



Presented on : 30/10/2017
Registered on : 30/10/2017
Decided on : 14/12/2022
Duration : yy/mm/days
05 01 14

IN THE COURT OF DISTRICT JUDGE-3, PANVEL, DIST.-RAIGAD
(Presided over by S. C. Shinde)

Civil M. A. No.137/2019
(Old Civil M. A. No. 176/2017)
CNR No. MHRG17-005663-2019
Exh. No.15/A

Sharfuddin Unis Kazi
Age. 82, Occupation : Nil
R/o. Pargaon, Tal. Panvel, Dist. Raigad



Applicant

Vs.

Sudhir Kashinath Katekar
Age. 51, Occupation : Agriculturist & Business
R/o. At. Bhangarpada, Po. Kundewahal,
Tal. Panvel, Dist. Raigad.



Respondent

Appearance :

Advocate for Applicant : Mr. S. Y. Bartake
Advocate for Respondent : Mr. V. K. Naik

- : J U D G M E N T :-
(Delivered on 14/12/2022)

Application is filed under Rule 2A of Order XXXIX of Civil Procedure Code, 1908 (in short "CPC") for taking action against Respondent for disobedience of order dt.26/07/2017 passed by this Court.

1. Brief facts of the case are as under : -

Applicant has filed R.C.S. No.104/2016 at Civil Judge Senior Division, Panvel, Dist.-Raigad. In that suit Applicant had filed application at exh.5 for injunction which was rejected on 26/04/2017. Against that order Applicant had filed M.C.A. No.44/2017. In that appeal at exh.22 status quo order was passed with a direction to Respondent No.5 that he should not excavate soil from suit property till 16/08/2017. As per order dt.16/10/2017 below exh.40, status quo under exh.22 was extended till further orders. As per Applicant, on 26/10/2017 Respondent has unauthorizedly entered on suit property and have illegally excavated in it. Respondent is unauthorizedly constructing on suit property. Respondent was not listening to Applicant therefore Applicant on 26/10/2017 has given complaint to Panvel City Police Station. As per Applicant, this act of Respondent is illegal and it is disobedience of order of Court under Rule 2A of Order XXXIX of C.P.C.

2. Notice was issued to Respondent. Respondent has appeared through advocate and has filed say at exh.10. Respondent has resisted application on ground that Applicant has no right to file this application as Survey No.89 Hissa No.1 and Survey No.90 are admeasuring about 20 Hectors. Applicant has not added CIDCO and other Government Officers as party in this application when they are party to suit. Applicant has not attached copy of lease agreement. M.C.A. No.44/2017 has been decided and dismissed on 20/11/2017 therefore no cause of action has arisen for this application. Respondent has

not disobeyed order of this Court. Applicant has not made it clear as to who, in which part and how much square feet have excavated. So also who and how much square feet have constructed is not mentioned. Applicant has not given any evidence. Photographs are of different subject. Cross examination of Applicant is necessary. Application is filed to misguide this Court therefore special cost be awarded.

3. Heard Ld. Advocate Mr. S. Y. Bartakke for Applicant. Ld. Advocate for Respondent remained absent therefore he could not be heard.
4. Perused record. Following points arise for my determination and findings with reasons thereon are as follows:

Sr. No.	Points	Findings
1	Whether Applicant satisfies that Respondent is guilty of disobedience of order of injunction or status quo dt.26/07/2017 passed by this Court?	No.
2	Whether property of Respondent should be attached or he should be detained in civil prison for disobedience or breach of order dt.26/07/2017 passed by this Court?	No.
3	What order?	Application is dismissed.

-: REASONS :-

As to Point No.1 and 2 :-

5. Both points are interconnected therefore both points are discussed simultaneously. To support his contention, applicant

has filed affidavit at exh.5, photocopy of exh.22 & order below it, photocopy of exh.40, photocopies of letters addressed to Panvel City Police Station and colour photographs. Whereas, Respondent has filed affidavit at exh.11 and colour photographs to support his case.

6. Before going into merits of the application it is necessary to consider relevant provisions in this regard. Order XXXIX of CPC deals with grant of temporary injunction. Rule 1 of that Order deals with cases in which temporary injunctions can be granted and Rule 2 is about granting and injunction to restrain repetition or continuance of breach. Rule 2A is regarding consequence of disobedience or breach of injunction. Rule 2A of that Order read as follows :-

(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

7. An application under Rule 2A of Order XXXIX of CPC lies only where disobedience or breach of an injunction granted or order complained of was one that is granted by Court under

Rule 1 & 2 of Order XXXIX of CPC which is naturally to ensure during pendency of suit. The power exercised by Court under Rule 2A of Order XXXIX is punitive in nature akin to power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to clearly made out beyond any doubt that there was an injunction or order directing the person against whom application is made to do or desist from doing some specific thing or act and that there was disobedience or breach. The power under Rule 2A should be exercised with great caution and responsibility.

8. Now question is whether act of disobedience should be during pendency of civil suit or after decision of suit. It is well settled that application under Rule 2A of Order XXXIX is maintainable only during pendency of civil suit in case interim order is passed by the Court or undertaking is given by party is violated. In present case, status quo order was passed on 26/07/2017 which was continued on 16/10/2017 till further orders. As per Applicant, on 26/10/2017 Respondent has excavated in suit property and therefore he has committed disobedience or breach of status quo order.
9. If facts are considered then in order to prove disobedience or breach of status quo order it was necessary to bring on record evidence about excavation of soil from suit property but Applicant has only filed photographs and copies of letter addressed to police station. Applicant has not given any

evidence to show in which area Respondent has excavated and how much square feet area was excavated. Applicant has not filed evidence affidavit and has not proved documents which he has filed on record. Applicant has filed pursis at exh.14 intimating that he do not want to lead any evidence. Mere filing of application without giving proper evidence in support of that is not sufficient to consider case of Applicant.

10. Whether there is disobedience or not needs to be prove by party who alleges such breach. M.C.A. No.44/2017 is dismissed on 20/11/2017. Once suit is decreed interim orders merges into final order likewise if appeal is disposed of interim orders merges into final order.
11. Respondent has filed some photographs but those photographs are also not proved. Apart from raising allegations Applicant has not adduced any evidence to prove his case. Applicant was required to prove his case beyond reasonable doubt as to how Respondent disobeyed the order. It has also not come on record whether disobedience or breach of order was willful or not.
12. If facts of case and documents on record are considered then Applicant has failed to prove disobedience or breach of order by Respondent. Evidence given by Applicant regarding disobedience or breach is not satisfactory. As discussed earlier power under Rule 2A of Order XXXIX of CPC is punitive and without any evidence it would not be proper to use that power under Rule 2A of Order XXXIX of CPC hence point no.1

& 2 are answered in negative. Considering the above discussion, I proceed to pass following order.

:: ORDER ::

1. Application is dismissed.
2. Parties to bear their own cost.

Application is disposed of accordingly.

Panvel,
Date :- 14/12/2022

Sd/-
(S. C. Shinde)
District Judge-3, Panvel-Raigad

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file Judgment/order are same, word to word as per the original order.

Name of the Stenographer	:	Rahul S. Marathe
Name of the Court	:	Shri. S. C. Shinde District Judge-3 & Assistant Sessions Judge, Panvel-Raigad.
Judgment/Order dictated declared & typed on	:	14/12/2022
Judgment/Order signed by P.O. on	:	14/12/2022
Judgment/Order uploaded on	:	14/12/2022