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MCC-66-2022

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 13th OF JANUARY, 2026MISC. CIVIL CASE No. 66 of 2022

*SANTOSH KUMAR (DEAD) THROUGH LRS. SMT. ASHA JAIN AND
OTHERS*

*Versus**RAJESH AND OTHERS*

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Appearance:

Shri Jaspreet Gulati - Advocate for the applicants/L.Rs.

Shri Rajendra Kumar Gupta, learned counsel for the respondent Nos. 1
to 5.

Shri Sandeep Vyas - Panel Lawyer for the respondent/State.
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ORDER

The applicants have filed this application under Order 39 Rule 2-A of the Code of Civil Procedure, 1908 for punishing the non-applicants for breach of the order dated 16.04.2012 confirmed by order dated 12.03.2014 passed by this Court in First Appeal No. 140/2012.

2. It is submitted by the learned counsel for the applicants that the original applicant/sole appellant-Santosh Kumar instituted a suit against the non-applicants seeking relief of declaration of title and partition. The respondents contested the suit by filing the written statement.

3. It is submitted by the learned counsel for the applicants that the learned court below vide judgment and decree dated 30.11.2011 dismissed the claim of the applicants/plaintiffs holding that the applicants/plaintiffs



have failed to prove their case. Being aggrieved by the judgment and decree dated 30.11.2011, the applicants have filed First Appeal No. 140/2012 alongwith an application under Order 39 Rule 1 and 2 of the Code.

4. The said first appeal came up for hearing before this Court on 16.04.2012. After hearing both the parties, this Court vide order dated 16.04.2012 (Annexure A/2) directed the parties that till the next date of hearing, parties to the appeal will maintain status quo with respect to the suit property. Thereafter, vide order dated 12.03.2014 (Annexure A/3), the order maintaining status quo was made absolute.

5. It is submitted by the learned counsel for the applicants that the order granting status quo has been passed in presence of both the parties, hence the respondents are well aware of the same and they are obliged to ensure compliance of the order passed by this Court.

6. It is submitted that despite of the order of maintaining status quo, the non-applicants have raised construction over the suit property, as they have built a shop over the suit property and are continuing to expand their constructions, which is evident from the photographs clicked on 01.12.2021 (Annexure A/4). It is submitted that the applicants have also filed photos of the suit property before raising the construction vide Annexure A/6. It is submitted that the applicants have also made a complaint to the Chief Municipal Officer, Bina vide Annexure A/5. Thus, prayed that the said act of the applicant is a clear violation/breach of the order passed by this Court on 16.04.2012 and therefore, the non-applicants may be suitably punished.

7. *Per contra*, it is submitted by the learned counsel for the respondents



that he has filed reply to the application denying the averments made in the application. He has submitted that the applicants have not violated the order of maintaining status quo granted by this Court in respect of the suit property. It is submitted that the non-applicants have not been prohibited or restrained by any order of this Court from using and enjoying the suit property. The applicants taking shelter of the order of status quo are trying to deprive the non-applicants from using the suit property. The respondents are owners in possession of the suit property and consequently, they are enjoying the suit property.

8 . It is submitted that the applicants are making false complaint against the non-applicants. The suit property, in respect of which the status quo order has been passed by this Court, still exists and the respondents have not transferred the said property to anybody or created any third party interest over the suit property. It is further submitted that the applicants have not filed any documents in respect of the actual physical condition of the suit property at the time of passing status quo order by this Court.

9. It is submitted that the applicants have not specifically stated in the application as to on which land the construction has been carried out by the non-applicants. It is submitted that although the applicants have made the alleged complaint to the CMO, Bina, but when no action has been taken on the said complaint, they should have approached the competent authority. On the basis, prayed for dismissal of the application.

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

11. From the perusal of the reply submitted by the non- applicants, it is



found that the non-applicants have nowhere stated that such construction, as alleged by the applicants, has not been raised. The non-applicants have very cleverly stated that the applicants have not mentioned as to where the construction has been raised showing in the appendix of the suit property, however, it is nowhere denied by the non-applicants that the construction has not been raised after passing of the status quo order by this Court.

12. During the course of the arguments, learned counsel for the respondents has tried to distinguish the case from the breach of injunction stating that in the application the relief for not creating third party right has been sought, therefore, they have not created third party right and thus, the order of status quo is interpreted as stay on creating third party right.

13. The Hon'ble Apex Court in the case of **Messrs Bharat Coking Coal Limited vs. State of Bihar and others** reported in 1987 (Supp) SCC 394, has defined the 'status quo' and 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."

14. This High Court in **Sumer Singh vs. Sanman Singh** reported in (2011) 1 MPLJ 387, while holding the respondent No.1 guilty for breach of the order restraining the respondents from alienating the suit property and also not to raise any construction over the suit property, has relied upon a judgment of Hon'ble Apex Court, which is reproduced hereinbelow:

"8. Hon'ble the Supreme Court in *Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai*, reported in (2008) 14 SCC 561 : AIR 2008 SC 3016 has held as under in regard to proper punishment in the event of breach of the order of the Court:

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"59. From the above decisions, it is clear that punishing a person for Contempt of Court is indeed a drastic step and normally such action should not be taken. At the same time, however; it is not only the power but the duty of the Court to uphold and maintain the dignity of Courts and majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with the orders passed by a Court, it is required to take strict view under the Act, it should not hesitate in wielding the potent weapon of contempt.

60. Now, in the instant case, both the orders passed by this Court on April 26, 2004 and January 10, 2005, were explicitly clear. The first order totally prohibited/restrained the respondents/contemnors from creating any interest whatsoever in the suit property. As held by us, in spite of the said order, interest had been created by the contemnors in the suit property. But even otherwise there is intentional disobedience and wilful breach of the subsequent order dated January 10, 2005 inasmuch as transactions had been entered into without issuing notice to the petitioners. We have already held that they could not have been entered into by the respondents before issuance of notice to the petitioners. The respondents were clearly aware of the order. In fact, the action was sought, to be defended and justified on the ground that the Court had not directed 'prior' notice, and as such, non-issuance of notice before entering into sale transactions would not amount to disobedience of the order of the Court. We are unable to uphold the contention. In the circumstances it must be held that the disobedience of the order by the



contemners was wilful, intentional and deliberate.

61. The question then is whether the case calls for imposition of punishment on the contemners. The learned counsel for the contemners submitted that in the affidavit-in-reply, the respondents have stated that if this Court comes to the conclusion that they had committed contempt of Court, the Court may accept unconditional and unqualified apology and may discharge notice. The counsel submitted that the statutory provision itself enacts that no apology shall be rejected merely on the ground that it is qualified or conditional [Explanation to section 12(1)].

62. We must frankly admit our inability to agree with the learned counsel. In the light of what is stated above, we are convinced that the contemners have intentionally and deliberately violated the orders of the Court. We are also convinced that the orders were clear, unambiguous and unequivocal having one and only one meaning. Wilful and deliberate disobedience of the orders passed by the Apex Court of the country can never be said to be bona fide, honest or in good faith. If it is so, the action calls for serious view to ensure, proper administration of justice.

63. In *Hiren Bose, Re*, AIR 1969 Cal 1 : 72 Cal WN 82, the High Court of Calcutta stated:

“It is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a weapon, of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrongdoer's power. Only then is it of any avail in a Court of justice. But before it can have that effect, it should be tendered at the earliest possible stage, not the latest. Even if wisdom dawns only at a later stage, the apology should be tendered unreservedly and unconditionally, before the judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology. It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be”.

64. It is well-settled that an apology is neither a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, it is intended to be evidence of real contriteness [Vide *M.Y. Shareef v. Hon'ble Judges of the High Court of Nagpur*, (1955) 1 SCR 757; *M.B. Sanghi v. High Court of Punjab and Haryana*, (1991) 3 SCR 312]. AIR 1955 SC 19; 1991 AIR SCW 2011.

65. In *T.N. Godavarman Thirumulpad through the Amicus Curiae v. Ashok Khot*, (2006) 5 SCC 1, a three-judge Bench of this Court had an occasion to consider the question in the light of an ‘apology’ as a weapon defence by the contemner with a prayer to drop the proceedings. The Court took note of the following observations of this Court in *L.D.*



Jaikwal v. State of U.P., (1984) 3 SCC 405 : 2006 AIR SCW 2475, (1984) 3 SCC 405 : AIR 1984 SC 1374.

“We are sorry to say we cannot subscribe to the ‘slap - say sorry - and forget’ school of thought in administration of contempt jurisprudence. Saying ‘sorry’ does not make the slipper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to ‘say’ sorry - it is another to ‘feel’ sorry.” Para 32 of AIR SCW

66. The Court, therefore, rejected the prayer and stated:

“Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemner finds that the Court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward.” Para 31 of AIR SCW

67. Similar view was taken in other cases also by this Court

68. We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a ‘tactful move’ when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court. In our considered opinion, on the facts and in the circumstances of the case, imposition of fine in lieu of imprisonment will not meet the ends of justice.

69. Considering the facts and circumstances in their entirety, in our opinion, ends of justice would be served if we hold the respondents/contemnors guilty under section 12 of the Contempt of Courts Act, 1971, read with section 94(c) and Rule 2-A of Order XXXIX of the Code of Civil Procedure, 1908 as amended by the Code of Civil Procedure (Amendment) Act, 1976 and Article 129 of the Constitution and order the respondents-contemnors to undergo simple imprisonment for a term of two weeks i.e. fourteen days.”

15. This Court is surprised to note the understanding of the non-applicants that the status quo means not to create third party right, but it means to carry on construction on the suit property. The non-applicants have not denied that the construction has been raised on the suit property. Thus, this Court finds that the non-applicants, despite knowing well that there is an order of maintaining status quo by this Court, have breached the order and flouted it deliberately. When it has been noticed and the application has been



filed, the same has been defended by giving wrong interpretation to the order and misleading the court. Therefore, the application reporting breach of the injunction order dated 16.04.2012 passed by this Court is allowed.

16. The non-applicants are held guilty of committing breach of the order of injunction passed by this Court. Consequently, the respondent Nos. 1 to 5 are directed to pay a fine of Rs.1,00,000/- to the applicants within a period of 15 days failing which they shall undergo simple imprisonment for a term of two weeks i.e. 14 days.

17. With the aforesaid, the MCC is allowed and disposed of.

(DEEPAK KHOT)
JUDGE

RAGHVENDRA