

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 24th OF APRIL, 2023

M.C.C. No. 354 of 2021

BETWEEN:-

VIKRAM SHRIVASTAVA

.....APPLICANT

***(BY SHRI NAMAN NAGRATH-SENIOR ADVOCATE WITH SHRI MOHD.
SIDDHIQUE-ADVOCATE AND SHRI ROHIT JAIN-ADVOCATE)***

AND

- 1. RAMPUR FINANCE CORPORATION PVT.
LTD. THR ITS DIRECTOR KUNAL K.
SHRIVASTAVA S/O LATE SHRI VIJAY
KRISHNA SHRIVASTAVA AGED 45 YEARS
REGISTERED OFFICE-KAILASH
NAWABGANJ, KANPUR R/O VILLA
VIKUNIYA MEHRAULI GURGAON
SULTANPUR NEW DELHI (DELHI)**

2. **YATIN K. SHRIVASTAVA**

3. **TARUN SINGH BHATI** ;

.....RESPONDENTS

(MRS. AMRIT KAUR RUPRAH-ADVOCATE FOR RESPONDENT 1)

*This application coming on for admission this day, **JUSTICE DWARKA DHISH BANSAL** passed the following:*

ORDER

This MCC/petition under Order 39 Rule 2-A CPC has been filed by applicant//plaintiff/appellant -Vikram Shrivastava alleging disobedience of the temporary injunction order dated 13.12.2016 passed in FA No.174/2013 with the contentions that the applicant has come to know from the reliable sources that the respondent 1/RFC through Shri Kunal Shrivastava and Shri Yatin Shrivastava, has/have alienated the property in question to one “Janta Tent and Events” through its proprietor Narendra Singh Jaggi and breached

the order passed by this Court. It is also contended in the application that certain persons are carrying out the demolition and construction activities on the disputed property, which is still undivided Joint Hindu Family property. Supporting the said contentions, learned senior counsel prayed for punishing the respondents. In support of his submissions he also placed reliance on the decision of Supreme Court in the case of Shaha Ratansi Khimji and Sons vs. Kumbhar Sons Hotel Private Limited and Ors. **(2014) 14 SCC 1**, which is in relation of lease, whereas in the present case, license agreement has been executed.

2. By filing reply to the application respondent 1(a)&(b)-RFC have denied from any breach of order of temporary injunction and prayed for dismissal of the application with the further submissions that the respondents have not alienated the suit property and the order of injunction passed by this Court is only in relation to the alienation/creation of third party right, therefore, there is no question of any breach of order of injunction.

3. Heard learned counsel for the parties and perused the record.

4. Perusal of IA No.16313/2016 and 16316/2016 filed in FA No.174/2013 shows that the appellant/applicant has made prayer of temporary injunction only

in respect of alienation of the suit property and has prayed injunction restraining the respondent from creating third party right.

5. Upon consideration of the aforesaid two IAs, this Court vide order dated 13.12.2016 had in presence of both the parties, ordered that "However, up to next date of hearing it is ordered that the respondent shall maintain status-quo in regard to 1/6th share of the suit property up to the extent of appellant."

6. With support of copy of agreement dated 16.01.2021, it has been stated in paragraph 22 of the application under Order 39 Rule 2-A CPC that the respondents have alienated the property in question but apparently the agreement dated 16.01.2021 is nothing but only an agreement of license for five years w.e.f. 20.01.2021, therefore, it cannot be said that the respondents have alienated the suit property. However, except this agreement (Annexure P/9), no document has been placed on record to show that the property has been alienated by the respondent(s).

7. So far as the argument of learned senior counsel, to the effect that in the light of order of status-quo the respondents were bound not to raise any construction and even to execute the agreement of licence, is concerned, this Court is of the considered opinion that when the order of status-quo is not specific, then it should be read and construed only in relation to the prayer made

by way of application(s) for temporary injunction and the scope of order of status-quo cannot be expanded to the other things beyond the prayer made in the aforesaid two applications under Order 39 Rule 1 & 2 CPC.

8. The Supreme Court in the case of *Bharat Coking Coal Limited vs. State of Bihar and Ors.* **AIR 1988 SC 127** has held as under :-

“5. The expression “status quo” is undoubtedly a term of ambiguity and at times gives rise to doubt and difficulty. According to the ordinary legal connotation, the term “status quo” implies the existing state of things at any given point of time. The qualifying words “as in the High Court” clearly limit the scope and effect of the status quo order. In the present case, the High Court determined only one question, namely, that slurry was not coal or mineral. It refrained from entering into the question of right or title of the parties on the ground that it involved investigation into disputed questions of facts. Therefore, apart from the abstract question that slurry was not coal or mineral, the impugned judgment does not adjudicate upon the rights of the parties. Viewed from that angle, it is obvious that status quo as in the High Court cannot mean anything else except status quo as existing when the matter was pending in the High Court before the judgment was delivered. Both the parties understood the scope and effect of the status quo order as meaning the state of things existing while the writ petition was still pending i.e. till the delivery of the judgment by the High Court. Respondent 4 moved the High Court in CrIMP No. 4841/86(8) without impleading the appellant herein and obtained the impugned order from the High Court dated 3-1-1987 which we have vacated. The proper course for Respondent 4 to have adopted was to have approached this Court to seek clarification, if he had any doubt as to the meaning and effect of the status quo order. We highly deprecate the conduct of Respondent 4 for having approached the High Court and obtained the impugned order by suppressing the fact that this Court had passed the status quo order. Even so, strictly speaking, no case for contempt is made out on the plain terms of the status quo order. The parties were relegated back to the position that obtained while the writ petition was pending. They were therefore subject to the order passed by the High Court dated 15-1-1985. No other conclusion is possible looking to the terms of the status quo order.”

In the case of *State Of Bihar vs. Rani Sonabati Kumari* **AIR 1961 SC**

221, it has been held as under :-

“18. (2) The second contention urged was that even if on a proper construction of the order, read in the light of the relevant pleadings the State Government was directed to abstain from publishing a notification under S. 3(1) of the Act, still if the order was ambiguous and equivocal and reasonably capable of two interpretations, a party who acted on the basis of one of such interpretations could not be held to have wilfully disobeyed the order. State in these terms, the contention appears unexceptionable. For its being accepted in any particular case,

however, two conditions have to be satisfied : (1) that the order was ambiguous and was reasonably capable of more than one interpretation (2) that the party being proceeded against in fact did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order. We are clearly of the view that the case before us does not satisfy either condition. In dealing with the first contention urged by learned Counsel, we have pointed out the true construction of the order - and in our opinion that is the only construction which it could reasonably bear. But this apart, even if the order was equivocal as learned Counsel puts it still it is of no avail to the appellant, unless the State Government understood it is in the sense, that the order was confined to acts by which the possession of the plaintiff was directly interfered with and the notification was issued on that understanding and belief. There are two pieces of conduct on the part of the State Government which are wholly inconsistent with the theory that the order was understood by them as learned Counsel suggested. The first is that before the notification under S. 3(1) was issued they applied to the Court to vacate the order of injunction so that they might issue notification, and it was during the pendency of this application that the notification was issued - without waiting for the order of the Court on their petition. The second is even more significant. When notice was issued to the defendant to show cause why it should not be committed for contempt, one would naturally expect, if the point urged has any validity, the defence to be based on a denial of disobedience, by reference to the sense in which the order was understood. We have already extracted the relevant paragraph of the counter-affidavit and in this there is no trace of the plea now put forward. Even in the memorandum of appeal to the High Court against the order of the learned Sub-ordinate Judge under O. 39, R. 2(3) there is no indication of the contention not urged and though a faint suggestion of inadvertence on the part of some officer appears to have been put forward during the stage of argument before the High Court, the point in this form was not urged before the learned Judges of the High Court, as seen from the judgment. The question whether a party has understood an order in a particular manner and has conducted himself in accordance with such a construction is primarily one of fact, and where the materials before the Court do not support such a state of affairs, the Court cannot attribute an innocent intention based on presumptions, for the only reason, that ingenuity of Counsel can discover equivocation in the order which is the subject of enforcement. The argument being in effect that a party who had bona fide misconstrued the order and acted on that basis, could not be held to have wilfully and deliberately disobeyed the order, such a plea could obviously be urged only when it is proved that a party was in fact under a misapprehension as to the scope of the order, but this was never the plea of the Government right up to the stage of hearing before the High Court. Besides, if the case of the State was, that acting bona fide it had committed an error in construing the order, one would expect an expression of regret for the unintentional wrong, but even a trace of contrition is singularly lacking at any stage of the proceedings. We are clearly of the opinion that there is no factual basis for sustaining the second ground urged by learned Counsel."

9. In the Case of *Sital Das Rakyan and another vs. SH. Jain Khartargachh Sangh and Others AIR 2004 Delhi 15*, coordinate Bench of Delhi High Court has held as under :-

"4. The Court appointed Local Commissioner with the directions to report to the Court regarding the possession and management of the temple complex. The Local Commissioner after having inspected the suit property submitted the report to the effect that plaintiff

appeared to be in possession of all the keys of the property measuring about four acres. The Court thereafter ordered for maintaining status quo in respect of the property in question.

5. Reading of the plaint as also report of the Local Commissioner and orders passed by this Court on 2nd March, 2001 about maintaining the status quo in respect of the property in question shows that injunction order passed by the Court was only in respect of maintaining possessory right in respect of the property in question. Such orders were passed against the defendants only as the plaintiff apprehended dispossession at the hands of the defendants and therefore, it is quite obvious that the Court protected the rights of the plaintiff so as to prevent the defendants from dispossession the plaintiff from the suit property.

6. True, the plaintiff should have sought approval by way of abundant precaution of the Court before commencing any construction but their act cannot attract the provisions of Order 39, Rule 2A as there was no stay operating against the plaintiff about raising of construction or making any renovation of the suit property. Therefore, it cannot be said that the plaintiffs have wilfully disobeyed the orders passed by this Court on 2nd March, 2001. The applications filed by the defendants under Order 39, Rule 2A merits dismissal. Dismissed as such. However, the plaintiff shall not raise further construction in the suit property without having orders from the Court in this regard.”

10. In the case of Surjya Roy Vs. Smt. Leela Nath and Others AIR 2005 Gauhati 35, Co-ordinate Bench of Gauhati High Court has held as under :

“4. The matter of consideration of breach of injunction and the powers, which are to be exercised by the Court under Order 39, Rule 2A CPC, is not for the purpose of punishing a person who disobeyed the injunction order, but to enforce the order. Therefore, it is necessary for the Court, before imposition of punishment, to find whether the order of injunction was unambiguous and is not reasonably capable of more than one meaning and that the party proceeded against, in fact, did intend to disobey the order of the Court and had not conducted himself in accordance with his interpretation of the order, which is reasonably possible. From the order of injunction issued by the Court two things are clear. The defendant petitioner had been restrained by the Court from alienating the suit land and to change the nature and topography of the suit land and house. Breach of injunction complained about is the act on the part of the defendant petitioner of repairs of the old superstructure standing on the suit land and not the construction of the new house, as the findings goes by two Courts below. The question is whether the injunction order issued by the Court could be interpreted to mean, not even to make repairs of the old structures by the petitioner. If plain reading of the order restrains repair to be made by the petitioner, it can certainly be a breach of injunction. On the other hand, since repairs of the old superstructure standing on the land is not specifically restrained by the injunction order can it be included in the order by virtue of restrain order prohibiting the petitioner from changing the topography of the suit land. The order of restrain prohibiting change of topography cannot be read to direct restrain even of repairs of the old house.

5. In Sheobrich Singh v. Basgit Singh, reported in AIR 1957 Patna 73, the Division Bench of the Patna High Court has held that the Order 39, Rule 2 (3) CPC is of penal character as the person found guilty of breach of the order is liable to imprisonment. In the circumstances, it is necessary to record that the breach of the order is made with the intention to defy the authority of the Court issuing the injunction. If the breach of the order was not with the intention to defy the authority of the Court and it was construction in good faith, the party is not liable to

be punished under Order 39, Rule 2 (3) CPC.

6. In *Joshi Girjadhari v. Rao Sanwal Das Shahpuri* reported in AIR 1958 Allahabad 639, it was held that the persons disobeying an injunction should not suffer imprisonment on mere suspicion. There must be positive proof of the fact that he deliberately disobeyed an injunction before a Court should deprive him of his property or send him to imprisonment.

7. In *Yumlembam Hangu Singh v. Smt. Satkpan Ningol Khumbongmayum Ongbi Radhamani Devi*, reported in (1983) 2 Gau LR 174, this Court has held that allegation of disobedience of injunction order is to be established not less stringently than in a criminal case.

8. For the punishment to be imposed for breach of injunction the party who complained of the breach is to establish that the order of injunction issued by the Court is not open for two interpretations and is unambiguous and the action complained about is not bona fide in good faith. In the present case, as the finding goes, the petitioner has only made repairs of the old house and this was made with the intention to protect the house from the impending storm, which usually occurs in the State. The injunction order does not specifically prohibit the petitioner defendant to carry out the repairs for maintaining the house in proper stature. If the injunction order issued by the Court is construed strictly, then it will go to the extent that the person living there would not be permitted to even put a nail on the wall. To me the order of injunction cannot be said to prohibit the repairs to be made in the house without altering the superstructure. In view of the aforesaid, the Courts below have committed an error in holding the petitioner guilty of breach of injunction.”

11. In view of the aforesaid legal position and looking to the prayer made in the application(s) for temporary injunction, this Court does not find any ground to hold the respondents guilty for disobedience of the order dated 13.12.2016 passed in FA No.174/2013.

12. Resultantly, this MCC is dismissed. Interim application(s), if any, shall stand dismissed.

(SHEEL NAGU)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE

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