

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1034/2018

PETITIONER : Pralhad s/o Nagorao Bodkhe
Aged about 62 years, occ. agriculturist
and service,
r/o Shukrwarpeth, Washim,
Tq. and Distt. Washim,
(Original defendant no.1)

...VERSUS...

RESPONDENTS :

1. Sau. Sulochana Ramchandra Kawarkhe,
Aged about 51 years,
Occ. household work,
r/o Goregaon, Tq. Sengaon,
Distt. Hingoli
(Ori. Plaintiff)
2. Sau. Satyabhama Mahadu Ingole,
Aged about 66 years,
occ. household work,
r/o Manjar Jawla, Post Belora,
Tq. Pusad, Distt. Yavatmal,
(original defendant no.2)
3. Sau. Shobha Uddhav Morey,
Aged about 56 years, occ. cultivator,
r/o Taktoda, Tq. Malegaon,
Distt. Washim,
(original defendant no.3)
4. Arun s/o Dagduji Pawar,
Aged about 46 years, occ. cultivator,
(Original defendant no.4-A)

5. Ganesh s/o Dagduji Pawar,
Aged about 44 years,
(Original defendant no.4-B)

Nos.4 and 5 by occ. cultivator and Service,

c/o Shri Rathod Sir, I.U.D.P Colony,
Washim, Tq. and Distt. Washim.

Mr. C.A. Joshi, Advocate for petitioner
Mr. V.K. Paliwal, Advocate for respondent no.1

CORAM : AVINASH G. GHAROTE, J.

Judgment reserved on : 11/02/2021

Judgment pronounced on : 16/02/2021

J U D G M E N T

1. Heard. Rule. Rule made returnable forthwith.
2. In Regular Civil Suit No.140/2012 a suit for partition and separate possession, filed by the present respondent no.1, for 1/5th share in the suit property, claiming to be the co-owner of the same, on account of the property being purchased on 7/6/1966 by the petitioner's maternal uncle Narayan Laxman and therefore was a joint family property, the learned Trial Court, on an application for grant of temporary injunction, granted ad interim relief on

22/3/2012, restraining the defendant no.1 (the present petitioner) from alienating or creating third party interest in the suit properties until further orders.

3. On 11/4/2012, the petitioner (defendant no.1) executed and registered two sale-deeds, one in respect of 2.42 hectares (northern side) of Gat No.20 in favour of Shaikh Aslam Gulam Rasul and Abdul Rahim Gulam Rasul for consideration of Rs.3,39,000/- and another in respect of 2.21 acres of land (southern side) of Gat No.20 in favour of Shaikh Ansar Shaikh Kasam and Gulam Rasul Shaikh Chand for a consideration of Rs.3,09,000/-.

4. The respondent no.1, filed an application under Order XXXIX Rule 2-A of C.P.C., claiming the violation of the order of ad interim injunction dated 22/3/2012 by the present petitioner (defendant no.1) and prayed for detention of petitioner (defendant no.1) in civil prison for three months.

5. The petitioner (defendant no.1) filed his say on the application under Order XXXIX Rule 2-A of C.P.C. Thereafter, as the

Counsel for petitioner (defendant no.1) was absent the learned Trial Court by treating his say on the application under Order XXXIX Rule 2-A of C.P.C., as his arguments, by an order dated 31/8/2017 held that the summons intimating the order of the Court in respect of ad interim injunction was served upon the petitioner (defendant no.1) on 30/3/2012 and so also the respondent no.1 (plaintiff) had also communicated the injunction order by way of R.P.A.D., dated 24/3/2012 and therefore the petitioner had knowledge of the same, in spite of which, the petitioner executed and registered two sale-deeds on 11/6/2012 in respect of the suit property and thus finding violation of the order of ad interim injunction, directed the defendant no.1, petitioner to be detained in civil prison for a term of three months.

6. Against this order dated 31/8/2017 an appeal has been preferred by the present petitioner before the District Judge, Washim bearing Misc. Civil Appeal No.17/2017, in which by an order dated 4/10/2017, the order directing detention of the petitioner in civil prison for a period of three months dated 31/8/2017 has been stayed during the pendency of the appeal. The

legality of efficacy of the order as passed on the application under Order XXXIX Rule 2-A of C.P.C. is not under challenge in the present petition, the same being subject matter of Misc. Civil Appeal No.17/2017 and therefore the present petition is restricted to the efficacy and legality of the impugned order and the discretion as exercised by the learned Trial Court, in passing the same.

7. On 16/7/2012, the respondent no.1/plaintiff filed an application under Order XXXIX Rule 11 read with Section 151 of C.P.C., for striking of the defence of the petitioner/defendant no.1 for having breached the order of injunction, which came to be allowed by an order dated 31/8/2017, whereby the defence of the petitioner/defendant no.1 is struck off. It is against this order, striking off the defence of the petitioner/defendant no.1 that the present petition has been filed.

8. Mr. C.A. Joshi, learned Counsel for the petitioner, submits, that the suit as filed by the respondent no.1, was not maintainable for the reason, that the property was purchased by the maternal uncles of the petitioner in the name of the petitioner by a

deed of sale dated 7/6/1966, for which he invites my attention to a typed copy thereof placed on record at Annexure-10. He therefore contends that the respondent no.1/plaintiff did not have any right whatsoever in the suit property and the suit on that count would not be tenable. He however, does not dispute that the petitioner has executed two sale-deeds of the suit property on 11/6/2012 as narrated above. Mr. C.A. Joshi, learned Counsel for the petitioner also does not dispute that the petitioner before the execution and registration of the sale-deeds dated 11/6/2012, had knowledge about the passing of the order of ad interim injunction, dated 22/3/2012. The contention of Mr. C.A. Joshi, learned Counsel for the petitioner is that as already action under Order XXXIX Rule 2-A of C.P.C., has been taken, taking further action under Order XXXIX Rule 11 of C.P.C., would amount of double jeopardy, of punishing the petitioner for the same action twice, for which reliance is placed on *Shiv Kumar Sharma Vs. Haryana State Electricity Board, AIR 1988 SC 1673*. Mr. Joshi, learned Counsel further submits that the provisions of Order XXXIX Rule 11 of C.P.C., are directory and not mandatory, for which he places reliance upon *Ramavatar Surajmal Modi Vs. Mulchand Surajmal Modi, AIR 2004, Bom. 212* and *Shaikh*

Samsul Hudda and others Vs. M/s Khayber Properties and Investments Pvt. Ltd. And others, AIR 2004 Bom. 126. He further submits that the impugned order, would result in deciding the claim in the suit in default, which the law abhors. He submits that in all cases, it is necessary that the decision ought to be on merits, and shutting off the defence of the petitioner, in this case, would tantamount to granting a decree to the respondent no.1 without trial. He therefore submits that the impugned order should go and the application under Order XXXIX Rule 11 of C.P.C., should be dismissed.

9. Mr. V.K. Paliwal, learned Counsel for the respondent no.1, submits, that the action on part of the petitioner, in executing the two sale-deeds on 11/6/2012, was clearly deliberate and intentional, in spite of the knowledge of the passing of the order of ad interim injunction, which knowledge is not disputed by the petitioner. He submits that the property sold was the only property available, and in case a decree is granted, no other property would be available. He submits that though the Trial Court, under the provisions of Order XXXIX Rule 2-A of C.P.C., has awarded a

punishment of three months to the petitioner, the same has been stayed by the Appellate Court. He submits that actions of the nature as done by the petitioner of flouting the orders of the Court, ought to be dealt with severely, for the reason that if they are not so done, the same would undermine the judicial process and the faith of the public in the same. He submits that howsoever harsh the punishment, the same has to be suffered by the petitioner, for the action done by him, which clearly amounted to a defiance of the order of the Court, which cannot be countenanced. He therefore submits that no lenient view be taken and the petition is required to be dismissed.

10. The matter of violation of an order of injunction, by a party, and specifically in circumstances where the party, to a lis is shown to have knowledge of the passing of the order, is something which goes to the very root of the administration of justice. Any violation of an order by the Court by a party, aware of it, has to be dealt with an iron hand, for the reason that such a violation undermines the cause of justice. It indicates, the mindset of the party, to violate an order by the Court, howsoever wrong, which

cannot be countenanced. If a party feels that the order by the Court is incorrect or wrong, there is always available to a party, a remedy, in the form of an appeal, where it is a final order and in the form of an application for vacating the same or by filing a reply and getting the application decided, in case it is an ad interim order. By no stretch of imagination, can a party, having knowledge of such an order of injunction, who defies the same, be granted any immunity from the consequences of such defiance. The dictum of the Hon'ble Apex Court in ***Anita International Vs. Tungabadra Sugar Works Mazdoor Sangh and others, (2016) 9 SCC 44*** succinctly elucidates the position in this regard :

“54. We are also of the considered view, as held by the Court in Krishnadevi Malchand Kamathia case [Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group, (2011) 3 SCC 363] , that it is not open either to parties to a lis or to any third parties to determine at their own that an order passed by a court is valid or void. A party to the lis or a third party who considers an order passed by a court as void or non est, must approach a court of competent jurisdiction to have the said order set aside on such grounds as may be available in law. However, till an order passed by a competent court is set aside as was also held by this Court in Official Liquidator [Official Liquidator v. Allahabad

Bank, (2013) 4 SCC 381 : (2013) 2 SCC (Civ) 619] and Jehal Tanti [Jehal Tanti v. Nageshwar Singh, (2013) 14 SCC 689 : (2014) 3 SCC (Civ) 512] cases, the same would have the force of law, and any act/action carried out in violation thereof would be liable to be set aside. We endorse the opinion expressed by this Court in Jehal Tanti case [Jehal Tanti v. Nageshwar Singh, (2013) 14 SCC 689 : (2014) 3 SCC (Civ) 512] . In the above case, an earlier order of a court was found to be without jurisdiction after six years. In other words, an order passed by a court having no jurisdiction had subsisted for six years. This Court held that the said order could not have been violated while it subsisted. And further that the violation of the order before it is set aside is liable to entail punishment for its disobedience. For us to conclude otherwise may have disastrous consequences. In the above situation, every cantankerous and quarrelsome litigant would be entitled to canvass that in his wisdom the judicial order detrimental to his interests was void, voidable, or patently erroneous. And based on such plea, to avoid or disregard or even disobey the same. This course can never be permitted.”

which has been followed in ***Robust Hotels Private Limited and others Vs. EIH Limited and others, (2017) 1 SCC 622.***

11. In ***Keshrimal Jivji Shah and another Vs. Bank of Maharashtra and others, 2004 (3) Mh.L.J. 893***, a Division Bench of

this Court, while considering a transfer of the property made by a party to the proceedings in the teeth of an ad interim order of injunction, held as under :-

“26. We cannot accept Shri Naphade's contention that observations of the Supreme Court in the case of Surjeet Singh should be read as restricted to proceedings under Order 22, Rule 10 of Civil Procedure Code and the same cannot be extended to defiance of injunction order issued under Order 39, Rule 1 of Civil Procedure Code. Once the issue is placed on the pedestal of public policy and the very faith of litigants in Rule of law and administration of justice, then it is not possible to make the distinction or bifurcation suggested by Shri Naphade. It would mean that consequences of nullifying such transaction not being provided by the Statute, it would not lose its legal efficacy even if it is in utter disregard to or in violation of or breach of prohibitory order or order of injunction issued by a Court of law. It would mean that parties can breach and violate Court orders openly and with impunity and neither they nor the beneficiaries suffer any consequences. It is time that we recognise the principle that transfer of immovable property in violation of an order of injunction or prohibition issued by Court of law, confers no right, title or interest in the transferee, as it is no transfer at all. The transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not party to the proceedings in which order of injunction or other prohibitory direction or restraint came to be issued. It is enough that the transferor is a party

and the order was in force. These two conditions being satisfied, the transfer must not be upheld. If this course is not adopted then the tendency to flout orders of Courts which is increasing day by day can never be curbed. The Court exercises its powers on the foundation of respect and regard for its authority by litigating public. People would lose faith and respect completely if the Court does not curb and prevent this tendency. The note of caution of the Supreme Court must be consistently at the back of everybody's mind. Therefore, Shri Naphade is not right in the distinction which he is trying to make.

27. These observations cannot be applied when it is noticed that during the pendency of an order of injunction, immovable property, which is subject matter of restraint or injunction, is transferred. When this course is admittedly adopted, then there is no choice but to declare the transaction as illegal. There is no question of then deciding the nature and effect of the order of injunction.

28. An order issuing interlocutory injunction is issued with a view to preserve and protect status quo during the pendency of the suit or litigation. The true effect of such an order is, therefore, preservation of status quo prevailing as on the date of issuance of the order. Any alteration in the status quo as prevailing and directed to be maintained by the Court of law is not permissible except with leave or sanction of Court. It is well settled that if Courts are not to honour and implement their own orders and encourage party litigants, be they public authorities, to invent methods of their own to short circuit and give a go by to the

obligations and liabilities incurred by them under orders of Courts, the rule of law will become casualty in the process - a consequence to be jealously averred by all and at any rate by the highest Courts in the State. (see AIR 2001 SC 2790 at P2792).”

(emphasis supplied)

A similar view has also been taken by the Hon'ble Apex Court in *C. Elumalai and others Vs. A.G.L. Irudayaraj and another*, (2009) 4 SCC 213, in which by order dated 19/3/2007 the Apex Court had directed disposal of the suit within a period of six months from the date of receipt of the order and that till completion of the suit the parties shall not create any third party right, which was violated, resultantly contempt jurisdiction was invoked in which an apology was sought to be tendered, contending that the respondent no.1, was a victim of circumstances and the unconditional apology be accepted. After considering *L.D. Jaikwal Vs. State of U.P (1984) 3 SCC 405*, para 1; *T.N. Godavarman Thirumulpad v. Ashok Khot and another (2006) 5 SCC 1*, paras 31-32; *Ashok Paper Kamgar Union v. Dharam Godha and others (2003) 11 SCC 1*; *Kapildeo Prasad Sah and others Vs. State of Bihar and others (1999) 7 SCC 569* ; *Attorney General Vs. Times Newspaper Ltd. (1973) 3 All ER*

54 (HL); Anil Ratan Sarkar and others Vs. Hiral Ghosh and others (2002) 4 SCC 21; All Bengal Excise Licensees' Assn. Vs. Raghavendra Singh (2007) 11 SCC 374; Patel Rajnikant Dhulabhai and another Vs. Patel Chandrakant Dhulabhai and others (2008) 14 SCC 561, the Court being satisfied that there has been a willful and deliberate violation of the Court's order, rejected the apology and by invoking the Court's jurisdiction under Article 129 of the Constitution of India impose exemplary costs of Rs 2,00,000 on each of the contemnors and also directed that in case of non-payment, the contemnors shall undergo simple imprisonment for three months each. Any third-party right created after order dated 19/3/2007 was held to be of no consequence and stands set aside.

12. From the above, it is apparent, that any transfer of property, which is the subject matter of the suit and whose transfer is enjoined, by an order of injunction, ad interim or temporary or otherwise, cannot be permitted by a party to the suit, having knowledge of such order, as doing so, would clearly undermine the rule of law, which the Courts are duty bound to protect.

13. In the instant case, the petitioner was clearly aware of the ad interim order of injunction, as passed by the Trial Court, which is reflected, from a perusal of the memo of appeal in Mic. Civil Appeal No.17/2017, challenging the conviction under Order XXXIX Rule 2-A of C.P.C., wherein the following statement has been made:-

“That suit is presented on March 2012. That this appellant presented his W.S. on 19/6/2012. That the trial court has passed exparte order of injunction as follows :

“Ad interim relief in terms of prayer clause A is hereby granted until further order and the defendant no.1 is hereby temporary restrained from alienating or creating third party interest in the suit property”.

That thereafter plff i.e. respondent no.1 Sulochanabai remain absent and was not ready for the hearing of exhibit 5. That after going through the order the appellant thought that the order in respect of house property because in the plaint the house property is described in para 1-A and therefore the appellant was not convenience that there was no order in respect of field property and therefore the respondent Sulochana filed an application on 16/7/2012.”

(emphasis supplied)

This clearly indicates that the petitioner had specific knowledge of the ad interim order of injunction as passed by the Trial Court, in spite of which, the sale-deeds dated 11/6/2012 came to be executed by him. It is not disputed that the petitioner was served with the suit summons on 30/3/2012. The petitioner thereafter had filed his written statement on 19/6/2012, which also indicated, that the petitioner was appearing and participating in the proceedings before the Trial Court. Though in the say to the application under Order XXXIX Rule 2-A of C.P.C., the petitioner, had raised a plea that he did not have knowledge about the order of injunction, the plea has been rejected by the Trial Court by giving a categoric finding that the petitioner, was served on 30/3/2012, and therefore, was aware of the proceedings in the suit as well as the ad interim order of injunction, which also stood communicated to the petitioner by R.P.A.D. which knowledge, in turn, is also substantiated by the averments of the petitioner in the memo of appeal in Misc. Civil Appeal No.17/2017, as reproduced above.

14. The above factual position would categorically demonstrate that the transfer of the suit property, by the petitioner

by executing and registering the two sale-deeds on 11/6/2012, was with knowledge of the order of ad interim injunction. It is further material to note that the petitioner, even during the pendency of the application under Order XXXIX Rule 2-A of the C.P.C., or after passing of the order thereupon dated 31/8/2017, directing the petitioner to be detained in civil prison for a period of three months, has not taken any steps to purge his actions. Neither there are any ameliorating circumstances brought on record. The petitioner, clearly does not appear to be contrite of his actions, rather appears to be defiant, which is indicated by his actions of challenging the various orders, without showing any attempt at restoring the *status quo ante* to the order of ad interim injunction dated 22/3/2012.

15. No doubt as held in ***Ramavatar Surajmal Modi*** (supra) and ***Shaikh Samsul Hudda*** (supra) that the provisions of Order XXXIX Rule 11 of C.P.C. are directory and not mandatory and would depend upon a finding being rendered that the party had violated the order of injunction, in spite of having knowledge of the same, in the instant case, such a finding has already been rendered by the learned Trial Court while deciding the application under

Order XXXIX Rule 2-A of C.P.C. True it is, that the order on the application under Order XXXIX Rule 2-A of C.P.C. has been stayed in appeal, however, on the admitted facts on record, as is apparent from what is narrated in paras supra, the knowledge and its violation subsequent thereto, of the order of ad interim injunction by the petitioner is not only writ large on the face of record but also stands admitted by the petitioner. The question therefore arises as to whether the discretion as exercised by the learned Trial Court, while deciding the application under Order XXXIX Rule 11 of C.P.C. is in aid of maintaining and furthering the Rule of law or otherwise. In view of the factual position as narrated above, there cannot be any doubt that the discretion as exercised by the learned Trial Court is in aid of maintaining and furthering the Rule of law. True it is, that as far as possible all lis, have to be decided on merits and not in default, however, a party to the lis, has to ensure that such default is no due to any action contrary to the law, attributable to the party. Once the record demonstrates that the party to the lis, by his action, has fallen foul of the law, it cannot be heard to claim that the exercise of the discretion in its favour, for it is the duty and obligation of every party to the lis, to act in a manner, which is

within the parameters of the law as applicable and not otherwise.

16. In the instant case, the petitioner, alone is to blame for the situation in which he finds himself. As stated earlier, not only was his action of alienating the suit property, in the teeth of an ad interim injunction order, which was to his knowledge, was an action amounting to willful and intentional defiance of the order, but the petitioner, even thereafter has not taken any action to restore the *status quo ante*, so as to claim the exercise of discretion in his favour, rather has continued with his defiance, by justifying his action of having executed and registered the sale deeds of the suit property on 11/6/2012, in spite of having knowledge of the order, restraining him from doing so, due to which the exercise of discretion by the learned Trial Court in striking off his defence cannot be faulted with.

17. In fact in ***Ramavatar Surajmal Modi*** (supra), itself, the learned Division Bench of this Court, has in para 12 noted what has been observed by the learned Single Judge, in para 10 of the judgment under challenge, that the defendant therein had

ultimately submitted to the Court's order and had handed over possession of the suit flat to the Court Receiver in pursuance to the Court's order, in light of which, it held that the exercise of discretion by the Court not to strike off the defence under Order XXXIX Rule 11 of C.P.C. was justified. In the instant case, there are no such ameliorating circumstances, and as observed above, the petitioner has not taken any action to undo, what has been done by him, in defiance of the order of the Trial Court dated 22/3/2012 and continues with the defiance, even today, in which circumstances, the exercise of discretion in the impugned order cannot be faulted with, more so as it furthers the Rule of law.

18. Reliance on ***Shiv Kumar Sharma*** (supra) by Mr. C.A. Joshi, learned Counsel for the petitioner, is also misplaced. ***Shiv Kumar Sharma*** (supra) was a case of service jurisprudence, in which a penalty of depriving the employee of the benefit of one increment for one year was imposed, which was without any further effect, in light of which it was held that the same would not have any effect on his seniority and the action of the Board in placing the employee, lower in seniority was held to be amounting to punishing the

employee, twice for the same act of misconduct, and was held not to be sustainable in law. The principle that a person cannot be punished for a misconduct or action twice, would be applicable in service or criminal jurisprudence, the same however, would not be attracted and applicable in the present case. Can it be said that since the petitioner, stands convicted under Order XXXIX Rule 2-A of C.P.C. for having defied and violated the order of injunction passed by the Court, by executing and registering the sale-deeds of the suit property, in contravention thereof, the violation goes away, vanishes !, that too without the petitioner taking any steps to purge his violative action and restore the *status quo ante* ? If it is so held, then every order of injunction or for that matter, every decree passed in a suit, would become un-operational/un-executable, once the defendant/judgment debtor, is sent to civil prison, for having declined to obey the order/decreed and has suffered the sentence, for then it would be permissible to say that since he has already suffered imprisonment for not obeying the order/decreed, now the same has become unexecutable/unenforceable against him on the ground of double jeopardy. Thus in my humble opinion, cannot, and is not, and can never be the purport and intent of the principle of

double jeopardy. When a party to the lis disobeys the order of a Court, with full knowledge of the same, such disobedience, nay defiance, cannot be countenanced for any reason whatsoever, as there cannot be any justifiable disobedience/defiance, whatsoever.

19. Even in service jurisprudence, when an employee, is convicted for a criminal offence, which may or may not involve moral turpitude, for example under the provisions of the Anti Corruption Act, the conviction under the Penal law, does not debar the initiation of a disciplinary enquiry and removal from service, in case the misconduct is held to be proved. Thus, the principle of double jeopardy, is clearly not attracted in the present matter.

20. Having said so, in view of the entire factual panorama of the present case, there is no merit in the challenge as laid to the impugned order and the petition is thus dismissed.

Rule stands discharged. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)