

A.No. 5950 of 2010

IN

C.S.No. 367 of 2010

C.V.KARTHIKEYAN .J.

This application has been filed under Order 14 rule 8 of O.S. Rules read with 39 Rule 2-A of Civil Procedure Code, to pass an order detaining the respondent in civil prison for her violated the order of interim injunction dated 06.08.2010 and subsequently extended on 01.10.2010 by this Court in O.A.No. 455 of 2010 in C.S.No. 367 of 2010 as the same has been disobeyed by the respondent and to punish the respondent for having committed an act of contempt of Court in the course of schedule proceedings.

2 . C.S.No. 367 of 2010 has been filed by the applicant herein for the following relief:-

(a) for grant of a permanent injunction restraining the defendant by themselves, their servants, agents or any one claiming through them from adopting and/or using the plaintiff's Trade Mark 'Narayana Pearls Gems & Jewels' as the defendant's trade name/trading style or part of its trade name / trading style or in any of its manufacturing activities, goods, bills, invoices, price lists, name

tags, calendars, name boards, sign boards, packing materials or complimentary items, advertisements in newspapers, magazines, television, hoardings, websites, internet, etc.,

(b) for grant of a permanent injunction restraining the defendant by themselves, their servants, agents or any one claiming through them from in any manner passing off their goods as that of the plaintiff's by using the plaintiff's Trade Mark 'Narayana Pearls Gems & Jewels' or any of its colourable imitations or variations including 'Om Narayana Pearls' either as a trade mark or trading style or part of its trade mark or trading style for any of its manufacturing and/or marketing activities.

(c) directing the defendant to render a true and proper account of profits earned by them through the manufacture and sale of the products using the plaintiff's trade mark 'Narayana Pearls Gems & Jewels' as part of its trading style and directing the defendant to pay to the plaintiff the said profits so earned by them using the plaintiff's trade mark 'Narayana Pearls Gems & Jewels' as part of its trading style.

(d) directing the defendant to pay to the plaintiff a sum of Rs. 10 lakhs

being the liquidated damages for use of the plaintiff's trade mark 'Narayana Pearls Gems & Jewels' as part of its trading style together with interest at 24% per annum from the date of plaint till date of payment;

(e) directing the defendant to surrender to the plaintiff the entire stock of unused plaintiff's trade mark 'Narayana Pearls Gems & Jewels' as part of its trading style, labels, cartons, boxes and any other materials, blocks, advertisements, with literature and any other materials containing and consisting of the plaintiff's trade mark 'Narayana Pearls Gems & Jewels' as part of its trading style for destruction; and

(f) directing the defendant to pay to the plaintiff the cost of the suit.

3. In the said application, the applicant had filed O.A.No. 455 of 2010 seeking an order of interim injunction restraining the respondent by themselves, their servants, agents or any one claiming through them from adopting and/or using the applicant's Trade Mark 'Narayana Pearls Gems & Jewels' as the respondent's trade name/trading style or part of its trade name/trading style or in any of its manufacturing activities, goods, bills, invoices, price lists, name tags, calendars, name boards, sign boards, packing materials or complimentary items, advertisements in newspapers, magazines, television, hoardings, websites,

internet etc., pending disposal of the suit.

4. This Court after hearing both sides had granted the injunction as prayed for. It had been further observed on 01.10.2010 that the respondent had been disobeying the order of Court and consequently it was informed that the applicant intends to file an application to punish the respondent for contempt of Court.

5. In this application, it had been stated in the affidavit that the interim order was communicated to the respondent on 31.08.2010 by way of registered post acknowledgment due which was acknowledged on 04.09.2010. Again the said applications came up for hearing and the interim order was extended in the presence of the respondent's counsel. It had been stated that the respondent had been continuously violating and disobeying the order of injunction granted by this Court. It had been further stated that this has caused much inconvenience and wrongful loss to the applicant herein. It is also stated that the respondent company continuously to carry on similar business without any registered Trade Mark thereby violating the registered Trade Mark of the applicant. It had been therefore stated that the respondent must be punished by an order of this Court.

6. The respondent had been served. Affidavit of service has been filed. The respondent had also refused to receive the notice sent by the learned counsel for the applicant. It is clear that the respondent is deliberately evading service of notice. It is therefore clear that the respondent is committing an act of disobedience. In this connection in (1998) 7 SCC 59, it had been held that after comparing provisions under Order 21 Rule 32(1) of CPC and Order 39 Rule 2-A CPC has follows:-

“12. But the position under Rule 2-A of Order 39 is different. Even if the injunction order was subsequently set aside, the disobedience does not get erased. It may be a different matter that the rigour of such disobedience may be toned down if the order is subsequently set aside. For what purpose is the property to be attached in the case of disobedience of the order of injunction? Sub-rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment, the Court is empowered to sell the property under attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of one-year period. If the disobedience ceases to continue in the meanwhile, the attachment also would cease. Thus even under Order 39 Rule 2-A, the

attachment is a mode to compel the opposite party to obey the order of injunction. But detaining the disobedient party in civil prison is a mode of punishment for his being guilty of such disobedience.

13. *The words “and may also” appearing in Rule 2-A were sought to be given a meaning that the course suggested thereafter in the Rule has to be resorted to as an option additional step, a resort to which would be impermissible without complying with the first course suggested in the Rule. The word “also” has different attributes and its meaning is not to be confined to “furthermore”. In legalistic use, the word “also” can be employed to denote other meanings as well. In Black's Law Dictionary, the word “also” has the following variety of meanings:*

“Also.- Besides; as well; in addition; likewise; in like manner; similarly; too; withal. Some other thing; including; further; furthremore; in the same manner; moreover; nearly the same as the word 'and' or 'likewise'.”

14. *Since the word “also” can have meanings such as “as well” or “likewise”, cannot those meanings be used for understanding the scope of the trio words “and may also”? Those words cannot altogether be detached from the other words in the sub-rule. Here again the word “and” need not necessarily be understood as denoting a conjunctive*

sense. In Stroud's Judicial dictionary, it is stated that the word "and" has generally a cumulative sense, but sometimes it is by force of a context read as "or". Maxwell on Interpretation of Statutes has recognised the above use to carry out the interpretation of the legislature. This has been approved by this Court in *Ishwar Singh Bindra v. State of U.P.* The principle of *noscitur a sociis* can profitably be used to construct the words "and may also" in the sub-rule.

15. Hence the words "and may also" in Rule 2-A cannot be interpreted in the context as denoting a step which is permissible only as additional to attachment of property of the opposite party. If those words are interpreted like that, it may lead to an anomalous situation. If the person who defies the injunction order has no property at all, the Court becomes totally powerless to deal with such a disobedient party. He would be immuned from all consequences even for any open defiance of a Court order. No interpretation shall be allowed to bring about such a sterile or anomalous situation (*vide Constitution Bench in Vidyacharan Shukla v. Khubchand Baghel*). The pragmatic interpretation, therefore, must be this: it is open to the Court to attach the property of the disobeying party and at the same time the Court can order him to be detained in civil prison also if the Court deems it necessary. Similarly, the Court which orders the person to be detained in civil prison can also attach the property of that person.

Both steps can be resorted to or one of them alone need be chosen. It is left to the Court to decide on consideration of the fact situation in each case.”

Following the dictum given by the Hon'ble Supreme Court and since it is clear that the respondent is continuing to carry on the business even though there is an order of injunction, this application is allowed and the respondent is directed to detain in civil prison for a period of two weeks.

7. The learned counsel appearing for the applicant is to take out necessary steps before the Master, High Court, Madras, to implement the said order detaining the respondent in civil prison.

Vsg

22.11.2016

(2/2)

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