on 31.5.2023 in the Petition under Article 227 No.879 of 2023.

4. List this case on 31.5.2024 at 2:30 P.M.

5. District Magistrate, Lucknow and Commissioner of Police, Lucknow are directed to take the possession of the property in question and

hand over the same to Mr. Mustaqeem Ahmad, S/o Dr. Aziz Ahmad, R/o House No.177/13, Golaganj, Post Office, Aminabad, District Lucknow & Mohd. Moid, S/o Late Haji Mohd. Naseer, R/o House No.65 Ghausganj, Post Office Aminabad, District Lucknow by evicting Mr. Jaykar Pandey, S/o Late Prem Ballabh Pandey, R/o House No.177/67, Gwynne Road, Near Jhau Lal Pul, Post Office Aminabad, District Lucknow, presently residing in Flat No.203 Ilo Apartment, New Hyderabad, Police Station Mahanagar, Lucknow (Mob No.9335267605).

6. The Commissioner of Police, Lucknow is further directed to file affidavit of compliance by the next date of listing.

7. Senior Registrar of this Court and Sri Sunil Bajpai, learned Addl. Chief Standing Counsel are directed to communicate this order to the District Magistrate, Lucknow as well as Commissioner of Police, Lucknow for necessary compliance, forthwith.

2. In pursuance of aforesaid order, affidavit of compliance is filed by the Commissioner of Police, Lucknow and informed that possession of the property in question has been handed over to the applicants in pursuance of direction of the writ court and list of articles is also annexed at page no.11 & 12 of the affidavit of compliance.

3. Considering the aforesaid facts, it is evident that order of the writ court has been complied with, therefore, present contempt application has lost its efficacy and same is hereby **dismissed**.

4. However, it is provided to the private respondent to go before the Commissioner of Police, Lucknow and receive articles as mentioned in the list of articles annexed with the affidavit of compliance.

Order Date :- 31.5.2024

Gaurav/-