

A

SANTANU CHAUDHURI

v.

SUBIR GHOSH

JULY 24, 2007

B

[G.P. MATHUR AND P.K. BALASUBRAMANYAN, JJ.]

C

Contempt of Court—Contempt petition—Eviction decree—Supreme Court granting six months time to tenant to vacate premises subject to his filing undertaking—Tenant did not file undertaking nor did he vacate the premises within the given time - Held: Court is to ensure compliance of order by ensuring delivery of possession to landlord—Thus, trial court directed to cause delivery of vacant possession of premises to landlord by eviction of tenant.

D

Petitioner-landlord filed eviction suit against respondent-tenant and the same was dismissed. Petitioner filed an appeal. High Court allowed the same and passed decree for eviction against the respondent. Respondent then filed an SLP. The SLP was dismissed. Respondent was granted six months time to vacate the suit premises subject to his filing affidavit by way of undertaking. However, respondent did not file the undertaking nor did he vacate the premises within the time granted. Petitioner then filed contempt petition.

E

Respondent filed counter affidavit that since he did not file any affidavit or undertaking as directed by the Court in the SLP, no disobedience of any Order of this Court was committed; that the landlord could execute the decree forthwith; and that there was no occasion for initiating contempt proceedings against him.

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Disposing of the petition, the Court

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HELD: 1.1 Time was granted to the tenant to vacate the disputed premises subject to his filing the usual undertaking within two weeks, but the tenant did not file any undertaking nor did he vacate the premises. The Court should ensure compliance with its order and see that vacant and peaceful possession is given to the landlord in the interest of justice.

[Para 5] [486-B, C]

H

1.2. Trial Court is directed to cause delivery of vacant possession of the

premises to the petitioner-landlord by eviction of the respondent-tenant or anybody else found in occupation of the premises within the time granted. This Order would not prevent or prejudice the petitioner-landlord from taking any steps for recovery of rent and mesne profits. The petitioner would also be entitled to Rs. 50,000/- as cost. [Para 6] [486-D, E]

Firm Ganpatram Raj Kumar v. Kalu Ram, AIR (1989) SC 2285; and *Zahurul Islam v. Abul Kalam and Ors.*, [1995] Supp. 1 SCC 464, relied on.

R.N. Dey and Ors. v. Bhagyabati Pramanik and Ors., [2000] 4 SCC 400, distinguished.

Rita Markandey v. Surjit Singh Arora [1996] 6 SCC 14; *Anil K. Surana and Anr. v. State Bank of Hyderabad* (2003) 10 Scale 580; *Ram Pyari (Smt.) and Ors. v. Jagdish Lal*, [1992] 1 SCC 157, referred to.

CIVIL APPELLATE JURISDICTION : Contempt Petition (C) No. 249 of 2006.

IN

SLP (C) No. 21766 of 2005.

WITH

Contempt Petition (C) No. 23/2007 In SLP (C) No. 21766 of 2005.

Arun Jaitley and Mukul Rohatgi, Sr. Adv., D. Bharat Kumar, Anand. Abhijit Sengupta, Indrani, Avijit Bhattacharjee, Tapan Kumar Sinha and Saumya Kundu for the appearing parties.

The Judgment Order of the Court was delivered by

G.P. MATHUR, J. 1. This petition has been filed by the landlord Santanu Chaudhuri for initiating contempt proceedings against the tenant Subir Ghosh.

2. The petitioner Santanu Chaudhuri filed a suit for eviction against Subir Ghosh in the Court of Civil Judge (Sr. Divn.), 9th Court, Alipore, which was dismissed. The appeal filed by the petitioner was allowed by a Division Bench of the Calcutta High Court and a decree for eviction was passed against the respondent Subir Ghosh (tenant) on 25.8.2005. Subir Ghosh then filed Special Leave Petition (Civil) No.21766 of 2005 in this Court. The petitioner Santanu Chaudhuri (landlord) also put in appearance on Caveat. The special leave petition was dismissed on 13.2.2006 and the following order

A was passed :

“The special leave petition is dismissed.

B Counsel for the petitioner prays for six months' time to vacate the premises. Counsel for respondent present on caveat is agreeable to the same. Accordingly, the petitioner is granted time to vacate the suit premises by 31st August, 2006 subject to filing the usual affidavit by way of undertaking within two weeks from today. An advance copy of the affidavit will be supplied to the counsel for the respondent.”

C 3. The present contempt petition has been filed on the ground that the time granted by this Court to vacate the premises expired on 31st August, 2006, but the tenant has not yet vacated the premises. Notice was issued on the contempt petition on 5.1.2007. Subir Ghosh (tenant) has filed a counter affidavit in reply to the contempt petition and the main ground taken therein is that he did not file any affidavit or undertaking as was directed in the order dated 13.2.2006 and in absence of any undertaking having been filed, it cannot be said that disobedience of any order of this Court has been committed. It has been further submitted that as no affidavit or undertaking had been filed, it was open to the landlord to execute the decree forthwith and there is no occasion for initiating contempt proceedings against him.

E 4. Shri Mukul Rohatgi, learned senior counsel for the tenant Subir Ghosh has placed strong reliance on *Rita Markandey v. Surjit Singh Arora*, [1996] 6 SCC 14 in support of his submission that no contempt has been committed by his client. In the said case it was held as under:

F “If any party gives an undertaking to the Court to vacate the premises from which he is liable to be evicted under the orders of the Court and there is a clear and deliberate breach thereof it amounts to civil contempt but since, in the present case, the respondent did not file any undertaking as envisaged in the order of the Supreme Court, the question of his being punished for breach thereof does not arise. However, even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the Court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the Court ultimately finds that the party never intended to act on such representation or such representation was false. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order

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extending the time for vacation of the suit premises, he may be held guilty of contempt of court, notwithstanding non-furnishing of the undertaking, if it is found that the representation was false and the respondent never intended to act upon it. However, the respondent herein cannot be held liable for contempt on this score also for the order in question clearly indicates that it was passed on the basis of the agreement between the parties and not on the representation of the respondent made before the Court. It was the petitioner who agreed to the unconditional extension of time by four weeks for the respondent to vacate and subsequent extension of time on his giving an undertaking and the Court only embodied the terms of the agreement so arrived at, in the order. Therefore, the respondent cannot in any way be held liable for contempt for alleged breach of the above order.”

Learned counsel has also referred to *R.N. Dey & Ors. v. Bhagyabati Pramanik & Ors.*, [2000] 4 SCC 400, wherein it was held that weapon of contempt cannot be used for purposes of executing a decree or implementing an order for which law provides appropriate procedure. This case, in our opinion, has no application as it related to award of compensation under the Land Acquisition Act, wherein it was subsequently revealed that the land owners, who had applied for compensation and had succeeded in its enhancement from the Reference Court, had in fact no title to the land acquired as the land stood already vested in the State. The next case relied upon by Shri Mukul Rohatgi is *Anil K. Surana & Anr. v. State Bank of Hyderabad*, (2003) 10 Scale 580, which is a case relating to repayment of loan of a bank and on the finding that no undertaking had been given, it was held that by the consent of the parties an executable decree had been passed in favour of the bank and the remedy lay in execution of the decree.

5. Shri Arun Jaitley, learned senior counsel for the petitioner Santanu Chaudhuri (landlord) has, on the other hand, placed strong reliance on *Ram Pyari (Smt.) & Ors. v. Jagdish Lal*, [1992] 1 SCC 157, wherein the special leave petition was dismissed but it was directed that the order of eviction shall not be executed before three months on the condition that the tenant filed an undertaking within three weeks. The tenant, however, neither filed any undertaking nor handed over vacant possession. Placing reliance upon an earlier decision rendered in *Firm Ganpatram Raj Kumar v. Kalu Ram*, AIR (1989) SC 2285 it was held that though contempt is a serious matter and it interferes with the rights of those who are found guilty of contempt, no Court should allow any party to mislead the Court and thereby frustrate its order.

- A It was also held that though perhaps the respondent could not be found guilty of violating any undertaking as there was none, in the facts and circumstances of the case, the Court should ensure compliance with its order and see that vacant and peaceful possession is given to the landlord in the interest of justice. Accordingly, a direction was issued to the trial Court to cause delivery of vacant possession of the shop to the landlord, if necessary, with police help. This case has been subsequently followed in *Zahurul Islam v. Abul Kalam & Ors.*, [1995] Supp. 1 SCC 464, where time was granted to the tenant to vacate the disputed premises subject to his filing the usual undertaking within four weeks, but the tenant did not file any undertaking nor vacated the premises. It was held that the Court should ensure compliance of the order by ensuring delivery of possession to the landlord. In our opinion, the present case is fully covered by the ratio of *Firm Ganpatram Raj Kumar v. Kalu Ram, Ram Pyari (Smt.) & Ors. v. Jagdish Lal and Zahurul Islam v. Abul Kalam & Ors.*, referred to above.

- D 6. We, accordingly, direct the trial Court to cause delivery of vacant possession of the premises in dispute to the petitioner Santanu Chaudhuri (landlord) by eviction of the respondent Subir Ghosh (tenant) or anybody else found in occupation of the premises, if necessary, with the help of police, within one month of presentation of a certified copy of this order before the trial Court. We make it clear that this order will not prevent or prejudice the petitioner (landlord) from taking any steps for recovery of rent and mesne profits as he is entitled in accordance with law. The petitioner will also be entitled to Rs.50,000/- as costs for the present proceedings. The respondent Subir Ghosh (tenant) is granted one month time to deposit the cost in the trial Court. In case the cost is not deposited as aforesaid, the trial Court shall recover the amount from Subir Ghosh (tenant) in accordance with law and the same shall be paid to the petitioner, Santanu Chaudhuri.

- F 7. The petition is accordingly disposed of.

Contempt Petition disposed of.

ORDER

- G No case for initiating contempt proceedings is made out. The contempt petition is dismissed.

N.J.

Contempt Petition dismissed.