

Supreme Court of India

Supreintendent Of Central Excise ... vs Somabhai Ranchhodhichai Patel on 23 March, 2001

Equivalent citations: AIR 2001 SC 1975, 2001 CriLJ 2040, 2001 (76) ECC 657, 2001 (129) ELT 280 SC, (2001) 2 GLR 254, JT 2001 (4) SC 333, 2001 (2) SCALE 683, (2001) 5 SCC 65, 2001 (1) UJ 653 SC, (2001) 2 UPLBEC 1371

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Bench: S Bharucha, Y Sabharwal

ORDER Y.K. Sabharwal, J.

1. The circumstances under which an order was passed by this Court on 25th August, 2000 directing that notice be issued on contempt petitions, in brief, are these:

2. On 31st December, 1997, Civil Judge (SD), Anand passed a decree in favour of respondent, inter alia, for Rs.9,33,378.37p. with interest @ 6% from the date of suit, i.e., from 16th March, 1982 and cost of the suit. The said decree is the subject matter of challenge in First Appeal No.2317/98 filed by the defendants (petitioners in SLP and contempt petition) in the High Court of Gujarat. A civil application was filed by the petitioners in the High Court seeking stay of the execution of the decree. The High Court by order dated 21st December, 1999 granted stay of the execution of the decree subject to the condition that decretal amount together with costs and interest is deposited in the trial court within the period stipulated in the order. The High Court further directed that on deposit being made, the respondent who is the original plaintiff shall be entitled to withdraw 50% of the amount on furnishing security to the satisfaction of the trial court and 50% without security.

3. The order dated 21st December, 1999 is the subject matter of challenge in the Special Leave Petition. While issuing notice in the petition on 27th March, 2000, this Court directed that the notice shall state that the matter may be disposed of at the SLP stage by varying the order under challenge so that withdrawal of the entire amount is permitted only against security and withdrawal of 50% amount without security was stayed. The order reads:

"Issue notice. Notice shall state that the matter may be disposed of at the S.L.P. stage by varying the order under challenge so that withdrawal of the entire amount is permitted only against security.

Pending further orders, the order under challenge is stayed to the extent that it permits the respondent to withdraw fifty per cent of the amount without furnishing security."

4. Pursuant to the decree, a sum of Rs.19,51,268/- was deposited in the trial court on 24th March, 2000.

5. After the aforesaid order was passed by this Court, Superintendent, Central Excise declared on oath in an affidavit before the trial court that this Court on 27th March, 2000 has passed in order that 50% amount can be withdrawn with full surety and remaining 50% shall not be withdrawn. It was stated that "if the judgment creditor approaches for permission to withdraw, the judgment creditor may be permitted to withdraw 50% amount thereof on furnishing full security". It was further stated that the certified copy of the order of this Court shall be produced as soon as it is

received. On 1st April, 2000, an application was filed by Kanubhai Ambalal Patel, the power of attorney holder of the first respondent, before the Civil Judge praying that as per the order of the High Court of Gujarat, 50% of the amount may be allowed to be withdrawn without surety and 50% with surety. On 3rd April the Civil Judge, on consideration of the affidavit of the Superintendent of Central Excise and the aforesaid application filed by the plaintiff permitted the judgment creditor/plaintiff to withdraw 50% of the deposited amount on furnishing full surety. On 5th April, 2000, order of this Court dated 27th March, 2000 was received by the Trial Court. On 7th April, 2000, an application was filed on behalf of the plaintiff before the trial court stating that this Court has passed an order to pay 50% of the amount to him without surety and praying that order may be passed to pay the said 50% amount deposited by the Excise Department without furnishing security. On the said application, after hearing counsel for both the parties, on the same date, namely, 7th April, 2000, an order was passed permitting withdrawal of 50% amount without furnishing surety. The order reads as follows :

"Plaintiff and his advocate are present. Heard. The defendant and his advocate the Government Pleader are present. Heard. An officer of respondent produces a copy of the order of the Supreme Court in SLP (C) No. 4327/2000. Considering the same, till further order the plaintiff is permitted to withdraw 50% amount without furnishing surety. Thus, as per the order dated 27.3.2000 of the Hon'ble Supreme Court, the plaintiff is permitted to withdraw 50% amount. Nazir to pay the amount accordingly and report."

6. Under the aforesaid circumstances, a civil application No.3942/2000 dated 2nd May, 2000 was filed by the petitioners in the first appeal pending in the High Court bringing to the notice of the High Court the aforesaid facts and submitting that the trial court has shown scant respect to the order of this Court and in clear violation thereof has permitted the withdrawal of 50% of the amount deposited by them without furnishing security. The petitioner, therefore, prayed in the said application for quashing and setting aside the order dated 7th April, 2000 and further prayed that the plaintiff be directed to deposit the amount so withdrawn forthwith in the trial court. In affidavit dated 7th June, 2000 filed in reply to the said application, the stand taken was that 50% of the amount without furnishing security had been withdrawn in terms of the order of the trial court dated 7th April, 2000 and if the said order is erroneous or illegal, the applicants are entitled to challenge the same by revision or appeal but in the said application the court will not go into the legality or validity of the order passed by the trial Judge. It was further submitted that the plaintiff was ready and willing to furnish security for the withdrawal of the 50% amount permitted pursuant to the order dated 7th April, 2000 and that it will not be in the interests of justice to direct redeposit of the said amount. On this application (Civil Application 3492/2000), the High Court passed an order on 14th June, 2000 to the following effect :

"In order to test the bonafides of the request made in Para 3 of the counter affidavit, S.O. to 28.6.2000. In the meantime security for 50% amount withdrawn by the Respondents be filed."

7. Instead of furnishing security, what was filed before the trial court was a solvency certificate dated 30th June, 2000 issued by a Mamlatdar.

8. When Civil Application No.3492/2000 was listed before the High Court on 24th July, 2000, none appeared for the plaintiff. The High Court, on consideration of the facts of the case including the fact that none had appeared for the plaintiff nor an intimation had been given that in terms of order dated 14th June, 2000 security for 50% amount which had been withdrawn had been furnished or not, disposed of the application with the direction to the plaintiff to deposit in the court of Civil Judge (SD), Anand 50% of the amount withdrawn by him within a period of two weeks.

9. On 26th July, Contempt Petition 199 of 2000 was filed in this Court, inter alia, stating that despite the order dated 27th march, 2000 having been brought to the notice of the court, the learned judge by order dated 7th April, 2000 permitted the respondent to withdraw 50% of the amount without security and thereby the respondent had committed contempt. As stated earlier, notice on the contempt petitions was issued on 25th August, 2000. That order reads:

"The trial court had permitted the respondent to withdraw 50% of the amount deposited by the petitioners without furnishing security and the respondent states in his counter that he was not aware of the order that we had passed when he did withdraw that amount. The petitioners then moved the High Court for a direction to the respondent to redeposit the amount so withdrawn, and, on 14th June, 2000, the High Court directed the respondent to provide security for that 50%. Even so, on 30th June, 2000, the trial court permitted the respondent to withdraw the amount only upon 'security in the form of insolvency certificate to the satisfaction of the trial court.' This, it seems to us prima facie, is flouting not only the order of this Court but also the order of the High Court dated 14th June, 2000.

The respondent shall now redeposit the 50% of the amount forthwith in the trial court.

Issue notice on the contempt petition that has been filed by the petitioners in regard to the earlier order of the trial court and suo motu notice in regard to what appears to be a breach of the High Court's order dated 14th June, 2000 and this Court's order dated 27th March, 2000. The notice in the suo motu petition shall issue not only to the respondent but also to the Civil Judge (SD), Anand.

The S.L.P. is adjourned to 9th October, 2000. The contempt petitions shall be returnable on that day."

10. Despite not only the knowledge but also having a copy of the order dated 27th March, 2000, the Civil Judge permitted the withdrawal of the 50% amount to the plaintiff without furnishing security. It seems that the amount was immediately withdrawn.

11. In the contempt petition and also in the special leave petition, affidavit has been filed by Navinbhai Somabhai Patel being son and power of attorney holder of the original plaintiff-respondent herein. The judicial officer has also filed an affidavit in reply to suo motu proceedings of contempt initiated against him. The facts noticed hereinbefore have not been controverted in the said affidavits. Indeed, the facts are incapable of being controverted.

12. First taking up the case of the respondent, Navinbhai states that the respondent who has been residing in USA since 1997 had executed a power of attorney in his favour and also in favour of one Kanubhai Patel before going to USA. Both of them have been pursuing the case. Navinbhai has tendered an unqualified and unconditional apology for withdrawing 50% amount without security under the orders of the trial court dated 7th April, 2000 and has prayed for leniency. In the affidavit Navinbhai states that he is not attempting to justify his conduct for which he has tendered unqualified and unconditional apology but is only placing the circumstances on record to show that there was no willful or deliberate non-compliance of the order dated 27th March, 2000 passed by this Court or order dated 14th June, 2000 passed by the High Court of Gujarat. The affidavit goes on to say that the deponent as well as Kanubhai are not well versed in English and depend entirely on the professional advice received from time to time and that whatever action they have taken were taken only on the basis of such advice.

13. In the affidavit dated 10th August, filed in the SLP, Navinbhai stated that on 7th April, 2000 "the deponent/respondents were not aware of the order dated 27th March, 2000 made by this Hon'ble Court". Now, when notice of contempt is issued, he states that this statement is not correct and has been erroneously made. He tries to explain that what he really meant by that statement was that he was not aware of the exact contents of the order till 14th April, 2000 though he did become aware of the substance of the order dated 27th March, 2000 as had been explained to him by his council. Regarding the order of the High Court dated 14th June, 2000, the explanation offered is that on receipt of the said order, he again approached his advocate and upon his advice obtained a solvency certificate from the concerned authorities against his various immovable properties valued at Rs.29,25,000/-. While issuing the solvency certificate, the Mamlatdar has retained all the original papers of the properties of the deponent. The said solvency certificate was filed in the trial court. He further states that when the Civil Application No.3492 came up for hearing before the High Court on 24th July, 2000, his advocate was not present and it could not be pointed out that a solvency certificate has already been filed and accepted by the trial Court and that the order of the High Court directing the respondent to furnish security to the satisfaction of the trial court had been duly complied with. The deponent is said to have received the certified copy of the order dated 24th July, 2000 only on 26th August, 2000 which was Saturday and the amount was redeposited on 28th August, 2000. Under these circumstances, Navinbhai submits that respondent never intended to act in willful disobedience of the order.

14. There can be no manner of doubt from the circumstances of the case that in clear breach of the order of this Court, the amount was withdrawn without security. It is also apparent that in breach of the order of the High Court dated 14th June, 2000 instead of furnishing security, a solvency certificate was filed by the respondent before the trial court. It also appears that in reply to the civil application, the respondent instead of taking a forthright stand took shelter under the order of the trial court dated 7th April, 2000 urging that the legality of the said order cannot be examined by the High Court in that appeal. It is apparent that there has been blatant flouting of the order of this Court. It is not an order of which any one can even remotely think of two interpretations. None has so pleaded. The conduct of the respondent has been reprehensible.

15. In spite of the facts as aforesaid, we may have assumed that the deponent and Kanubhai did not know English and whatever action was taken were based on the professional advice received from time to time as claimed and on that basis given benefit of doubt to the respondent, since it is also claimed that the application dated 7th April, 2000 was in the handwriting of the advocate himself who told Kanubhai that this Court had permitted withdrawal of 50% amount without security, but for the manner in which the respondent conducted himself in the High Court and before this Court. Before the High Court he took shelter under order of the Civil Judge dated 7th April, 2000 fully knowing that it was contrary to the order dated 27th March, 2000 passed by this Court. Before this Court, as already stated, first he filed affidavit stating that he was not aware of the order dated 27th March, 2000 passed by this Court and later he tried to explain by stating that what he meant was that he was not aware of the exact contents of the order but was aware of the substance of the order. The explanation is entirely misconceived. The admitted filing of a false affidavit which is now sought to be explained constitutes contempt by itself. It is evident that the deponent has no regard whatsoever for truth. He has taken different stands at different times to suit his convenience. Having regard to the fact that the respondent is said to be living abroad since 1997, we do not want to punish him for the actions of his attorney, to whom notice of contempt has not been issued. Under these circumstances, taking a lenient view, we are inclined to accept the apology. It is ordered accordingly.

16. Reverting now to the contempt proceedings initiated against the judicial officer, tendering unconditional and unqualified apology, he says that "with my limited understanding, I could not read the order correctly". The judicial officer further says in his affidavit that while passing the order dated 7th April, 2000, he inadvertently erred in reading and understanding the order dated 27th March, 2000 and that there has been a serious lapse on his part in this regard. What we have said earlier while dealing with the stand of the respondent that the facts are incapable of being controverted and in clear breach of the order of this Court, a sum of Rs.9,78,634/- was permitted to be withdrawn without security, is applicable with more force against the judicial officer. It is a matter of great concern, regret and deep anguish that the order of the type in question which clearly and unambiguously grants a stay of the order of the High Court permitting withdrawal of 50% of amount without security could not be understood by the officer. The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake. Despite these glaring facts, we assume, as pleaded by the judicial officer, that he could not understand the order and, thus, on that assumption it would be a case of outright negligence, which, in fact, stands admitted but wilful attempt to violate the order for any extraneous consideration or dishonest motive would, therefore, be absent. In this view, we drop these contempt proceedings against the officer by issue of severe reprimand.

17. What we have said above, however, is not the end of the matter. It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever. Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar

General of the High Court of Gujarat.

18. In the special leave petition we grant leave. We feel it appropriate to make absolute the order as we had proposed in order dated 27th March, 2000. It is, therefore, ordered accordingly and, thus, the order of the High Court under challenge is modified and it is directed that the entire amount would be withdrawn only against furnishing security to the satisfaction of the trial court. The contempt petitions and appeal are disposed of accordingly.