

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 544 of 2018**

- Pramod Kumar Dubey S/o Late Shri Shyamlal Dubey, Aged About 68 Years
Occupation Retired Teacher, R/o Baikunthpur, Raigarh, Tehsil And District
Raigarh Chhattisgarh

---- Petitioner**Versus**

- Anil Kishore Mishra S/o Late Hemlal Mishra, Aged About 51 Years
Occupation Service (Civil Court), R/o Baikunthpur, Raigarh, District Raigarh
Chhattisgarh

---- Respondent

For Applicant : Shri Roop Naik, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****03/07/2018**

1. Heard.
2. The instant petition is against the order dated 13.03.2018 passed in Misc. Civil Appeal No.01/2018. The said appeal was preferred against the order dated 05.12.2017 passed in MCC under Order 39 Rule 1 and 2 – A CPC for breach of injunction.
3. The brief facts of this case are that a suit was filed by the respondent/plaintiff, wherein an application under Order 39 Rule 1 & 2 CPC was filed against the defendant. In such application for injunction prayer was made that in Baikunthpur plot No.318 ad-measuring 2422 sq. feet sheet No.31 and the part of the land towards the west which is shown in the suit map as A and was delineated in red, the defendant be restrained to disturb the possession and raise construction there over. The said application

under Order 39 Rule 1 & 2 CPC was adjudicated by the order dated 19.05.2006, whereby the petitioner/defendant through their agents and servants were restrained to raise construction over the suit land. Thereafter, it was the case of plaintiff/respondent that despite the injunction order the petitioner/defendant continued with the construction and having objected to the same, he was abused. Eventually, he filed an application under Order 39 Rule 2 A CPC for breach of injunction to punish the petitioner/defendant accordingly. In the said application, the Court below recorded the evidence of the parties and eventually came to a conclusion that there has been a willful disobedience of the order committed by the petitioner/defendant and passed an order under Order 39 Rule 2A CPC and ordered for attachment of the immovable property of the petitioner and send him to three months civil imprisonment. The said order was subject of first appeal in 1/18 before the First Additional Sessions Judge to the Court of Third Additional District Judge, Raigarh. The Court of Additional District Judge dismissed the appeal by holding that the finding arrived at by the Court below that the petitioner/defendant has committed willful breach of the order cannot be faulted. As such affirmed the order passed by the Court below. The said order is under challenge before this Court.

4. Learned counsel for the petitioner submits that the application under Order 39 Rule 2A CPC only survives up till the decree is passed and once the decree is passed, it merges into the decree. It is submitted that the order dated 05.12.2017 cannot be passed independently. Learned counsel further submits that there is no deliberate disobedience of the order as the injunction order was not in know of the petitioner. He places his reliance in the case of ***Ravi Yashwant Bhoir Versus District Collector, Raigad and others {(2012) 4 SCC 307}*** and submits that once the decree has been passed, the application to enforce the decree cannot be independently

executed by virtue of Order 39 Rule 2A CPC, therefore, the order passed by both the Courts below needs to be set aside.

5. Perused the documents filed along with the petition. The document would show that by order dated 19th May, 2006 passed in civil suit No.56A/2006 by 4th Civil Judge, Class-II, Raigarh an injunction order was passed against the defendant/petitioner by allowing an application under Order 39 Rule 2 (1) & (2) CPC, whereby the defendant/petitioner was restrained to raise any construction over the disputed part of the Sheet No.31, Plot No.318 area 2422 Sq. Feet. The document which has been filed shows that thereafter an application under Order 39 Rule 1 & 2 A of the CPC was filed, wherein it was pleaded that despite the injunction order, the petitioner/defendant continued with his construction and when it was objected, the plaintiff was abused and it was stated that he keeps like nature of order in the pocket and on this ground it was stated that there has been deliberate breach of the order under Order 39 Rule 2 – A CPC committed by the petitioner/defendant, therefore, he may be sent to three months civil imprisonment and attachment of the properties. In reply the averments were denied by the petitioner.
6. Court thereafter went to proceed to record the evidence of the plaintiff and the petitioner/defendant. The respondent /plaintiff recorded his statement and statement of one Rajesh Khakha, police constable and petitioner/defendant recorded his evidence and of one Barat Ram and Amrit Lal Bareth. The record also contains an order dated 01.02.2010 passed in Misc. Civil Appeal No.21/09 which on the caption it is shown that the said appeal so filed against the same order dated 04.08.2009 before the Additional District Judge and on 01.02.2010 after four years the Third Additional District Judge observed that the order dated 19.05.2006 could not

be further continued. What are the backgrounds of this order and how it was passed it was not clear before this Court and no document has been filed and order dated 04.08.2009 is also not placed before this Court.

7. Be that as it may, it appears that the finally the application under Order 39 Rule 2 A CPC was decided on 05.12.2017. The impugned order dated 13.03.2018 which is before this Court records a finding that the order dated 05.12.2017 passed in MJC No.1/13 whether requires to be set aside or not. The original order dated 05.12.2017 passed in the MJC is also not before the Court, therefore, the averments are travelled through the facts which are not in the order of the appellate Court. It appears that the appellate Court while adjudicating the issue has considered the statement of the petitioner and this admitted fact was considered that the petitioner Pramod Kumar Dubey had continued with the construction despite the stay order was existing. The statement of the witnesses adduced in the MJC i.e. Barat Ram Yadav was considered, wherein the Court found when he stopped the work of construction was not clarified. It is further observed that after the stay order was passed on 19.05.2006 since the petitioner continued with the construction a report was made to the police, it was marked as Ex. P-1 and the police refused to entertain the complaint on the ground that it is a non-cognizable offence. The Court further observed that after the report was made and the police witness Rajesh Khakha, who was T.I. went to the spot, he saw and observed that the petitioner was continuing with his construction and it was held that such construction was even after injunction order of the Court. The Court after evaluating the evidence further observed that even after passing of the stay order, the petitioner continued with his construction and eventually found that the order passed in MJC on 05.12.2017 is well merited.

8. The submission made by the petitioner that the application under Order 39 Rule 2 A CPC could not be separately adjudicated when the decree has been passed on the basis of the law laid down by the Supreme Court in ***Ravi Yashwant Bhoir*** (supra) appears to be misplaced as the facts would reveal that while the suit was pending and injunction order was passed on 19th May, 2006 a deliberate breach was committed by the petitioner and during such time only an application under Order 39 Rule 2A CPC was filed on 12.06.2006 while the suit was pending. The submission made by the petitioner that the MJC and the suit has been decided on the same date i.e. on 05.12.2017 rather supports the fact that before the suit was decided the breach of injunction was already complained by filing an application under Order 39 Rule 2-A CPC. Therefore, the ratio of law decided by the Supreme Court will not be applicable in the given case. Herein in this instant case, by evidence it was established that the construction was continued even after passing of the order of injunction. The final judgment and decree is not filed. It is only the oral submission made by learned counsel for the petitioner that on 05.12.2017 the judgment and decree was passed simultaneously with the orders in MJC of Order 39 Rule 2A CPC.
9. It is a finding of fact by both the Courts below that breach of injunction has been committed by the petitioner. Having found the breach of order of Court has been deliberately done the Court cannot be dormant.
10. In the like situation, the Supreme Court in the matter of **Narayan Dutt Tiwari Vs. Rohit Shekhar and Another {(2012) 12 SCC 554}** has held thus in paras 23, 24 & 44, which are quoted as under:-

“23. The House of Lords, in *Attorney General V. Guardian Newspapers Ltd.* observed that public interest requires that we have a legal system and courts which command public respect and if the courts were to make orders manifestly incapable of achieving their avowed

purpose, law would indeed be an ass. It was further held that the court should not make orders which would be ineffective to achieve what they set out to do.

24. The Supreme Court also, in *K.A. Ansari v. Indian Airlines Ltd.* has held that : (SCC p.170, para 20)

“ 20.....Difficulty in implementation of an order passed by the court, howsoever grave its effect may be, is no answer for its non-implementation.”

44. A Division Bench of the Madras High Court in *Sri-la-Sri Sivasubramanyananda Swami v. Sri-la-Sri Arunachalasamy Chidambaram* had the occasion to examine whether the civil courts can issue directions to the police officials for execution and implementation of the orders of the civil court. Relying on *Jaipur Mineral Development Syndicate v. CIT* it was held that the civil courts in exercise of their inherent power and in the absence of any express or implied prohibition are entitled to pass orders as may be necessary to prevent abuse of the process of the court and to avoid gross miscarriage of justice. It was accordingly held that a litigant who has secured an order from the court is entitled to full benefit thereof and the court is entitled to resort to law enforcement machinery to see that its orders are obeyed. It was further held that no technicality can prevent the court from doing justice in exercise of its inherent powers. To the same effect is the judgment of the Karnataka High Court in *Karisiddamma v. Sanna Kenchamma*.”

11. The petitioner cannot be allowed to have a safe route by shelving the lawful orders of the Court by making its effect porous in the eyes of general people. The order of the Court in any case are to be followed irrespective of the difficulties falls out of it. In a result, when finding of two Courts have been arrived at of deliberate breach of the injunction order or Court by the petitioner, this Court is not inclined to interfere with such order.

12. The petition has no merit. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu