

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 88 of 2017**

1. Satyadev Pandey S/o Teja Prasad Pandey Aged About 62 Years R/o Bus Stand, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.
2. Dr. Krishna Pratap Pandey, S/o Keshav Prasad Pandey, Aged About 39 Years R/o Imlipara, Tahsil And District Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. Kiranakant Rabinson S/o P. C. Rabinson Aged About 50 Years R/o Near Kali Mandir, Tifra, Present Address- C/o Anupam Rabinson, Behind Civil Line Thana, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.

---- Respondent

For Appellant:
For Respondent:

Shri Neeraj Choubey, Advocate.
None.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

26.09.2017

1. This Miscellaneous Appeal has been preferred by the plaintiffs' under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) against the order dated 20.07.2017 passed by 5th Additional District Judge, Bilaspur in Civil M. J. C. No. 14/2011, by which, the application filed by the plaintiffs' under Order 39 Rule 2(A) of the CPC has been rejected.

2. The undisputed facts of the case are that the Plaintiffs have instituted a suit for specific performance of contract on the basis of an agreement to sale dated 03.05.2005 purported to have been executed by Defendant No. 1 Kirankant Rabinson in favour of the plaintiffs. While filing the suit, an application enumerated under Order 39 Rule 1 & 2 of the CPC was also made praying therein for restraining the Defendant No. 1 from

alienating the property in question pending decision of the suit. The said application was considered on 11.12.2007 and on the basis of an undertaking given by the counsel for Defendant No. 1, the plaintiffs have withdrawn their application filed under Order 39 Rule 1 & 2 of the CPC (I. A. No. 1) as it was assured by him that the suit property shall not be alienated during the pendency of the suit and accordingly, the said application for issuance of temporary injunction was rejected. Despite the said undertaking, the Defendant No. 1 has sold the suit property to one Bhatia Builders and Developers, Bilaspur through its Director by executing a registered deed of sale, dated 10.07.2008 and, have thus committed a breach of injunction.

3. In view of the aforesaid wilful disobedience of the order, dated 11.12.2007, the plaintiffs have been constrained to file the application as required under Order 39 Rule 2(A) of the CPC for initiation of contempt proceedings against the Defendant No. 1 on 23.12.2008.

4. The aforesaid application was objected by Defendant No. 1 Kirankant Rabinson by submitting very specifically that no undertaking as such was given by him, therefore, he was not aware with regard to the said undertaking of his counsel when the order was passed by the trial Court on 11.12.2007.

5. After considering the aforesaid application and its reply, the trial Court has observed that at the time of passing of the said order on 11.12.2007 the defendant No. 1 was neither present nor his signature was there in the said order sheet and, under such circumstances, it cannot be held that the alleged undertaking given by his counsel was within his knowledge. As a consequence, the trial Court has rejected the said

application filed under Order 39 Rule 2(A) of the CPC by its order impugned dated 20.07.2017.

6. Being aggrieved, the plaintiffs'/appellants have preferred this appeal. Shri Neeraj Choubey, learned Counsel for the appellants submits that the Defendant No. 1 was aware with regard to the alleged undertaking given by his counsel on 11.12.2007 and based upon the alleged assurance he has not pressed his application for issuance of temporary injunction on the said date. It is, therefore, submitted by him that the defendant No. 1 has committed wilful default of the order passed on 11.12.2007 by alienating the suit property on 10.07.2008. He submits further, though not raised in this appeal, that even prior to the said order, specific direction was issued on 19.06.2006 by which both the parties have been directed to maintain the status quo with regard to the suit property till the disposal of the application filed under order 39 Rule 1 & 2 of the CPC. He submits further that the trial Court has committed illegality in rejecting his application for issuance of contempt proceedings against the defendant No. 1, while exercising the powers under Order 39 Rule 2(A) of the CPC. He, therefore, submits that the order impugned deserves to be set aside.

7. I have heard the learned Counsel for the Appellants and perused the relevant papers annexed with this appeal carefully.

8. The suit for specific performance of contract based upon an agreement to sale dated 03.05.2005 was filed on 12.06.2006. Along with the suit, an application for issuance of temporary injunction as provided under Order 39 Rule 1 & 2 of the CPC was filed. The said application was rejected on 11.12.2007 on the basis of the above mentioned undertaking given by the counsel for Defendant No. 1.

9. A bare perusal of the order dated 11.12.2007 would, however, reveal that the alleged undertaking was given by the counsel for Defendant No. 1 in his absence. Under such circumstances, it is difficult to hold that the alleged undertaking was given by his counsel well within his knowledge. Consequently, the trial Court has rightly come to the conclusion that the alleged undertaking was not within the knowledge of the Defendant No. 1 by rejecting the said application filed under Order 39 Rule 2(A) of the CPC.

10. The initiation of proceedings as per the provisions prescribed under Order 39 rule 2(A) of the CPC is in the nature of quasi-criminal and therefore, it must be shown by the plaintiffs that the alleged undertaking given by the counsel for defendant No. 1 was as per his instruction and/or well within his knowledge. Unless and until, the said fact is proved by reliable and cogent evidence no proceeding as such could be initiated against him.

11. In the matter of **Suresh and others** Versus **Imran Khan and Others**, reported in **1995 Supp. (3) SCC 306**, it was observed by the Supreme Court at para 2 as under:

“2. The proceedings in contempt are in the nature of quasi-criminal proceedings and it must be shown that the litigant in defiance or disobedience of the court's order proceeded to do any act which was in violation thereof. Unless the litigant is aware of a prohibitory order made against him by the court there can be no desire or intention on his part to flout the court's order. Therefore, unless it is shown that the litigant was made aware of the order served on his lawyer it may not be possible to hold that despite the knowledge of the order he wilfully decided to commit a breach of the order by acting contrary thereto. Proceedings in the nature of contempt being quasi-criminal it must be shown that the litigant was aware of the prohibitory order issued by the court and notwithstanding the same in breach thereof or in total disregard thereof he proceeded to continue with the construction. It being

not disputed that there was no evidence to show that the lawyer to whom the prohibitory order was given had communicated that order in any manner whatsoever to the litigant, it is not possible to come to the conclusion that by continuing with the construction the litigant intended to commit a breach of the order or showed disrespect for the order. In that view of the matter if the High Court was disinclined to punish the litigant for contempt, be that under the Contempt of Courts Act, 1971 or under article 215 of the constitution of India, we see no reason why we should interfere with the impugned order in exercise of power under article 136 of the constitution. The special leave petition is, therefore, dismissed. No order on the application for impleadment.”

12. In the light of the aforesaid principles, the burden was heavily upon the plaintiffs to prove the said fact that the alleged undertaking given by the said counsel was well within the knowledge of the defendant No. 1. However, from perusal of the record, I do not find any materials that the alleged undertaking given by the counsel was within the knowledge of Defendant No. 1. As far as the order dated 19.06.2006 is concerned, it would also not be any useful for appellants as the said order was enforceable only till the disposal of the application filed under Order 39 Rule 1 & 2 of the CPC and has lost its efficacy when the said application for temporary injunction was rejected on 11.12.2007. Therefore, the earlier direction as contained in the order dated 19.06.2006 cannot be taken into consideration while considering the application filed under Order 39 Rule 2(A) of the CPC.

13. In view of the foregoing discussions, I do not find any substance in this appeal. Consequently, the appeal being devoid of merits is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE