

## Samee Khan vs Bindu Khan on 1 September, 1998

**Equivalent citations:** AIR 1998 SUPREME COURT 2765, 1998 AIR SCW 2939, 1999 SCFBRC 19, 1998 (2) ALL CJ 1489, 1998 (2) UJ (SC) 753, (1998) 3 APLJ 37, (1998) 2 KER LT 58, 1999 (121) PUN LR 465, (1999) 1 PUN LR 465, 1999 (1) SRJ 228, 1998 (6) ADSC 628, 1998 (5) SCALE 40, 1998 (2) REVLR 245, 1998 (7) SCC 59, 1998 UJ(SC) 2 753, (1998) 6 JT 163 (SC), (1998) 3 CIVILCOURTC 707, (1999) 1 LANDLR 29, (1999) 1 MAD LJ 37, (1999) 1 MAD LW 90, (1999) 1 MAHLR 1, (1998) REVDEC 761, (1999) 1 RAJ LW 98, (1998) 7 SUPREME 85, (1998) 4 RECCIVR 125, (1998) 5 SCALE 40, (1999) 1 ALL WC 18, (1999) 1 CIVLJ 486, (1998) 3 CURCC 207, (1998) 2 LS 19

**Bench:** S. Saghir Ahmad, K.T. Thomas

PETITIONER:

SAMEE KHAN

Vs.

RESPONDENT:

BINDU KHAN

DATE OF JUDGMENT: 01/09/1998

BENCH:

S. SAGHIR AHMAD, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

**O R D E R** Two neighbours are engaged in a long drawn fight in civil court on a small issue. The fight started at the lowest level (Munsiff's Court) and they have now reached this apex Court with a side issue which emanated therefrom. Defendant in the suit has defied an order of ad-interim injunction and plaintiff in the suit moved for punitive action against him. the trial court ordered him to be put in prison for one month. that order was confirmed by the appellate Court, but the High Court in revision quashed it. Plaintiff is still classing his adversary on that issue and he has reached this court

with the special leave Petition against the High Court's order.

The subject-matter of the suit is a small space of land used as a means of access (gali) which abuts the house of both the parties. Plaintiff who filed the suit prayed for an ad-interim injunction order restraining the defendant from causing any obstruction to the use of the said space as a gali. The trial Court which granted the temporary injunction order on 16.10.1984 required the defendant to maintain status-quo in regard to the suit property and subsequently the ad-interim order was made absolute. but within a month thereof plaintiff complained to the court that the defendant had put up a brick wall in the disputed space in utter defiance of the injunction order and moved for initiating action under Order 39 Rule 2A of the Code of Civil Procedure (for short 'the Code'). The trial court found that defendant had put up the obstruction wall in disobedience of the order of injunction and directed him to be detained in civil prison for a period of one month. The said order was confirmed in appeal by the Civil Judge (Senior Division).

Before the High Court, defendant adopted a twin approach though he did not dispute the factual position that the impugned obstruction was made by him. firstly he raised a contention that the Court cannot order his detention without ordering attachment of his property. Alternatively, he pleaded for mercy of the court on the facts that the obstruction has subsequently been removed and he has tendered unconditional apology to the court. Learned single Judge of the High Court of Rajasthan who heard the matter, accepted both pleas and exonerated him from punishment.

Learned counsel for the petitioner contended first that the view taken by the High Court that no Court can direct a contumacious party to be detained in prison without ordering his property to be attached, is contrary to law and settled legal position. He cited certain decision of different High Courts in support of his contention. In fact, those decisions were cited before the High Court also but learned single Judge dissented from them and concluded that attachment of property of the defiant party is sine qua non for resorting to the action of sending him to prison.

Order 39 Rules 1 and 2 of the Code deal with powers of the Court to grant temporary injunction. Rule 2A has been inserted in the order as per Act 104/1976. Rule 2A reads thus:-

" Consequence of disobedience or breach of injunction - (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 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 property entitled thereto."

Along with the insertion of the said Rule, legislature has deleted the erstwhile corresponding provision which was sub-rule (3) to Rule 2. It was worded as follows:-

" In case of disobedience, or of breach of any such terms, the Court granting an injunction 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 six months, unless in the meantime the Court directs his release."

It can be noted from the "Objects and Reasons" for the aforesaid amendment in 1976 that it is intended to make the provision applicable also to cases where injunction orders passed under Rule 1 are disobeyed, and for empowering a transferee court also to exercise such powers. Otherwise the deleted provision is the same as the present sub-rule 2A(1).

Learned Single Judge Considered the said Rule in juxtaposition with Order 21 Rule 32(1) of the Code and has observed that the latter provision deals with execution of a decree of injunction against a judgment debtor while the former deals with ad-interim or interlocutory order of injunction by providing remedies for disobedience or breach of such orders.

Learned Judge pointed out that under Order 21 Rule 32 the wording is that the "decree may be enforced by his detention in the civil prison or by the attachment of his property or by both". The use of the words "or both"

according to the learned Judge must be understood differently from the words "and may also" as used in the case of interlocutory order of injunction as the former definitely indicated that either of the alternatives or both of them can be resorted to. The following are the reasons adverted to by the learned judge:

"This distinction between the two remedies, therefore, suggests that the conjunction 'and' used in the language of sub-rule 1 of Rule 2A of Order 39 CPC should not be read as 'or' as has been used in the language of sub-rule 1 of Rule 32 of Order 21. It may further be noted that the use of the words 'and may also' in the latter part of sub-rule 2-A(1) clearly suggests that the remedy of civil imprisonment of the contemner is not an alternative remedy but an 'additional remedy'. Alternative remedies give option to choose one or the other remedy from amongst the remedies provided and such remedies are not co-existent unless specifically provided as has been done in Order 21 Rule 32 by use of the words 'or both'. In the language of Order 39 Rule 2A(1) the use of the words 'and may also' indicates the intention of the Legislature that the order of detention of the contemner in civil imprisonment may be passed in 'addition to' the order of attachment of his property and not 'in lieu' thereof."

Learned Judge then proceeded to consider it from another angle, for which the main distinction between civil contempt and criminal contempt was highlighted and observed that enforcement of the order in civil contempt is for the benefit of one party against another, while the object in criminal contempt is to uphold "the majesty of law and the dignity of the Court". In that context the High Court added thus:

" Viewed from the above angle also I am of the opinion that the punishment of civil imprisonment in the case of violation or disobedience of the order of an injunction of a Court is to be awarded 'in addition to' and not 'in lieu of' or 'in the alternative' of the punishment of attachment of his property. Rule 2A(1) gives an "additional" power to the Court, as is indicated by the use of the words " and may also" and not an "alternative"

power, as would have been indicated if the word "or" had been used, to punish the contemner by his sending to civil prison besides attaching his property. In my opinion the legislature cannot be attributed with an intention of using the words "and may also" in the latter part of sub- rule (1) of Rule 2A of the Order XXXIX CPC unnecessarily, superfluously and without any purpose. Those words, to my mind, necessarily suggest that the order of sending the contemner to civil prison may be passed only in addition to the order of attachment of his property."

At the first blush the above interpretation appeared attractive. But on a closer scrutiny we feel that such interpretation is not sound and it may lead to tenuous results. No doubt the wording as framed in Order 21 Rule 32(1) would indicate that in enforcement of the decree for injunction a judgment-debtor can either be put in civil prison or his property can be attached or both the said courses can be resorted to. But sub-rule (5) of Rule 32 shows that the court need not resort to either of the above two courses and instead the court can direct the judgement- debtor to perform the act required in the decree or the court can get the said act done through some other person appointed by the court at the cost of the judgement-debtor. Thus, in execution of a decree the Court can resort to a three fold operation against disobedience of the judgment- debtor in order to compel him to perform the act. But once the decree is enforced the judgment-debtor is free from the tentacles of Rule 32. A reading of that Rule shows that the whole operation is for enforcement of the decree. If the injunction or direction was subsequently set aside or if it is satisfied the utility of Rule 32 gets dissolved.

But the position under rule 2A of Order 39 is different. Even if the injunction order was subsequently set aside the disobedience does not get erased. It may be a different matter that the rigour of such disobedience may be toned down if the order is subsequently set aside. for what purpose the property is to be attached in the case of disobedience of the order of injunction? Sub-rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment the court is empowered to sell the property under attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of one year period. If the disobedience ceases to continue in the meanwhile the attachment also would cease. Thus even under Order 39 Rule 2A the attachment is a mode to compel the opposite party to obey the order of injunction. But

detaining the disobedient party in civil prison is a mode of punishment for his being guilty of such disobedience.

The words "and may also" appearing in R.2A were sought to be given a meaning that the course suggested thereafter in the Rule has to be resorted to as an optional additional step, a resort to which would be impermissible without complying with the first course suggested in the Rule. The word "also" has different attributes and its meaning is not to be confined to "further more". In legalistic use, the word "also" can be employed to denote other meanings as well. In Black's Law Dictionary the word "also" has the following variety of meanings:

Also. Besides as well in addition; likewise, in like manner;

similarly; too; withal. Some other thing, including, further, furthermore, in the same manner, moreover; nearly the same as the word "and" or "likewise".

Since the word "also" can have meaning as such "as well" or "likewise", can not those meaning be used for understanding the scope of the trio words "and may also"? Those words cannot altogether be detached from the other words in the sub-rule. Here again the word "and" need not necessarily be understood as denoting a conjunctive sense. In Stroud's judicial Dictionary it is stated that the word "and" has generally a cumulative sense, but sometimes it is by force of a context read as "or" Maxwell on "interpretation of Statutes" has recognised the above use to carry out the interpretation of the legislature. This has been approved by this Court in *Ishwar Singh vs. State of UP* {AIR 1968 SC 1450}. The principle of *Noscitur A Sociis* can be profitably be used to construct the word "and may also"

in the sub-rule.

Hence the words "and may also" in Rule 2-A cannot be interpreted the context as denoting to a step which is permissible only as additional to attachment of property of the opposite party. If those words are interpreted like that it may lead to an anomalous situation. If the person who defies the injunction order has no property at all the court becomes totally powerless to deal with such a disobedient party. he would be immuned from all consequences even for any open defiance of a court order. No interpretation shall be allowed to bring about such a sterile or anomalous situation (vide Constitution Bench in *Vidya Charan Shukla vs. Khubchand Baghel* [AIR 1964 SC 1099]. The pragmatic interpretation, therefore, must be this: It is open to the court to attach the property of the disobeying party and at the same time the court can order him to be detained in civil prison also if the court deems it necessary, Similarly the court which orders the person to be detained in civil prison can also attach the property of that person. Both steps can be resorted to or one of them alone need be chosen. It is left to the court to decide on consideration of the fact situation in each case.

It is pertinent to point out that Rule 2(3) of Order 39 of the Code before that sub-rule was deleted by Act 104 of 1976, has been interpreted by different High Courts in India and in almost all such decisions the High Courts have adopted a similar construction as we have made above. (that sub-section has been quoted earlier). It is almost the same as Rule 2A and the slight distinction is not material for us in this case. Vide, a Full Bench of the Madras High Court in Ottapiurakkal Thazath Suppi & ors. vs. Alabi Mashur Koyanna Koya Kunhi Koya (AIR 1917 Madras 448) a Single Judge of the Patna High Court in Nawal Kishore Singh & ors. vs. Rajendra Prasad Singh & Ors. (AIR 1976 Patna 56) which was subsequently approved by a Division Bench of the same High Court. Kapildeo Upadhyay vs. Raghunath Pandey [AIR 1978 Patna 212].

We, therefore, disagree with the interpretation placed by the learned Single Judge in the impugned order regarding the scope of Rule 2A of Order 39 of the Code. However, we are in agreement with him that in view of the subsequent actions done by the respondent (by removing the obstruction and tendering unconditional apology to the court) it is not necessary to put the respondent in prison. We, therefore, dismiss this special leave petition subject to the clarification made above regarding the legal position.