



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MRS JUSTICE M G UMA

WRIT PETITION NO. 54219 OF 2018 (GM-CPC)

BETWEEN:

SMT. T. GEETHA
W/O V.M. RAMESH BABU @ RAMESH
AGED ABOUT 36 YEARS
RESIDING AT MALLIGE ROAD
1ST CROSS, GOKULA EXTENSION
TUMKUR TOWN, TUMKUR TALUK
& DISTRICT - 572 101

...PETITIONER

(BY SRI: G. BALAKRISHNA SHASTRY, ADVOCATE)

AND:

1. SRI. RANGANATH
S/O CHANNAIAH
AGED ABOUT 48 YEARS
RESIDING AT MALLIGE ROAD
1ST CROSS, GOKULA EXTENSION
TUMKUR TOWN, TUMKUR TALUK
AND DISTRICT - 572 101
2. SRI. H.S. NAVEEN
AGED ABOUT 35 YEARS
FATHER NAME NOT KNOWN
POLICE SUB INSPECTOR
JAYANAGAR POLICE STATION
TUMKUR, TALUK AND DIST
TUMKUR - 572 101
3. SRI. RADHA KRISHNA
AGED ABOUT 35 YEARS
CIRCLE INSPECTOR OF POLICE
TILAK PARK CIRCLE, GANDHINAGAR
TUMKUR, TALUK AND
DISTRICT TUMKUR - 572 101





4. SRI. NAGARAJ
AGED ABOUT 45 YEARS
DEPUTY SUPERINTENDENT POLICE
TUMKUR, TUMKUR DISTRICT
PIN - 572 101

5. DR. DIVY GOPINATH IPS
AGED ABOUT 36 YEARS
SUPERINTENDENT POLICE
TUMKUR DISTRICT
TUMKUR - 572 101

...RESPONDENTS

(BY SMT: ANUKANKSHA KALKERI, HCGP FOR R2-5
V/O DT:06.12.2018, NOTICE TO R1 IS D/W)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 15.11.2018 PASSED BY THE 4TH ADDITIONAL CIVIL JUDGE AND JMFC TUMKUR REJECTING THE PETITION FILED UNDER ORDER XXXIX RULE 2[A] OF CPC AS AGAINST THE RESPNDENT NOS.2 TO 5 IN MISC.PET.NO.37/2017 VIDE ANNEXURE-A CONSEQUENTLY ALLOWED THE MISC. PETITION AS AGAINST THE RESPONDENT NOS.2 TO 5 AND CONTINUE THE PROCEEDINGS, AND PUNISH THE RESPONDENTS TO ACCORDANCE WITH LAW, TRUE COPY OF THE MISC. PETITION NO.37/2017 IS PRODUCED AT ANNEXURE-J AND ETC.,

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING - B GROUP THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

The petitioner in Civil.Misc.No.37 of 2017 on the file of the learned Principal Civil Judge (Jr.Dn.) and JMFC, Tumakuru, is impugning the order dated 15.11.2018 holding that Civil.Misc. petition is not maintainable against respondent Nos.2 to 5 and dismissing the same.



2. Heard Sri G Balakrishna Shastry, learned counsel for the petitioner and Smt Anukanksha, Kalkeri, learned counsel for respondent Nos.2 to 5. Perused the materials on record.

3. Learned counsel for the petitioner submitted that the plaintiff and defendant share common boundary and the defendant proceeded to construct the building without leaving set back. Therefore, petitioner as plaintiff filed the suit OS No.727 of 2016 against the defendant seeking permanent injunction restraining him from putting up construction without leaving set back. The Trial Court granted temporary injunction, later the same was vacated. The plaintiff approached the Appellate Court in MA No.11 of 2017 on the file of the learned II Additional Senior Civil Judge and JMFC, Tumakuru. The said appeal came to be allowed vide judgment dated 01.09.2017. Thereby, the temporary injunction was granted in favour of the plaintiff and against the defendant. In spite of granting temporary injunction, the defendant proceeded to construct the building violating the bye laws. Therefore, the plaintiff filed the application under Section 151 of CPC seeking direction to the



police to enforce the temporary injunction. The said application was allowed vide order dated 10.11.2017 and the Sub Inspector of concerned police station was directed to give police protection to the plaintiff to implement the order of temporary injunction granted by the Appellate Court. After securing the said order, the plaintiff issued several requisitions requesting the police to enforce the order of temporary injunction granted by the Trial Court against the defendant. In spite of that, the police officers in collusion with the defendant permitted him to construct the building. Thereby, they have disobeyed the order of the Trial Court. Therefore, the petitioner has filed Civil.Misc.No.37 of 2017 seeking to take action against the respondents under Order XXXIX Rule 2A of CPC. In the meantime, the petitioner had filed Writ Petition Nos.8104-8105 of 2018 seeking issuance of writ of mandamus for similar relief.

4. Learned counsel submitted that when the writ petitions were pending before this Court, the respondents have taken up a contention that since Civil.Misc.No.37 of 2017 is pending before the Trial Court, the writ petitions are not maintainable. Recording their submissions, the said writ petitions came to be disposed off. Now when the petitioner



insisted for taking action in Civil.Misc.No.37 of 2017, respondents took up a contention that Civil.Misc. petition is not maintainable. The Trial Court without considering the merits of the case, proceeded to pass the impugned order only on maintainability of the petition and dismissed the petition as not maintainable holding that the only remedy available to the petitioner is to seek action for contempt of Court.

5. Learned counsel places reliance on the decision of the Division Bench of this Court in ***Rudraiah Vs State of Karnataka and Others***¹, in support of his contention that when there are specific provision available under Order XXXIX Rule 2A of CPC, invoking the contempt jurisdiction is not permissible. Under such circumstances, the impugned order passed by the Trial Court is not maintainable. Accordingly, he prays for allowing the petition.

6. *Per contra*, learned High Court Government Pleader opposing the petition submitted that the Civil.Misc. petition filed by the petitioner was not maintainable, in view of the decision of the Hon'ble Apex Court in ***Food Corporation of India Vs***

¹ AIR 1982 KAR 182



Sukh Deo Prasad², wherein, the Hon'ble Apex Court specifically held that when there is an order passed under Order XXXIX Rules 1 and 2 CPC, then only disobedience of such order would arise for consideration to invoke Order XXXIX Rule 2A of CPC. In the present case, the order passed against the respondents is under Section 151 of CPC. Under such circumstances, the petitioner could not have invoked Order XXXIX Rule 2A of CPC.

7. Learned High Court Government Pleader also submitted that the respondents have taken an undertaking by the defendant not to proceed with construction work and thereby they have obeyed the order passed by the Trial Court. Hence, there is no question of disobeying any order. Therefore, she prays for dismissal of the petition.

8. The admitted facts of the case are that, the petitioner as plaintiff filed suit OS No.727 of 2016 seeking permanent injunction against the defendant. It is not in dispute that the temporary injunction was granted in favour of the plaintiff and against the defendant in MA No.11 of 2017 and the

² (2009) 5 SCC 665



same has reached finality. It is the specific contention of the petitioner that in spite of granting temporary injunction, defendant proceeded with the construction work without leaving set back and therefore, he has filed application under Section 151 of CPC seeking specific direction to the respondents. This fact is not in dispute. It is also not in dispute that the said application was allowed and the direction was issued to the respondents to give police protection to the petitioner to enforce the order of temporary injunction granted, as per order dated 10.11.2017.

9. Now it is the contention of the petitioner that in spite of such direction, respondents are not ready to give protection to the plaintiff to enforce the order of temporary injunction. On the other hand, it is the contention of respondents that they have made all efforts and got an undertaking by the defendant not to proceed with the construction work. But this fact was never considered by the Trial Court. On the other hand, impugned order was passed on maintainability of the Civil.Misc case holding that Civil.Misc. is not maintainable for violation of Order XXXIX Rules 1 and 2 of CPC.



10. The Trial Court proceeded to observe that the petition under Order XXXIX Rule 2A of CPC against respondent Nos.2 to 5 is not maintainable as they are not parties to the suit. The Trial Court also observed that violation of Order XXXIX Rules 1 and 2 is maintainable only against the parties to the suit and not against strangers. It has also observed that if the police officer disobeyed the order of the Court, the petitioner could have initiated contempt of Court proceedings and therefore, Civil.Misc. is not maintainable.

11. A bare reading of Order XXXIX Rule 2A of CPC refers to disobedience or breach of injunction by 'any person'. There is no reference to the parties to the suit, but specific reference is to 'the person guilty of such disobedience or breach'. Therefore, the finding of the Trial Court that against the stranger Order XXXIX Rule 2A cannot be invoked, cannot be accepted. In the present case, in view of the peculiar facts and circumstances of the case, the said finding given by the Trial Court that the remedy of the petitioner is to invoke contempt jurisdiction cannot be accepted, in view of the finding



of the Division Bench of this Court in **Rudraiah** (*supra*), where Division Bench has categorically held as under:

"That being so, the general provisions made under the Contempt of Courts Act cannot be invoked by the decree holder, for forcing the party to obey the injunction order. It is a well settled principle of law that when there is special law and general law, the provisions of the special law prevail over the general law and when special procedure and special provision are contained in the CPC itself under Order 39 Rule 2A for taking action for the disobedience of an order of injunction, the general law of contempt of Court cannot be invoked. If such a course encouraged holding that it amounts to contempt of court, when an order of subordinate court is not obeyed, it is sure to throw open a floodgate of litigation under contempt jurisdiction."

12. It is pertinent to note that the petitioner had filed Writ Petition Nos.8104-8105 of 2018 before this Court seeking grant of writ of mandamus in the nature of direction to the respondents. When the said petition was taken up for consideration by the co-ordinate Bench of this Court, learned Additional Government Advocate appearing for the respondents drawn my attention of the Court to the very same



Civil.Misc.No.37 of 2017 filed by the petitioner which is pending before the Court. It is contended that the petitioner has already taken steps by filing application under Order XXXIX Rule 2A of CPC. Therefore, the writ petition is not maintainable. The said submission was accepted by the co-ordinate Bench of this Court in writ petitions and the same came to be dismissed vide order dated 05.09.2018.

13. Strangely, learned counsel for the respondents contend that the even Civil.Misc. is not maintainable as there is no order passed by the Trial Court under Order XXXIX Rules 1 and 2 against the respondents. In support of such contention, she placed reliance on the decision of the Hon'ble Apex Court in ***Sukh Deo Prasad*** (*supra*). The facts and circumstances of the case before the Hon'ble Apex Court was entirely different. There was no order of temporary injunction granted under Order XXXIX Rules 1 and 2 of CPC. What was granted is only a direction to the Food Corporation to deposit the rent payable to the defendant. Under such circumstances, the Hon'ble Apex Court formed an opinion that they disobeyed the said direction to deposit the rent payable to the defendant before the Court



and therefore, Order XXXIX Rule 2A could not have been invoked.

14. But in the present case, the facts and circumstances are very simple and admittedly, there was an order of temporary injunction granted against the defendant. A direction was given to the respondents to provide protection to the plaintiff to implement or to enforce the order of temporary injunction granted in his favour. Under such circumstances, I do not find any reason to contend that Civil.Misc. is not maintainable.

15. I have gone through the impugned order passed by the Trial Court. The finding of the Trial Court that invoking Order XXXIX Rule 2A of CPC is only against the parties to the suit and not against the third parties and that the only remedy available to the petitioner to invoke contempt jurisdiction is perverse and illegal and liable to be set aside.

16. Hence, the following:

ORDER

(i) The writ petition is ***allowed.***



(ii) The order dated 15.11.2018 passed in Civil.Misc.No.37 of 2017 on the file of the learned Principal Civil Judge (Jr.Dn.) and JMFC, Tumakuru, is hereby set aside.

(iii) The Trial Court is directed to consider the petition in accordance with law.

**Sd/-
JUDGE**

*bgn/-
List No.: 1 Sl No.: 12