

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CONT No. 386 of 2015

1. Kalyan Singh Kurre S/o Late Dev Prasad Kurre, aged about 64 years,
R/o Mungeli, P.C. No.6/29, Tahsil and District Mungeli, Chhattisgarh

---- Applicant

Versus

1. Smt. Lalita Bai W/o Ramsumer Thakur R/o Mohammad Vasir Khan,
Ward Mungeli, Tahsil and District Mungeli, Chhattisgarh

---- Respondent/Non-applicant

For Applicant – Shri G.P.Kurre, Advocate along with applicant Kalyan
Singh Kurre.

For Respondent – Shri Sourabh Sharma, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

27/10/2015

1. Heard on I.A.No.2/15 filed on behalf of the applicant regarding penalizing the Town Inspector for non-compliance of the order dated 17-08-2015.
2. Learned counsel for the applicant submitted that this Court vide order dated 17-08-2015 ordered that Town Inspector shall ensure the compliance of the order of the Court by taking appropriate steps against the respondent. Learned counsel further submitted that in M.A.No.41 of 2015 the Court ordered that the parties shall remain in status quo for the land bearing Khasra No.1126/7 until further orders. But, the respondents in M.A.No.41 of 2015 were making construction in the said survey number and the matter was reported to the Town Inspector and he remained inactive and he did not comply with the order of this Court. Therefore, he be penalized for the non-compliance of the order.
3. After perusal of the instant contempt case (c), it goes to show that neither the Town Inspector is a party to the present matter nor any application has been filed to implead the Town Inspector as a party before appreciation regarding

penalizing for non-compliance of the order. As per settled law, a person has to be given an opportunity in a matter appropriately filed under the law against him.

4. With the above facts as the I.A.No.2/15 filed in the instant matter and the same is not maintainable for the moment, hence, the same is hereby dismissed without appreciation on its merit.

5. I.A.No.2/15 dismissed.

6. Also heard on I.A.No.3/15, preliminary objection on behalf of non-applicant Smt. Lalita Bai with respect to maintainability of the instant contempt petition.

7. Learned counsel for the applicant would submit that he do not want to file written response to I.A.No.3/15 and he is ready to argue on I.A.No.3/15.

8. With the consent of both the parties, arguments heard on I.A.No.3/15.

9. Learned counsel for the non-applicant submitted that the instant contempt petition is not maintainable as the original M.A. No.41 of 2015 (Kalyan Singh Kurre Vs. Smt. Lalita Bai and three others) is still pending wherein the Court ordered that both the parties shall remain in status quo for the land bearing Khasra No.1126/7 until further orders. Learned counsel further submitted that the petitioner/applicant had a forum to file an appropriate application in the instant M.A. under the provisions of Order 39 Rule 2A of the CPC if at all any disobedience or any breach for the order of Court committed by the respondent. Learned counsel would further submit that since the matter, as pleaded, is a subject matter of Order 39 Rule 2A of the CPC, the instant contempt petition is not maintainable and the same may be disposed of. Learned counsel further submitted that the non-applicant had not made any construction over Khasra No.1126/7 instead she has raised construction over the land bearing Khasra No.1126/2.

10. Per contra, learned counsel for the applicant submitted that the provisions of Order 39 Rule 2A of the CPC is not applicable in the instant case as the

respondent committed contempt of this Court for the order passed in M.A.No.41 of 2015 dated 31-07-2015, hence, the instant contempt petition is maintainable. The learned counsel would further submit that if no any wrong action committed by the non-applicant then as to why they tendered unconditional apology in I.A.No.3/15. The learned counsel would further add that the non-applicant constructed in the land bearing Khasra No.1126/7, not over the land bearing Khasra No.1126/2, hence, the contempt petition is maintainable. Learned counsel would further add that the said order passed as aforementioned was for the Khasra No.1126/7, not for the land bearing Khasra No.1126/2.

11. On close scrutiny of the matter and documents submitted in the petition, it goes to show there was an order for maintaining status quo in M.A.No.41 of 2015 by both the parties. If any party disobeyed the order, committed breach to the injunction granted by such order, he had a forum to come before Court under Order 39 Rule 2A of the CPC for disobedience and breach of injunction. To hold any person guilty that he had violated the order of status quo, entire opportunity, examination and appreciation are required. What was the status on the date of order and to what extent someone committed disobedience or committed breach of injunction and raised the construction, whether the non-applicant is constructing over Khasra No.1126/7 or over Khasra No.1126/2 are not the subject matter of the instant contempt petition. For this, it requires appreciation. A remedy is available under the law to the applicant; why the same was not availed is remained unanswered. So as, tendering unconditional apology has to be read with the entire pleading of I.A.No.3/15 wherein the non-applicant categorically stated that they have not made any construction over Khasra No.1126/7; again the construction raised in which Khasra No. is not the subject matter of the instant contempt case. And as a remedy available and forum is available to the applicant, any contempt cannot be held as a civil contempt as required under Section 2(b) of the Contempt of Courts Act as already the legislature provided consequences of disobedience or breach of injunction.

12. With the above appreciation, in the considered view of this Court, the instant contempt case, as filed, is not maintainable since an alternative remedy for any disobedience or breach of injunction, if any, is available to the applicant.

13. Consequently, I.A.No.3/15 is hereby allowed. The instant Contempt Case (C) is dismissed as not maintainable without any appreciation on merit reserving liberty to the applicant to seek remedy available under the procedural law.

14. The contempt case dismissed as not maintainable.

15. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
Judge