

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CIVIL MISCELLANEOUS APPEAL.No.587 of 2022

JUDGMENT:

This Civil Miscellaneous Appeal is filed against the Order of the trial Court in I.A.No.942 of 2022 in I.A.No.113 of 2022 in O.S.No.21 of 2022.

2. The Zoroastrian Club filed an application before the trial Court under Order XXXIX rule 2A of C.P.C for attachment of savings bank account and for punishing the respondent by taking him into custody and sending him to civil prison for a term of three months for his continuous disobedience of Orders of injunction passed against him in I.A.No.113 of 2022. The trial Court considering the arguments of both sides partly allowed the application and directed to send the respondent therein to civil imprisonment for a period of two months on payment of process. Aggrieved by the said Order, respondent preferred the present Civil Miscellaneous Appeal.

3. The learned Counsel for the appellant/respondent mainly contended that the trial Court decided the I.A.No.942 of 2022 in O.S.No.21 of 2022 filed by the petitioner/respondent herein

without any independent enquiry and the appellant was set exparte when his Counsel could not appear due to ill health and consequential death of his mother and without deciding the injunction petition in I.A.No.113 of 2022 in O.S.No.21 of 2022 in which Counter affidavit was already filed on 11.02.2022 and also without deciding the Vacate Petition in I.A.No.159 of 2022 in I.A.No.113 of 2022 in O.S.No.21 of 2022 filed on the same day. The petition under Order XXXIX rule 2-A C.P.C is analogous to the contempt proceedings, as such the procedure required to be followed and adhere to both oral and documentary evidence adduced by the plaintiff/petitioner. The trial Court neither conducted enquiry nor permitted him to leading evidence before sending him to the civil prison. Though the trial Court relied upon Exs.P1 to P29, they were not marked, as the mandate of the statute is that injunction application should be disposed of within 30 days when exparte ad-interim injunction was granted by the Court.

4. He further stated that petitioner/respondent herein has not initiated any steps for recovery of possession through due process of law and he is trying to dispossess the appellant in view of exparte injunction under the threat of civil imprisonment. The appellant is in possession of the suit

schedule property and making payments to the respondent herein as per the terms of the agreement between the parties. The trial Court without assigning any reasons resorted to exercise its drastic power conferred under Order XXXIX rule 2-A. Therefore, requested the Court to set aside the Order of the trial Court in I.A.No.942 of 2022 in I.A.No.113 of 2022 in O.S.No.21 of 2022.

5. Perusal of the record shows that initially Zoroastrian Club filed O.S.No.21 of 2022 for perpetual injunction against one Keki P. Irani/appellant herein and to restrain him from entering, holding and conducting any business or third party functions at the suit schedule premises. During the pendency of the suit, I.A.No.113 of 2022 is preferred by the petitioner Club requesting the Court to grant ad-interim injunction against the defendant in the suit.

6. The parties herein are referred as petitioner and respondent as arrayed in the suit for the sake of convenience.

7. The petitioner stated that Zoroastrian Club was established in the year 1915. The defendant is in the catering and supply business. As they intend to let out their premise for

conducting functions for third parties invited bids for appointing a new Hirer and the defendant was the successful bidder as a Hirer under a Hire Agreement dated 24.06.2011 for a period of 2 years and agreed to pay Rs.5,00,000/- per month as Hire charges and upon his request, it was extended till 2014 and it came to an end on 23.06.2014. When the defendant made several requests, the Managing Committee permitted him to act as a 'Preferred Supplier' till August 2015. The defendant in a letter dated 01.08.2015, requested for change in the booking conditions, but it was not accepted by the Managing Committee. Hence, he filed O.S.No.433 of 2015 on 11.08.2015 and sought for injunction by suppressing the real facts and also obtained ad-interim status-quo in his favour. But, it was vacated in a detailed Order dated 16.11.2015.

8. The defendant filed C.M.A.No.55 of 2015, in which the Court by Order dated 18.01.2016, directed the plaintiff to give one month time to enable the defendant to remove his material from the suit schedule property. Against which C.R.P.No.810 of 2016 was preferred on 10.02.2016 and the same was disposed of by this Court by Order dated 20.06.2016 directing the trial Court to dispose of the Civil Miscellaneous Appeal on merits within two months, later C.M.A was dismissed on 16.11.2016,

confirming the Order of the trial Court in which it was stated that the defendant is not a tenant nor he is in possession of the suit schedule property. Later defendant came up for compromise and sought for two years time to conduct his business in the suit schedule property. The said proposal was placed before the Extraordinary General Body Meeting, but it was rejected. Again the defendant filed O.S.No.162 of 2017 on 21.09.2017 for enforcing the Memo of Compromise. Later plaintiff filed suit for rejection of plaint and then defendant withdrawn the suit. Accordingly, it was dismissed as withdrawn on 01.08.2019. When two suits were pending, he also filed Tr.OP.No.2696 of 2017 and the same was dismissed on 31.08.2018. The plaintiff also filed C.C.No.1527 of 2018 against the defendant, but it was ended in acquittal, as such defendant filed O.S.No.104 of 2019, claiming damages of Rs.62,00,000/-.

9. The defendant is a habitual litigant. He filed several cases against plaintiff. In view of the long pending litigation, the defendant was permitted to carry on his business of conducting functions for a limited period up to 31.12.2021 on payment of charges payable to plaintiff as set out in the Terms of Compromise and the same was approved by the Managing Committee and also by the extraordinary General Meeting on

15.01.2020. In the said agreement Clauses 4, 5 and 7 are reads as follows:

iv) At the end of the tenure on 31st December 2021. The defendant shall remove himself, his representatives and items brought by him from the Plaintiff Club and not claim any rights whatsoever over the Mandapam and any part of the plaintiff's premises.

v) Defendant shall not book/take advance bookings for functions any bookings for the plaintiff's Club premises post the tenure, i.e, 31st December 2021 and any such bookings shall be null & void, the plaintiff having absolute right to disallow/cancel such booking.

vii) agreed and acknowledged that in event of a delay by him to remove himself and his belongings from the Mandapam and designated area on or before 7th January 2022, he shall pay to the Plaintiff a sum of Rs.75,000/- plus GST per day as penal charges for wrongful usage and the Plaintiff shall be entitled to adjust amounts due against the interest free security deposit.

10. When the defendant filed a Compromise Memo dated 27.02.2020 before the City Civil Court, it was dismissed as not pressed on 10.03.2020. Due to Covid-19, modified terms are also accepted by the Managing Committee and as per the arrangement made under the Board, terms of compromise between the parties came to an end on 31.12.2021 and defendant has to pay Rs.16,37,595/- to the plaintiff. When the plaintiff called upon the defendant to pay the said amount, he filed O.S.No.1243 of 2021 on 31.12.2021 for permanent

injunction and thus requested the Court to grant ad-interim injunction against the defendant.

11. In a counter filed by the respondent/defendant, he stated that he deposited Rs.12,00,000/- as refundable security deposit to the petitioner/plaintiff. The petitioner Committee forced him to vacate the premises on 29.12.2021. He intended to file criminal case against the plaintiff, but police refused to entertain the same, as such he filed a suit in O.S.No.1243 of 2021 for injunction and also filed I.A.No.1 of 2021 for temporary injunction. He stated that there are marriages, receptions and functions on 09.02.2022, 10.02.2022, 1d1.02.2022d, 12.02.2022, 14.02.2022dd, 17.02.2022, 21.02.2022d and 27.02.2022 which were booked in the last year of October. He also filed electricity bills to show that he is in possession of the property. In view of the injunction granted till 21.02.2022, he will be put to irreparable loss and injury. Therefore, requested the Court to dismiss the petition, but the trial Court considering the arguments of both sides granted temporary injunction till 21.02.2022.

12. The plaintiff/petitioner stated that as per Clause-V of the terms of compromise, the defendant/respondent should not

take any advance bookings for functions post tenure i.e, 31.12.2021. Defendant/respondent willfully disobeyed the Orders of the trial Court. He further stated that interim stay granted till 21.02.2022 was extended from time and again. As he committed breach, plaintiff/petitioner filed an application to send him to the civil prison. The trial Court considering the arguments of both sides partly allowed the same and directed to the send the defendant/respondent to the civil prison for a period of two months on payment of process. The defendant/respondent knowing pretty well that the compromise was entered only till 31.12.2021, made bookings for the marriages and functions even after the said date and now claiming that it will cause irreparable loss to him if he is not allowed to proceed with the said functions. When there was a specific clause in the terms of compromise about at the end of the tenure i.e, on 31.12.2021, it is for him to vacate the premises and handover the possession, but neither he vacated nor paid the penal charges for wrongful usage as mentioned in the compromise memo and again came to the Court by suppressing all the material facts and requested the Court to set aside the Order of the trial Court.

13. Perusal of the record shows that initially even the plaintiff/petitioner entered into an agreement with the defendant/respondent only for two years, it was extended till 2014. From then onwards, he filed several cases against the plaintiff/petitioner without vacating the premises. When all the cases were dismissed, he came forward with the compromise. When the plaintiff/petitioner considered the compromise with specific conditions that it ends by 31.12.2021, he agreed for it, but later violated the terms and conditions and still intended to drag on the litigation and thus the trial Court rightly convicted him for his misconduct. He again approached this Court without any valid ground and it clearly amounts to abuse process of law.

In the result, the Civil Miscellaneous Appeal is devoid of merits and is dismissed with costs confirming the Order of the trial Court in I.A.No.942 of 2022 in I.A.No.113 of 2022 in O.S.No.21 of 2022 dated 22.11.2022.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATED: 10.02.2023

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