

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1923 OF 2015

ORDER:

This civil revision petition is filed under Section 115 of Code of Civil Procedure (for short "C.P.C.") challenging the order dated 29.04.2015 in E.A.No.8 of 2015 in E.P.No.1 of 2015 passed by the VII Junior Civil Judge, City Civil Court, Hyderabad, whereby petition filed by the petitioner under Section 151 of C.P.C to provide police protection and to implement the orders passed in A.S.No.41 of 2013 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, was declined.

Petitioner/Decree Holder (D.Hr.) filed the above petition alleging that he filed a suit O.S.No.251 of 2010 against the defendant/Judgment Debtor on the file of the VII Junior Civil Judge, City Civil Court, Hyderabad and the same was dismissed on 28.11.2011, the matter was carried into appeal in A.S.No.41 of 2013 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, upon hearing both the counsel, III Additional Chief Judge, City Civil Court, Hyderabad allowed the appeal by decree and judgment dated 25.11.2014 and decreed the suit granting perpetual injunction in favour of the petitioner.

After passing decree, J.Dr. continuously attempting to interfere with the possession and enjoyment of the D.Hr. over the schedule property, therefore, petitioner filed Execution Petition under Order XXI Rule 32 of C.P.C.

The specific reason assigned by the petitioner for grant of police protection is that J.Dr. and her agents are trying their best to dispossess him from the schedule property and to protect his

possession, he lodged a complaint with the police, but no purpose was served. Therefore, the petitioner was constrained to file E.P.No.1 of 2015 and during pendency of E.P., the same petitioner filed E.A.No.8 of 2015 under Section 151 of C.P.C. to provide police protection to protect the possession of the petitioner.

The respondent filed counter denying the material allegations inter alia contending that the petition was filed with false and frivolous allegations and it is not maintainable. It is asserted that the J.Dr. and her agents are trying to interfere with the property is false and in fact D.Hr. vacated the property, thereby the question of interference does not arise. It is also contended that the D.Hr. is not at all in possession and enjoyment of the suit schedule property and shifted his articles and the same was video graphed by the respondent, thereby the question of granting police protection does not arise and prayed for dismissal of the petition.

The Executing Court dismissed the application on the ground that there was no provision for grant of police protection for implementing the decree of injunction, at best, the remedy available to the D.Hr. is under Order XXI Rule 32 of C.P.C., therefore, the relief prayed for in the petition is misconceived and that apart Execution Petition is pending for adjudication and during pendency of such petition, the Court cannot grant police protection at this stage, which is beyond the scope of under Order XXI Rule 32 of C.P.C.

Undisputedly, the D.Hr. obtained decree for perpetual injunction in O.S.No.251 of 2010 restraining the respondent and her men from interfering with the possession and enjoyment,

though initially the suit was dismissed, but the same was decreed by the appellate Court, to protect possession and to implement the decree the petitioner has to file petition under Order XXI Rule 32 of C.P.C.

Order XXI Rule 32 of C.P.C. reads thus:

32. Decree for specific performance for restitution of conjugal rights or for an injunction. (1) Where the party against whom a decree for specific performance of a contract, or for restitution of conjugal rights or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

In case of attachment and committing to Civil Prison, certain procedure is provided under sub-rules (2) to (4).

But sub-rule (5) further permits the D.Hr. to seek certain other reliefs, which is extracted hereunder.

“(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.”

Thus, by invoking sub-rule (5) of Rule 32 of Order XXI of C.P.C. the D.Hr. may claim police protection in addition to the relief of sending J.Dr. to civil prison and attachment or both. There is an amendment to sub-rules 3 and 4, which I am not concerned with in the present revision.

In the present case, Execution Petition is filed under Order XXI Rule 32 of C.P.C. is not placed on record to find out what was the relief the petitioner claimed i.e. either for arrest of J.Dr. or for attachment or for both or in addition to or in lieu of above two reliefs claimed any other relief covered under sub-rule (5) of Rule 32 of Order XXI of C.P.C.

Even if the said relief is claimed, after hearing both the parties the Court can pass final order in the Execution Petition, but the petitioner is not entitled to file a petition under Section 151 of C.P.C. during pendency of Execution Petition. Therefore, filing of such application to provide police protection during pendency of Execution Petition by way of interlocutory order is misconceived.

To claim protection to implement the order of interim injunction or perpetual injunction, the standard of proof and requirements to grant such relief is totally different.

In **“Polavarapu Nagamani and others v. Parchuri Koteshwara Rao and others¹”** after analyzing entire law, the Division Bench laid down the following guidelines to exercise jurisdiction under Section 151 C.P.C to provide police protection and they are as follows:

(i) When the allegations are made by the party obtaining an order of injunction, that the said order has been violated, an application seeking police protection would not lie. The aggrieved party has to necessarily file execution petition under Order XXI Rule 32 or an application under Order XXXIX Rule 2A of Code of Civil Procedure seeking attachment and/or arrest of the violator for contempt of the Court.

¹ 2010 (2) ALD 41 (DB)

(ii) *When a petition is filed seeking police protection, whether or not to exercise of power under Section 94(e) or Section 151 of CPC, the facts alleged or pleaded. An order for police protection cannot be passed in a routine manner.*

(iii) *If an application is filed by the person obtaining ad interim injunction alleging that there is a threat of breach, disobedience or violation of the order of injunction, subject to proof, the Court has power to order police protection imposing necessary conditions not to interfere with the life and liberty rights of the opposite party.*

(iv) *The standard of proof required in the case of threat of disobedience of injunction or alleged breach, disobedience or violation of an order of injunction should be very high and it should be in between the standard of beyond reasonable doubt and a standard of balance on probabilities. Be it noted, as held by Supreme Court in **Chottu Ram v. Urvashi**² and **Anil Ratan Sarkar v. Hirak Ghosh**³, in all cases of contempt the plea should be proved applying the very high standard of proof and not mere affidavits or self-serving statements of the party seeking the intervention of the Court.*

In view of guideline no.4 of the “**Polavarapu Nagamani and others v. Parchuri Koteswara Rao and others**” (referred supra), the standard of proof required in the case of threat of disobedience of injunction or alleged breach, disobedience or violation of an order of injunction should, be very high and it should be in between the standard of proof beyond reasonable doubt and a standard of proof on probabilities.

If such is the law, bald allegations made in the affidavit filed by the D.Hr. that the “J.Dr. and her agents continuously interfering in the possession of the D.Hr. over the suit schedule property and trying to dispossess the D.Hr. from the possession of

² (2001) 7 SCC 530

³ (2002) 4 SCC 21

the property” are not sufficient to grant police protection. Though the petitioner made an allegation that he approached the police and lodged a complaint dated 12.02.2015, the allegations made in the complaint are not part of petition. But the police did not take any action against the J.Dr. and her alleged men, who made an attempt to interfere with the possession of the D.Hr. If for any reason, the decree of permanent injunction is disobeyed by the J.Dr. or her men, the remedy open to the D.Hr. is to seek relief in the Execution Petition, but not by way of Interlocutory Application.

In “**P.R. Muralidharan and others v. Swamy Dharmananda Theertha Padar and others**”⁴ the Supreme Court had an occasion to consider whether a High Court under Article 226 of the Constitution of India could grant the relief of police protection. It held that in a given case, a person may be entitled to police protection having regard to the threat, protection to his life and liberty or for protection of rights declared by a decree or order passed by a civil court, and if court is satisfied that the authorities have failed to perform their duties. It held that there would be no such entitlement for protection of the writ petitioner's rights in question (to property or to an office and discharging of certain functions) when the writ petitioner's rights to do so are open to question as manifested by the pleadings themselves.

The Supreme Court in “**Meera Chauhan v. Harsh Bishnoi**”⁵, held that when parties violate order of injunction or stay order or act in violation of the said order the court can, by exercising its inherent power, give appropriate direction to the police authority to

⁴ (2006) 4 SCC 501

⁵ (2007) 12 SCC 201

render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order and held as follows:

“14. Before we deal with this question of possession as to who was in actual possession at the relevant point of time it would be appropriate to note that the order for restoration was passed by the trial court on an application under Section 151 of the Code of Civil Procedure. A question may arise whether such an application can be entertained by the court when specific provision under Order XXXIX of the Code of Civil Procedure has been made for grant of injunction in the form of mandatory order in the exercise of power under the said order. Therefore to decide this aspect of the matter, let us consider the scope of Section 151 of the Code of Civil Procedure. Section 151 reads as under:

151. Saving of inherent powers of Court.--Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

The Supreme Court in “**Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal**”⁶ while dealing with the power of the court to pass orders to meet the ends of justice or to prevent the abuse of the process of the Court, the Court held that the courts have inherent jurisdiction to issue temporary order of injunction in the circumstances which are not covered under the provisions of Order XXXIX of the Code of Civil Procedure. However, it was held by the Court in the aforesaid decision that the inherent power under Section 151 of the Code of Civil Procedure must be exercised only in exceptional circumstances for which the Code lays down no procedure. At the same time, it is also well settled

⁶ AIR 1962 SC 527

that when parties violate order of injunction or stay order or act in violation of the said order the court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

Thus, the law declared by the Apex Court, Division Bench of this Court and Single Judge of this Court referred above at best would show that the police protection can be provided to implement the order when interim order is violated by the respondent. There is no quarrel with regard to power of the Court to grant police protection for implementation of the order of injunction, but what is high standard of proof is required in such case, is the question in this petition.

In view of the law declared by the Division Bench of this Court, which is a binding precedent on the learned Single Judge, high degree of standard of proof is required to grant police protection and based on a bald allegation in the affidavit filed along with the petition, the Courts are not supposed to provide such police protection, since it will have serious consequences which the Presiding Officer of Court can visualize as an ordinary prudent person.

In “**Bijiga Papa Rao and others v. Jonnalagadda Srinivasa Rao**⁷” in paragraph No.17, the learned Single Judge held as follows:

“17. It is required to be noted that the ultimate endeavour of the Courts should be in the direction of the upholding the majesty of the Courts and safeguarding the sanctity of the orders and decrees of the Courts from being invaded and flouted in the name of lame, feeble and unreasonable excuses and explanations and in the name of unsustainable technicalities. In the instant case, the petitioners herein, having suffered an order of injunction and having failed to assail the same, are attempting to take shelter in the guise of pendency of suit, O.S. No.88 of 2013, and in the considered view of this Court, the same is not tenable in the absence of any order in their favour. The efforts of the Courts should necessarily be in the direction of creating confidence in the people in the system and the same cannot be achieved without respect to the rule of finality. It is a settled law that unless the order under challenge suffers from jurisdictional error and patent perversity, the jurisdiction of this Court under Article 227 of the Constitution of India is not available. Since the order under challenge, in the considered opinion of this Court, does not suffer either from any jurisdictional error or any perversity, this Court does not find any justification to meddle with the order impugned.

This is also in the lines of “**Gampala Anthaiah v. Kasarla Venkat Reddy**⁸”. The legal principle laid down by the learned Single Judge is not in quarrel. But still, high stand of proof is required to pass such an order of providing police protection to the person aggrieved. But in the present case, except making a bald allegation in the affidavit which I extracted above, is not supported by any material. There is absolutely nothing enabling the petitioner to claim police protection to implement the order passed by the Trial Court. In the absence of any material regarding alleged violation of the order, based on bald allegations, the Courts are not expected to provide police protection, in view of serious consequences that flow from passing of such orders. Therefore, the

⁷ 2015 (2) ALD 171

⁸ 2014 (2) ALD 281

Trial Court rightly declined to provide police protection, as the petitioner failed to substantiate the allegation that the respondent made a serious attempt to dispossess him from the property. Therefore, the finding recorded by the Trial Court does not call for interference by this Court and the petitioner is at liberty to approach the Court under Order XXI Rule 32 of C.P.C., if there is any violation or disobedience of order where regular enquiry is to be conducted to punish the violator.

In the present facts of the case, the petitioner made a bald allegation that the respondent and her men are trying to interfere with his possession, whereas the respondent contended that D.Hr. already vacated the premises and the same was video graphed, but such question have to be decided in the Execution Proceedings, not in the interlocutory application filed under Section 151 of C.P.C.

The allegations made in the affidavit are not supported by any iota of evidence and in the absence of any piece of paper in support of such allegation, the Court cannot grant police protection as a matter of routine in view of serious consequence that may ensue on account of passing such order.

Therefore, the petitioner miserably failed to prove the alleged interference beyond reasonable doubt since the standard of proof required in such case is high.

The Execution Petition is still pending before the Court and if the petitioner really aggrieved by such threat of interference may seek relief under sub-rule (5) of Rule 32 of Order XXI of C.P.C. but not by filing a separate application as an interim measure since

the Execution Petition is still pending before the Executing Court, on this ground the revision is liable to be dismissed.

The present revision is filed under Section 115 of C.P.C., which permits this Court to call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears to have exercised jurisdiction not vested in it by law, or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity and pass appropriate order.

Here, in this case the petitioner did not raise any contention that the Executing Court exercised jurisdiction not vested on it by law or failed to exercise jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material irregularity. In the absence of raising such ground, this Court cannot interfere with the impugned order passed by the Executing Court. Therefore, it is difficult for me to interfere with the order under challenge in view of limited jurisdiction that conferred on this Court under Section 115 of C.P.C., consequently I find that the revision is devoid of merits and deserves to be dismissed.

In the result, the revision is dismissed. No costs.

Consequently, miscellaneous applications pending if any shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

21.04.2017
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