

Karnataka High Court

D.M. Samyulla vs Commissioner, Corporation Of The ... on 15 March, 1990

Equivalent citations: ILR 1990 KAR 1097, 1990 (1) KarLJ 352

Author: R Jois

Bench: R Jois, R Murthy

ORDER - DISMISSAL OF APPEAL/PROCEEDING FOR DEFAULT - EFFECT & REVIVAL - Interim order does not survive after dismissal of proceeding - Order staying dismissal of proceeding for default, futile and of no effect since stay of order means stay of executable order & order of dismissal inexecutable - Revival of Interim Order only on restoration of main proceeding.

Miscellaneous Appeal, in which stay of eviction was granted on 13-9-1982, was dismissed for default on 23-2-1989. In Miscellaneous Application for restoration of appeal, stay of order of dismissal dated 23-2-1989 as sought for was granted. No order restoring the interim order dated 13-9-1982 nor an order of stay of execution of eviction order having been made, question arising for consideration as to whether the order of stay of dismissal had the effect of restoring interim order dated 13-9-1982.

Held:

(i) With the dismissal of M.A. No. 35 of 1982, for default, the interim order granted in the appeal came to an end. Thus the interim order could not and did not survive after the dismissal of M.A. No. 35 of 1982 and therefore the interim order dated 13-9-1982 did not exist on and after 23-2-1989.

(ii) The order staying the dismissal of M.A.No. 35 of 1982, for default, was futile and of no effect, for stay of an order means the stay of an order which is capable of being executed. An order dismissing an appeal is not an executable order and therefore, an order of stay staying the order of dismissal, which order itself is incapable of being executed, was of no effect at all.

(iii) It may be that if and when an order dismissing a proceeding for default is set aside, any interim order which was in existence during the pendency of that proceeding gets revived with the restoration of the original matter. Admittedly, in the present case, the order dismissing the appeal for default still remains intact and has not been set aside as the Miscellaneous Application is still pending.

NULL IRREGULAR OR ERRONEOUS ORDERS - DISOBEDIENCE - Order not to be disregarded but clarification/modification to be sought - Not open to party to decide whether order null or valid, regular or irregular.

It is only in cases where there is an order restraining an authority or person from doing any particular act and the person or authority considers that the order was erroneous, the person or authority cannot take upon himself/itself to disregard the order as issued, but has to seek clarification or modification of the order...A party who knows an order, whether it is null or valid, regular or irregular, cannot be permitted to disobey it and it would be dangerous to allow the party to decide as to whether an order was null or valid and whether it was regular or irregular.

Such a principle would be attracted in cases where there has been an order of the Court against any particular person or authority and that person or authority takes the stand that the order of the Court is illegal or it is bad for not following any mandatory procedure or takes upon himself or itself to disobey the order of the Court.

ORDER Rama Jois, Ag. C.J.

1. In this complaint presented under Sections 10 and 12 of the Contempt of Courts Act, the complainant has prayed for punishing the respondents for having deliberately and wilfully committed the contempt of the City Civil Court, Bangalore, by disobeying its order dated 13-9-1982.

2. The undisputed facts of the case are these: A vacant land measuring 486 square yards belonging to the Corporation of the City of Bangalore at Briand Square, Mysore Road, Bangalore City had been leased to the complainant for establishing a Petrol Bunk. On 28-2-1982 an order of eviction was passed by the Competent Officer acting under Section 4 of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act directing the eviction of the complainant from the said premises. Aggrieved by the said order, the complainant presented an appeal against that order under Section 10 of the said Act on 10-9-1982. On an application made in the said appeal, the Appellate Authority/ City Civil Court made an order on 13-9-1982 staying the order of eviction. On 23-2-1989 the appeal was dismissed for default. On 28-2-1989 a miscellaneous application under Section 151 read with Order IX Rule 13 of the Code of Civil Procedure was filed before the Appellate Authority praying for setting aside the order dated 23-2-1989 dismissing the appeal for default with a prayer for restoration of the appeal and to dispose of the same on merits. In the said miscellaneous application, the complainant presented I.A.No. 1 for staying the order dated 23-2-1989 dismissing the appeal for default. On the said application, the following order was made:

"Order of dismissal passed on 23-2-1989 in M.A.No. 35 of 1982 is stayed until further orders."

The notice on the miscellaneous application was stated to have been served on the Commissioner on 7-8-1989 and the Counsel for the Corporation filed vakalath in the miscellaneous application on 1-9-1989. On 27-9-1989 objections were filed by the Corporation to the miscellaneous application. On 17-1-1990 the Corporation authorities executed the order dated 28-2-1982 made by the Competent Authority under the Act and took possession of the land. On 18-1-1990 the complainant filed an application for restoration of the possession of the land under Section 144 read with Section 151 of the Code of Civil Procedure. On 19-1-1990 the City Civil Court made an order permitting the complainant to enter upon the land. On 5-2-1990 on the application, I.A.No. IV filed by the complainant, the City Civil Court directed the Corporation to put the complainant in possession of the property. Aggrieved by the said order, the Corporation preferred a Revision Petition before this Court in C.R.P.No. 850 of 1990 and the civil revision petition was dismissed. Immediately thereafter, on 15-2-1990 the possession has been handed over to the complainant.

3. The question, however, for consideration in this complaint is whether the respondents are liable to be punished for disobeying the order of the City Civil Court dated 13-9-1982.

4. As stated earlier, the order of eviction was made by the Competent Officer on 28-2-1982. The execution of that order was stayed by the order dated 13-9-1982 made by the City Civil Court on an interlocutory application filed in Misc. Appeal No. 35 of 1982. If the said order can be regarded as having been in force, there can be no doubt that the action of the Corporation authorities executing the order dated 28-2-1982, on 17-1-1990 would amount to contempt of Court. But, there is no dispute that the appeal itself was dismissed for default on 23-2-1989 and Miscellaneous No. 172 of 1989 was made on 28-2-1989 praying for setting aside the order dismissing the Misc. Appeal No. 35 of 1982. The said miscellaneous application is still pending and the order dismissing the appeal for default has not been set aside so far.

5. It is also not in dispute that no order has been made in Misc. No. 172 of 1989 restoring the interim order dated 13-9-1982 or an order staying the execution of the order of eviction dated 28-2-1982 has been made. On the other hand, the order made on I.A.No. 1 in Misc. No. 172 of 1989, as stated earlier, was an order staying the order of dismissal of the appeal dated 23-2-1989.

6. Sri H. Rangavittalachar, learned Counsel for the complainant, however, strenuously contended that the order staying the order of dismissal of Misc. Appeal No. 35 of 1982 had the effect of restoring the interim order dated 13-9-1982 passed during the pendency of the appeal. In support, of this submission the learned Counsel relied on the order made in C.R.P.No. 850 of 1990. The relevant portion of the order reads:

"It was contended by learned Counsel for the petitioner that the interim orders passed in M.A.No. 35/82 will not get revived on the dismissal order being stayed in Misc. No. 172/89. It is admitted that the interim order granted in M.A. 35/82 was not specifically revoked or vacated. Therefore with the stay of the dismissal order dated 23-2-89, the interim order granted in M.A.No. 35/82 gets revived. Therefore contention to the contrary is rejected."

(Underlining by us) As can be seen from the above order the learned Single Judge proceeded on the basis that it was admitted that the interim order granted in M.A.No. 35 of 1982 had not been revoked or vacated and therefore with the stay of the dismissal order dated 23-2-1989, the interim order granted in M.A.No. 35 of 1982 gets revived.

7. With great respect to the learned Judge, we are unable to agree that any such consequences ensue. In our opinion, with the dismissal of M.A. No. 35 of 1982 for default, the interim order granted in the appeal came to an end. Thus the interim order could not and did not survive after the dismissal of M.A.No. 35 of 1982 and therefore the interim order dated 13-9-1982 did not exist on and after 23-2-1989.

8. If only the complainant had secured an interim order during the pendency of the miscellaneous proceedings staying the execution of the order of eviction dated 28-2-1982, then the authorities of the Corporation could not proceed to execute the order of eviction. In our opinion, the order staying the dismissal of M.A.No. 35 of 1982 for default was futile and of no effect, for stay of an order means the stay of an order which is capable of being executed. An order dismissing an appeal is not an executable order and therefore, an order of stay staying the order of dismissal, which order itself is

incapable of being executed, was of no effect at all.

9. It may be that if and when an order dismissing a proceeding for default is set aside, any interim order which was in existence during the pendency of that proceeding gets revived with the restoration of the original matter. Admittedly, in the present case, the order dismissing the appeal for default still remains Intact and has not been set aside as the miscellaneous application is still pending. In order that the order of eviction dated 28-2-1982 was not executed during the pendency of miscellaneous petition, the complainant should have sought for stay of that order. He did not do so. The learned Counsel for the complainant, however, submitted that even on the basis that the authorities were of the view that the stay order did not have the effect of restoring the interim order dated 13-9-1982 and/or having the effect of staying the order of eviction dated 28-2-1982, it was obligatory on the part of the respondents to have sought for modification or clarification, but, they could not take upon themselves to proceed on the basis that there was no interim order staying the order of eviction dated 28-2-1982. In support of this submission the learned Counsel relied on the Judgment of the Madras High Court in MOTTUR HAJEE ABDUL RAHMAN & CO. v. DEPUTY COMMERCIAL TAX OFFICER, . The relevant portion of the Judgment on which the learned Counsel relied is at paragraph 5. It reads:

"I emphasise and it is worth emphasising that no officer of the Government however high or exalted he may be, can take upon himself the responsibility of judging the correctness or validity of an order of any Court and if he honestly and bona fide in the discharge of his functions feels that the order is erroneous or requires any modification, the only remedy open to him is to approach that Court by way of review or modification or a higher Court by way of appeal or otherwise. Apart from that, it is not open to him to take upon himself the responsibility of judging the order and take any action contrary to or inconsistent with the same on the basis of his own judgment. If once an officer is permitted or allowed to do any such thing, that will mean the end of the very principle of rule of law on the basis of which the entire fabric of our democratic society has been constructed."

In our opinion, the principle stated in the aforesaid decision is not at all apposite to this case. It is only in cases where there is an order restraining an authority or person from doing any particular act and the person or authority considers that the order was erroneous, the person or authority cannot take upon himself/itself to disregard the order as issued, but has to seek clarification or modification of the order. In the present case, there was no order at all staying the execution of the order of eviction dated 28-2-1982 and what had been stayed was the order dismissing the appeal and therefore there was nothing to seek clarification. As pointed out earlier, the complainant had chosen to take an order of stay of dismissal of M.A.No. 35 of 1982 which order was incapable of execution. It is difficult to appreciate as to why and how such a purposeless or futile order was sought for and granted. It is true that such an order was understood as an order restoring the order staying the order of eviction dated 13-9-1982 though it was not; but all the same we cannot proceed to punish the respondents for disobeying an order which was not in existence.

10. The learned Counsel next relied on the authority reported in *Hadkinson v. Hadkinson*, 1952 All England Law Reports at page 567. The relevant portion reads:

"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it....It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed."

The principle laid down in the said decision is a party who knows an order, whether it is null or valid, regular or irregular, cannot be permitted to disobey it and it would be dangerous to allow the party to decide as to whether an order was null or valid and whether it was regular or irregular. In our opinion, such a principle would be attracted in cases where there has been an order of the Court against any particular person or authority and that person or authority takes the stand that the order of the Court is illegal or it is bad for not following any mandatory procedure or takes upon himself or itself to disobey the order of the Court.. But, such a situation does not arise here. In the present case the question for consideration is whether in the absence of an order of the Court staying the order of eviction dated 28-2-1982, can this Court punish the respondents for having disobeyed that order? In our opinion, the answer must be in the negative. To hold the respondents guilty of contempt of Court for having disobeyed an order which did not exist would be unjust. The fact that the said order was understood by the City Civil Court and also by this Court in the Revision Petition as reviving the interim order which had lapsed with the dismissal of the appeal does not make any difference, as the respondents could not be expected to expect that such a view would be taken for it was plain that with the dismissal of M.A.No. 35 of 1982 on 23-2-1989, the interim order granted on 13-9-1982 staying the order of eviction dated 28-2-1982 came to an end and the order of stay made on 31-3-1989 staying the dismissal of M.A.No. 35 of 1982 was futile and of no effect and did not have the effect of reviving the Interim order which was in force during the pendency of the appeal.

11. Lastly, the learned Counsel submitted that the Corporation authorities themselves had not taken the stand that there was no interim order against them and the stand taken before the City Civil Court that they had no knowledge of the stay order which has been disbelieved and the Court held that the Corporation authorities had the knowledge of the stay order dated 31-3-1989. But, as can be seen from the order in the Revision Petition, the Corporation did take the stand that the interim order passed in M.A.No. 35 of 1982 did not get revived on the stay of the dismissal order In Misc. No. 172 of 1989.

12. In the result, we make the following:

ORDER Complaint is dismissed.