

IN THE HIGH COURT AT CALCUTTA

SPECIAL CIVIL JURISDICTION

(Appellate Side)

CPAN No. 657 of 2022

In

MAT 1288 OF 2021

With

CAN 2 OF 2022

Reserved on : 11.05.2022

Pronounced on: 20.07.2022

Partha Sarathi Chandra & Ors.

...Applicants

-Vs-

Jharna Chandra @ Jharna Rani Chandra & Ors.

...Contemnors

Present:-

Mr. Siddhartha Banerjee

Mr. Dipayan Kundu

Mr. Soumajit Majumder, Advocates

...for the Applicants.

Mr. Saptanshu Basu, Sr. Adv.

Ms. Sananda Ganguli

Mr. Shubradip Roy, Advocates

...for the Alleged Contemnor Nos. 1 & 3.

Mr. T.M. Shiddqui ,

Mr. Simanta Kabir, Advocates

.... for the Contemnor No.2/State.

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

Rajarshi Bharadwaj, J:

1. The applicant is seeking contempt proceedings against the contemnors for violation of solemn order dated 08.06.2022 passed by learned Division Bench in M.A.T 1288 of 2021 along with C.A.N 1 of 2021.
2. The applicant/respondent in the present case is one Partha Sarathi Chandra. The alleged contemnor No.1/petitioner is one Jharna Chandra@Jharna Rani Chandra, mother of the applicant/respondent. The alleged contemnor No.3 is one Soma Nath , sister of the applicant/respondent. The premises in question is a two storied building, measuring about 1985 square feet and situated at 22/3 Mondal Para Road, Police Station -Behala, Kolkata - 700034.
3. Before considering the submissions made by learned counsel appearing on behalf of the respective parties, the facts of the case in a nutshell are that the petitioner(the alleged contemnor no.1 in the contempt application) moved a writ petition bearing WPA No.11588 of 2021, which was disposed of by the Learned Single Judge vide order dated November 29, 2021. It was recorded in the said order that the Learned Counsel for the petitioner submitted that the respondents no.4 and 5 (herein the applicants) have regularly harassed the petitioner.
4. WPA No.11588 of 2021 was, thus, disposed of on November 29, 2021 by observing that the respondents/applicants shall not be permitted to enter into the said residence of the petitioner/alleged contemnor no.1 without the leave in writing of the petitioner duly countersigned by the Inspector-in-charge, Behala Police Station. It was also observed that the petitioner/ alleged contemnor no.1 may keep her daughter with her and file proceedings under the Maintenance & Welfare of Parent & Senior Citizen Act, 2007 and claim any reliefs thereunder against the respondents/applicants.
5. Thereafter, the respondents/applicants preferred an appeal before the division bench challenging the order of the Learned Single Judge. W.P.A 11588 of 2021 that was set aside on 08.06.2022 by observing:

“Having heard the learned counsels for the parties and on perusal of the record, it is noticed that the learned Single Judge has recorded the argument and thereafter without giving any reason or recording any finding, straightway has issued a direction to the Inspector-in-Charge, Behala Police Station to escort the appellant nos. 2 and 3 out of the house forthwith and immediately by permitting the said appellants to remove all their articles from the premises and further directing that the appellant nos. 2 and 3 will not be permitted to enter into the residence without the leave in writing of the respondent no. 3 duly countersigned by the Inspector-in-Charge, Behala Police Station. Before issuing such a direction. Learned Single Judge was required to consider the rival contention of the parties and. record reasons for issuing such a harsh direction against the appellant nos. 2 and 3. In exercise of the writ jurisdiction under Article 226 of the Constitution, such a direction was not warranted especially when the title suit is already pending and the dispute is private in nature.”

6. Subsequently, the contempt application being CPAN No. 657 of 2022 was filed alleging intentional and willful violation of the said order dated 08.06.2022 passed by learned Division Bench in M.A.T 1288 of 2021 along with C.A.N 1 of 2021 by restraining and taking further measures to prevent the applicants from entering into the premises.

7. The Learned Counsel for the applicants submits that by the solemn order dated 08.06.2022, written consent by the contemnor No.1 is no longer required to enter and reside in the said premises. However, the contemnors acted in willful, deliberate and contumacious manner by violating of the order by putting padlock at the main entrance of the premises and obstructing peaceful entry into their own room located in the first floor to visit, feed and take care of one Mr Pratanu Chandra, son of the applicants No. 1 and 2. In addition, no assistance was provided by Officer-in -Charge, Behala Police Station to the applicants for accessing the said premises.

8. The Learned Counsel for the alleged contemnor No. 1, at the outset, submits that highest reverence and obedience is maintained towards the Hon'ble Court. The order/judgement dated 08.06.2022 passed by the Learned Division Bench could not in any way be interpreted to entitle the applicants to enter the premises and/or specifically direct the alleged contemnor No.1 to allow the applicants to enter the premises and that no wilful and/or deliberate disobedience of the order/judgment was committed by contemnor No. 1.

9. It is respectfully stated that on account of Deed for Revocation of Settlement on the ground that the settlee (applicant) did not take proper care of the alleged contemnor No.1, executed on 13.03.2021 (recorded in Book- I, Volume No. 1903-2021, Page 119458- 119474 being No.190302990 of 2021) whereby the alleged contemnor No.1 revoked and cancelled the Deed of Settlement dated 22.01.1996, the applicant no longer has resemblance of title in respect of the premises. The Deed for Revocation of Settlement specifically stated that the Deed of Settlement is not acted upon, has no legal power and is no longer enforceable in the eye of law. Subsequently, the premises has been vested upon alleged contemnor No.3 by a valid gift deed dated 09.04.2021 (recorded in Book- I, Volume No. 1903-2021, Page 182222-182245 being No. 190304019 of 2021) whereby the alleged contemnor No. 3 has become the lawful owner of the premises. The status of the alleged contemnor No. 1 is now merely as a licensee and has no legal authority to allow the applicant to enter the premises. The applicant and the son of the applicant are stranger to the premises and under no circumstances there has been lack of solicitude for the rule of law or for the order passed by the Hon'ble Court.

10. The Learned Counsel for the alleged contemnor No. 1 further contends that the contemnor No. 1 is entitled to live a peaceful life with dignity and respect and without the threat, fear of ill behaviour and torture of the applicant and his family. The applicant has failed to take care and maintain the alleged contemnor. There arises no need for the applicant to forcefully enter and reside

at the premises as the applicant and his family is living a quality and undisturbed life by staying separately at Khidirpore.

11. The Learned Counsel for the alleged contemnor No. 3 submits that there has been no error in understanding the true spirit behind the order/judgment dated 08.06.2022 passed by the Hon'ble Court and that no wilful or deliberate disobedience of the order/judgment was committed by contemnor No.3. The alleged contemnor No. 3, being the lawful owner of the premises in pursuance of a valid gift deed dated 09.04.2021 is entitled to undisturbed enjoyment of the premises and pays tax and other dues in respect of the premises. In addition, the premises has been duly mutated by contemnor No. 3 in Assessment Registrar of KMC. Intrusion of the applicants creating hinderance to peaceful occupation led to the alleged contemnor No.3 obtaining an order of injunction dated 09.11.2022 which restrains the applicants from residing in the premises. Therefore, the son of the applicants is a trespasser and following due process of law, steps for eviction was taken.

12. Heard learned counsel for the respective parties and on perusal of the records this court is of the view that there can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction, neither would it be permissible for the court to issue any supplementary or incidental directions which are not to be found in the original judgment and order. The court is only concerned with the wilful or deliberate noncompliance of the directions issued in the original judgment and order. In the instant case, the order dated 08.06.2022 did not create nor deny any specific right or title in favour of either party to inhabit the said premises. There arises no element of doubt in the instant case in view of the on-going developments that the respondents did not act within the bounds of its power.

13. The decision of the Supreme Court in Maruti Udyog vs. Mahinder C. Mehta reported in AIR 2008 SC 309 suggests that irrespective of whether or not a decree is executable, the question to be considered by this Court in determining whether a case for contempt has been made out is, whether, the

conduct of the contemnor was such as would make a fit case for awarding punishment for contempt of Court.

14. The Supreme Court vide *Bank of Baroda vs. Sadruddin Hasan Daya* reported in 2004 1 SCC 360 held that contempt is a matter which is between the Court passing the order of which contempt is alleged and the contemnor; questions as to executability of such order is a question which concerns the parties inter-se. The power of the Court to invoke contempt jurisdiction, is not, in any way, altered by the rights of the parties inter-se .

15. The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, the court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt, the court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. Contempt petition to initiate action for civil contempt can be presented only by an aggrieved party. In the present case, the petitioner/applicant is not aggrieved by the direction issued in the judgment or order but instead is aggrieved by a separate cause of action which arose subsequently. The alleged conduct of the respondents stated by the petitioner forming basis for the contempt constitutes to be a separate legal claim.

16. In such view, the contempt application being CPAN No.657 of 2022 would not be maintainable as no case of contempt has been made out. Hence, the contempt application lacks merit and the same is dismissed accordingly.

17. There will be no order as to costs.

18. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities

[RAJARSHI BHARADWAJ, J]

[SHAMPA (DUTT) PAUL, J]

Kolkata
20.07.2023
PA (BS)