



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No. of 2024
(@ Special Leave Petition (C) No. 34892 of 2014)

**Amit Kumar Das, Joint Secretary,
Baitanik, a registered society.**

... Appellant

Versus

**Shrimati Hutheesingh Tagore
Charitable Trust.**

... Respondent

J U D G M E N T

SANJAY KUMAR, J

- 1.** Leave granted.
- 2.** Focus in this appeal is on the scope and extent of the contempt jurisdiction exercised by a High Court under Article 215 of the Constitution of India read with the provisions of the Contempt of Courts Act, 1971.
- 3.** By judgment dated 12.11.2014 passed in C.P.A.N. 2113 of 2013 in F.A. No. 229 of 2010, a Division Bench of the High Court at Calcutta held that the act of the contemnor therein was in willful disobedience to the stay order passed in the first appeal and was not only contemptuous but also illegal and invalid. However, instead of initiating proceedings for contempt,

the Division Bench opined that justice would be subserved by vacating the stay order passed in the first appeal. Aggrieved by this turn of events, the contemnor is before this Court.

4. By order dated 27.01.2015, this Court stayed the operation of the impugned judgment passed by the High Court at Calcutta.

5. Shrimati Hutheesingh Tagore Charitable Trust, Kolkata (for brevity, 'the Trust'), was the plaintiff in T. Suit No. 164 of 2004, filed for declaration of title, recovery of possession and for damages, before the learned 3rd Civil Judge (Senior Division), Alipore. This suit was instituted by it against Baitanik, a registered society (for brevity, 'the Society'), which was in occupation of the premises, detailed in suit schedules A and B, situated at 4B, Elgin Road (now, Lala Lajpat Rai Sarani), Bhawanipore, Kolkata. The Trial Court decreed the suit by its judgment dated 25.02.2009 and directed delivery of possession of the suit premises to the Trust within 30 days. Execution proceedings were initiated by the Trust on 30.07.2009.

6. While so, the Society preferred an appeal in F.A.T. No. 321 of 2009 against the judgment dated 25.02.2009, which was thereafter renumbered as F.A. No. 229 of 2009, before the High Court at Calcutta. Therein, an interim order was passed on 03.03.2010 in CAN 7021 of 2009 (application for stay) in the following terms: -

“..... We, therefore, dispose of the application for stay with the following directions: -

1) There shall be an unconditional order of stay of all further proceedings in title execution case pending in the court of the learned Civil Judge (Senior Division), Third Court at Alipore, for a period of eight weeks.

2) The appellant is directed to deposit Rs. 10,00,000/- (Rupees Ten Lac only) with the learned Registrar General of this Court by eight weeks without prejudice to the rights and contentions of the parties and subject to the result of the appeal.

3) The appellant must go on depositing current occupation charges at the rate of Rs. 35,000/- (Rupees thirty five thousand) only per month for the suit premises during the pendency of the appeal with the learned Registrar General of this Court. First of such deposit for the month of March, 2010 is to be made by April 16, 2010. All subsequent deposits are to be made by fifteenth of each succeeding month for which the same is due and payable.

4) All these deposits are to be made by the defendant no. 1-appellant without prejudice to the rights and contentions of the parties and subject to the result of the appeal.

5) If the defendant no.1-appellant deposits Rs.10,00,000/- (Rupees ten lac), only and goes on paying the monthly occupation charges at the rate of Rs. 35,000/- (Rupees thirty five thousand) only, the interim order of stay shall continue till the disposal of the appeal.

6) The learned Registrar General is requested to invest the amounts that may be deposited by the appellant in; short

term renewable interest bearing fixed deposits scheme with any nationalized bank of his choice. He is, further, requested to see that such fixed deposits are renewed from time to time during the pendency of this appeal subject, however, to any order that may be passed in this appeal.

7) In default of the deposits, as aforesaid, the interim order of stay shall stand vacated and the decree shall be executed at once.

However, we clarify that pendency of this appeal shall not prevent the plaintiffs-respondents-decree holders from initiating proceedings for recovery of mesne profit under Order XX, rule 12 of the Code of Civil Procedure and the learned trial judge shall be at liberty to proceed with such proceedings in accordance with law.

However, the learned trial judge shall not pass any final order without the leave of this Court.

The defendant no. 1 appellant is, also, directed to maintain status quo, as regards possession, nature and character, as of to (*sic.*) today, in relation to the property in suit during the pendency of the appeal. We, further, restrain the defendant no.1 appellant from creating any third party interest in relation to the property-in-suit including granting of any licence in favour of any third party during the pendency of this appeal.

With the aforesaid directions, the application for stay, filed under C.A.N. 7021 of 2009, is, thus, disposed of.

We make no order as to costs

Let the hearing of the appeal be expedited.....”

7. By order dated 10.08.2010, the High Court is stated to have extended the time to deposit the sum of ₹10 lakh by a period of two months, but it is an admitted fact that the said deposit was made only on 22.12.2010.

8. Pertinent to note, the Society also filed CAN. 8838 of 2010 in its appeal seeking leave to let out a portion of the suit premises. However, by order dated 07.03.2011, the High Court rejected the said application.

9. Developments thereafter led to initiation of contempt proceedings by the Trust, in C.P.A.N. 2113 of 2013, alleging violation of the condition set out in the stay order dated 03.03.2010. More particularly, it was alleged that the Society had resorted to letting out the suit premises for holding exhibitions. While considering this allegation, a Division Bench of the High Court at Calcutta took note of the Report dated 06.06.2013 of the Sub-Inspector of Bhawanipore Police Station, confirming that Ms. Sofia Khatoon and Ms. Roommee Bhattacharya had jointly held an exhibition from 13.05.2013 to 19.05.2013 on the ground floor of the suit premises after paying a sum of ₹6,000/- to the Society towards rent. The Division Bench also noted that a receipt had been issued by the contemnor, viz., Amit Kumar Das, the Joint Secretary of the Society, as if it was a donation instead of rent for use of the suit premises. On his behalf, it was contended

that the very purpose of the Society was to promote and spread the culture of Tagore amongst the public, through songs, dramas, dances and literary discussions, and even if any such events were held in the suit premises, there was no change in the character of the property. The Division Bench further noted that the inquiring officer had learnt that, after the order of the High Court, the Society was collecting rent in the garb of donations by letting out the suit premises for holding exhibitions.

10. Observing that one of the conditions of the stay order dated 03.03.2010 was that the Society must maintain *status quo* as regards possession of the suit premises pending the appeal and refrain from creating any third-party interest in relation thereto, including by way of grant of a licence, the Division Bench concluded that the Society had, in fact, granted licences for short terms to third parties for the purpose of exhibitions, dances and other functions on payment of donations. Further, the Division Bench noted that all the functions which were being held at the suit premises, in lieu of donations, were not organized by the Society itself, and such acts on its part amounted to willful and deliberate violation of the order dated 03.03.2010 passed in the first appeal. The Division Bench also took note of the fact that the application filed by the Society seeking leave to let out a portion of the suit premises had already been rejected. As the

execution proceedings initiated by the Trust, the decree holder, stood stayed by virtue of the order dated 03.03.2010, the Division Bench opined that justice would be subserved by vacating the said order of stay of execution proceedings without initiating a proceeding for contempt. The Bench accordingly allowed C.P.A.N.2113 of 2013 and vacated the order of stay granted in F.A. No. 229 of 2009. The Bench held that the decree would be executable at once, subject to the result of the pending appeal.

11. The appellant before us, *viz.*, the contemnor, would contend that it was not open to the High Court to vacate the stay order passed in the appeal in exercise of contempt jurisdiction. He would point out that no steps were taken by the Trust to seek such relief in the appeal and the High Court ought not to have resorted to such action in the contempt case.

12. On the contrary, the Trust would argue that the impugned order does not warrant interference at this stage as the order of stay dated 03.03.2010 in the appeal stood vacated automatically in terms of clause 7 thereof, as there was a default in the making of deposits as directed in the earlier clauses. It would point out that the Society was required to deposit a sum of ₹10 lakh with the Registrar General of the High Court within the stipulated time but such deposit was made only on 22.12.2010, well after the expiry thereof. It would also point out that the Society was required to

deposit occupation charges @ ₹35,000/- per month during the pendency of the appeal and assert that the Society stopped making such deposits since February, 2020. It is however admitted by the Trust that no steps were taken to revive the execution proceedings on these grounds.

13. Now, a look at caselaw on the point. In ***Sudhir Vasudeva vs. M.George Ravishekaran***¹, a 3-Judge Bench of this Court observed as under, in the context of exercise of contempt jurisdiction: -

“19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971..... The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor can the plea of

¹ (2014) 3 SCC 373

equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above.....”

14. However, in ***Baranagore Jute Factory PLC. Mazdoor Sangh (BMS) vs. Baranagore Jute Factory PLC.***², considering the aforesaid precedent, a 2-Judge Bench of this Court noted that the 3-Judge Bench had clarified therein that directions which are explicit in the judgment or ‘are plainly self-evident’ can be taken into account for the purpose of considering whether there is any disobedience or willful violation. The Bench further held that the Court has a duty to issue appropriate directions for remedying or rectifying the things done in violation of the Court order and in that regard, the Court may even take restitutive measures at any stage of the proceedings.

15. Significantly, the 2-Judge Bench had merely echoed the affirmation of the legal position by another 2-Judge Bench of this Court in ***Delhi Development Authority vs. Skipper Construction Co. (P) Ltd.***³.

² (2017) 5 SCC 506

³ (1996) 4 SCC 622

The principle that a contemnor ought not to be permitted to enjoy and/or keep the fruits of his contempt was reiterated therein. Reference was made by the Bench to ***Mohammad Idris vs. Rustam Jehangir Babuji***⁴, wherein it was held that undergoing punishment for contempt would not mean that the Court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of its orders. Therefore, the principle that stands crystallized by these judgments is that, in addition to punishing a contemnor for disobeying its orders, the Court can also ensure that such a contemnor does not continue to enjoy the benefits of his disobedience by merely suffering the punishment meted out to him.

16. This being the settled legal position, we find that the fact situation in the present case is such, that vacating of the stay order in the appeal by the High Court in exercise of contempt jurisdiction did not assume either a restitutive or a remedying character. Violation of the *status quo* condition in the stay order stood complete, even as per the High Court, and vacating of the stay order did not have the effect of restoring the parties to their original position or deny the contemnor the benefit of the disobedience which already stood concluded. Violation of a conditional stay order, in the usual course, would entail vacating thereof in a properly

⁴ (1984) 4 SCC 216

constituted proceeding. By resorting to such a step while exercising contempt jurisdiction, the High Court, in our considered opinion was not acting in furtherance of the principle adumbrated in the above decisions.

17. No doubt, the concluded act in violation of the *status quo* order in relation to possession of the suit premises amounted to ‘civil contempt’ under Section 2(b) of the Contempt of Courts Act, 1971, and warranted appropriate consequences under the provisions thereof. However, without taking recourse to such a step, the High Court thought it fit to vacate the stay order in the appeal so as to enable the Trust to execute the decree. This action of the High Court clearly transgressed the scope and extent of its contempt jurisdiction and cannot be sustained. To that extent, the impugned order is set aside. However, as the High Court desisted from exercising contempt jurisdiction, owing to this misconceived measure, despite finding the contemnor guilty of willfully violating the *status quo* condition in the stay order, we consider it appropriate to remand the matter to the High Court for continuing with that exercise as we have now set aside the course of action adopted by the High Court in the alternative.

18. Further, as the Trust asserts that the stay order stood vacated automatically owing to the default by the Society in making deposits, it is for the Trust to take appropriate steps. The Trust would be at liberty to take all

such measures as are permissible in law in that regard, be it before the High Court or the executing Court.

19. The appeal is accordingly allowed in part, to the extent indicated above.

Pending applications, if any, shall stand closed.

In the circumstances, parties shall bear their own costs.

.....,J
(ANIRUDDHA BOSE)

.....,J
(SANJAY KUMAR)

**January 30, 2024;
New Delhi.**