

THE HONOURABLE SRI JUSTICE T. VINOD KUMAR

CIVIL REVISION PETITION NO.2516 OF 2019

ORDER:

This Civil Revision Petition is directed against the order dated 18.09.2019 in C.M.A. No.70 of 2018 of XIII Additional District & Sessions Judge, Ranga Reddy District at L.B. Nagar, whereby the Appellate court, confirmed the order dated 13.08.2019 in I.A. No.510 of 2018 in I.A. No.208 of 2018 in O.S. No.387 of 2018 passed by the Learned VIII Additional Senior Civil Judge, Ranga Reddy District.

The case of the revision petitioner is that the learned XIII Additional District & Sessions Judge, erred in confirming the order passed by the VIII Additional Senior Civil Judge, Ranga Reddy District in I.A. No.510 of 2018 in I.A. No.208 of 2018 in O.S. No.387 of 2018 VIII Additional Senior Civil Judge, Ranga Reddy District, whereby the revision petitioner was found to have acted in disobedience and breach of the injunction order and convicted for civil contempt under Order 39 Rule 2A of Civil Procedure Code, 1908.

The brief facts of the case are that the respondent herein had filed the suit against the revision petitioner in O.S. No. 387 of 2018, before the VIII Additional Senior Civil Judge, Ranga Reddy, for perpetual injunction in respect of the suit schedule property bearing No. 4-7-146/16, on Plot No. 6, Shanthivanam Township, admeasuring 260 Sy.yds, in Survey No. 260, Bagh Hayathnagar Village & Revenue Mandal, Ranga Reddy District, Telangana. In the said suit, the respondent herein filed an I.A. No.208 of 2018

under Order XXXIX Rules 1 and 2 CPC seeking the relief of temporary injunction. The petitioner herein resisted the said I.A. and filed counter, wherein it is claimed that the petitioner had obtained provisional permission from the GHMC authorities for construction of residential building consisting of first floor and the construction of house is in progress. The Trial court after taking in to consideration the documents available on record including the judgment and decree dated 09.03.2016 in O.S. No. 105 of 2011 against the vendors of the petitioner herein, allowed the contested I.A. No. 208 of 2018 by order and decree dated 02.05.2018 restraining the petitioner from proceeding with further construction until disposal of the suit.

Despite an order of temporary injunction having been passed by the learned VIII Additional Senior Civil Judge on 02.05.2018, the petitioner herein continued with the construction, thus I.A. No.510 of 208 in I.A. No. 208 of 2018 in O.S. 387 of 2018 was filed by the respondent before the Trial Court, under Order XXXIX Rule 2-A of C.P.C. for punishing the petitioner for disobedience and breach of the injunction order. The petitioner filed counter therein opposing the said I.A. The respondent marked Exhibits P-1 o P13 in the said I.A. The Trial Court by taking note of the submissions made and also the exhibits marked by the respondent and the conduct of the petitioner, found that the petitioner has breached the injunction order after it was passed on 02.05.2018 in I.A. 208 of 2018 to stop further construction and proceeded with further construction for which the petitioner was found liable for civil imprisonment. Thus, the trial court by its order dated 13.08.2018 allowed the I.A. 510 of 2018 in I.A. 208 of 2018 in O.S. No. 387 of

2018 holding that the petitioner herein to be detained in civil imprisonment for a period of one month for disobedience of the orders in I.A. 208 of 2018.

The petitioner being aggrieved by the order dated 13.08.2018 in I.A. 510 of 2018 in I.A. 208 of 2018 in O.S. No. 387 of 2018 passed by the VIII Senior Civil Judge, filed CMA No.70 of 2018 before the XIII Additional District & Sessions Judge, Rangareddy District.

The Appellate Court by its order dated 18.09.2019, by taking note of the report of the Advocate commissioner, who visited the premises on 22.05.2019, and the presence of structures being constructed from first floor to fifth floor, held the same to be in violation of the injunction order dated 02.05.2018 in IA No. 208 of 2018 in O.S.No. 387 of 2018. Thus, the Appellate court did not find favour with the submission of the petitioner of not having acted in disobedience and breach of injunction order of the trial court and held that the trial court rightly allowed the petition filed under Order XXXIX Rule 2A of CPC in I.A. No. 510 of 2018 by its order dated 13.08.2018 and dismissed the C.M.A. No. 70 of 2018.

Assailing the said order of the Appellate Court dated 18.09.2019, the present revision is filed by the petitioner.

Heard Sri. G. Shankaraiah, learned counsel of the petitioner and G. Venugopal Reddy, learned counsel for the respondent.

The learned counsel for the petitioner has vehemently urged that the appellate court erred in confirming the order passed by

the trial court under Order XXXIX Rule 2A of CPC, on the ground that there is no disobedience of the order passed in I.A. No. 510 of 2018 since the identity of the property of the petitioner being different from that of the contesting respondents. The learned counsel for the petitioner has sought to draw attention of this court to the relief sought for by the respondent in the suit to submit that the learned Trial court exceeded its jurisdiction in passing the order.

The learned counsel for the respondent while seeking to sustain the order of both the appellate court and the trial court, would submit that the petitioner had purchased the suit schedule property from its vendors, during the pendency of the suit in O.S. 105 of 2011 against them and the said suit being decreed against the vendors, the doctrine of *lis pendse* would apply.

Having regard to the submissions made on both sides, it is to be seen that the present revision is filed against the order of the appellate court confirming the order of trial court, whereby the petitioner is found to have acted in disobedience and breach of injunction order. Though, the learned counsel for the petitioner sought to urge that the identification of the suit schedule property is different from that the petitioners property, the same cannot be gone into in the present revision petition for the reason, the said issue is the subject matter of O.S. No.387 of 2018 which is pending consideration before the VIII Additional Senior Civil Judge, Ranga Reddy. Further, in the present revision petition, the limited issue, which needs consideration is whether the order of the appellate court confirming the order passed by trial court under

Order XXXIX Rule 2A of CPC, whereby the petitioner is directed to be detained in civil imprisonment for a period of one month needs to be interfered with by setting aside the same.

As seen from the order under challenge, having regard to the defence put up by the petitioner of not having acted in disobedience of the order of temporary injunction dated 02.05.2018 of the Trial court, the appellate court appointed an Advocate Commissioner to note down the physical features of the suit schedule property. Upon the Advocate commissioner visiting the property and filing the report into the court, the Appellate Court has elaborately dealt with the claim of the petitioner wherein it is observed as under:

“In the Civil Miscellaneous Appeal and Advocate Commissioner was appointed to note down the physical features of the suit schedule property. Atleast by this time the Appellant ought to have shown both the properties to the Commissioner and ask him to note down the physical features of both the properties to establish that they are different properties. But he did not do so. The Commissioner after visiting the said property got filed his report along with photographs, wherein there is a building consisting of ground floor + five upper floors and therein construction work is going on. Even in the Commissioner’s report, it is held that the suit schedule property is consisting of ground floor + five upper floors including pent house and overhead water tank and in the ground floor one bore well along with septic tank and the stage of construction of the building is semi finished i.e, third and fourth floor brick work was under construction and in the ground floor consisting of three rooms in finished condition along with bathroom and respondent/appellant is residing in the same.”

The appellate court having regard to the report of the Advocate Commissioner and the findings recorded by the trial court at para 8 of the injunction order wherein it is stated that the

construction is at pillar stage, came to the conclusion that the petitioner continued with the construction of work even after injunction order was passed on 02.05.2018, whereby the petitioner was directed not to proceed with the construction work till disposal of the suit. On the above basis, the appellate court found the petitioner having acted in violation of the injunction order of the trial Court and found no reason to interfere with the order passed by the trial court holding the petitioner to be in disobedience and breach of the injunction order. The appellate court while confirming the order of the trial court, further noted that, if the claim of the petitioner of having stopped the construction work on 01.05.2018, there is no answer as to how the construction of ground + five floors came up on the petition schedule property. Thus, the claim of petitioner not having acted in disobedience of the injunction order is moonshine.

The scope of Order XXXIX Rule 2A of CPC is to enforce the order of the court and one such mode prescribed is by detaining the person in breach, in civil prison. In so far as power to punish for disobedience of court orders has been dealt with by the Hon'ble Supreme Court in the case of ***Delhi Development Authority v. Skipper Construction***¹, wherein the court was pleased to observe that if a lenient view is taken with regard to disobedience of the court orders, the person who obtains such orders against the parties who are the perpetrators of the acts will further get boldened and the court should deal with such disobedience strictly.

¹ (1996) 1 SCC 272

Further, in the case of **Surya Vadanan Vs. State of Tamil Nadu**², the Supreme Court observed –

“ violation of an interim or an interlocutory order passed by a court of competent jurisdiction ought to be viewed strictly if the rule of law is to be maintained. No litigant can be permitted to defy or decline adherence to an interim or an interlocutory order of a court merely because he or she is of the opinion that that order is incorrect - that has to be judged by a superior court or by another court having jurisdiction to do so.”

“If as a general principle, the violation of an interim or an interlocutory order is not viewed seriously, it will have widespread deleterious effects on the authority of courts to implement their interim or interlocutory orders or compel their adherence.”

Thus, having regard to the law laid down by the Apex Court, having regard to the facts of the case which clearly indicate an intentional disobedience on the part of the petitioner in violating the orders of the learned VIII Additional Senior Civil Judge in I.A. No.208 of 2018 in O.S. No.387 of 2018, this Court is of the view that the petitioner instead of taking steps to have the *injunction* order vacated before the court below or challenging the said *injunction order* before the higher forum, had acted in violation of such orders and therefore the conduct of the petitioner is highly contumacious.

Once, it is held that the petitioner had acted in disobedience and breach of the injunction order, the consequences that follow are, but natural.

However, having regard to the fact, that the petitioner is a lady, aged about 53 years and working as a teacher, if ordered to

² (2015) 2 SCC 183

undergo civil imprisonment for one month would suffer severe hardship, this court is of the view that a humanitarian approach is to be adopted, but not without testing the bonafides of the petitioner. Thus, applying the principle of restitution, the petitioner is hereby directed to bring down the illegal construction made to the suit schedule property after passing of the injunction order dated 02.05.2018 in I.A. No. 208 of 2018 by the VIII Additional Senior Civil Judge, to show her bonafides and tender her unconditional apology before the trial court within 30 days from the date of receipt of a copy of this order, by filing a petition along with photographs. Failing such compliance, the order dated 18.09.2019 in C.M.A. No. 70 of 2019 passed by the XIII Additional District & Sessions Judge, Ranga Reddy District, confirming the order dated 13.08.2018 in I.A. No.510 of 2018 in I.A. No.208 of 2018 in O.S. No.387 of 2018 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, stands affirmed and the petitioner shall be detained in civil prison for a period of one month.

Subject the above observation and direction, the Civil Revision Petition is disposed of. No order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

T. VINOD KUMAR, J

Date: 17.02.2020
MRKR