IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 24TH MAY 2006 / 3RD JYAISHTA, 1928

CRP.No. 2118 of 2000(D)

CMA.69/1999 of PRL.SUB COURT,IRINJALAKUDA
OS.832/1997 of MUNSIFF COURT, KODUNGALLUR (IA. 1981 /1998)

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REVN. PETITIONERS/APPELLANTS 2 TO 4/
RESPONDENTS 2 TO 4 IN I.A./DEFENDANTS 2 TO 4 IN O.S.:

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1. C. ARAVINDAKSHA MENON,
S/O. CHANAYIL PARUKUTTY AMMA, ADVOCATE,
KODUNGALLUR, LAKAMALESWARAM VILLAGE,
KODUNGALLUR TALUK.

2. VENU, S/O. NELLAYIL MEENAKSHI AMMA,
LOKAMALESWARAM VILLAGE,
KODUNGALLUR TALUK.

3. VIDYASAGARAN,
S/O. VADAKKEDATH MADATHIL VASUMATHI AMMA
LOKAMALESWARAM VILLAGE,
KODUNGALLUR TALUK.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
ADV. SRI.P.G.RAJAGOPALAN
ADV. SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENT/RESPONDENT/PETITIONER IN I.A./PLAINTIFF IN O. S:

RAGHAVA MENON,
S/O. PATTIYIL LAKSHMIKUTTY AMMA,
LOKAMALESWARAM VILLAGE, KODUNGALLUR TALUK,
P.O. KODUNGALLUR.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
BY ADV. SHRI V.P.H. PANICKER.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/05/2006, ALONG WITH CRP NO. 2119 OF 2000 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO. 4307 OF 2000 IN C.R.P. 2118 OF 2000

DISPOSED OF VIDE ORDER DATED 24.05.2006 IN THE C.R.P.

24.05.2006 SD/- K.T. SANKARAN, JUDGE.

/true copy/

P.A. TO JUDGE

K.T. SANKARAN, J.

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C.R.P. Nos. 2118 & 2119 OF 2000

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Dated this the 24th May , 2006

O R D E R

One of the questions involved in these revisions is whether the defendants in the suit can be ordered to be detained in civil prison under Order XXXIX Rule 2A of the Code of Civil Procedure for violation of the interim order passed by the court, when the suit was ultimately dismissed. The suit filed by the respondents was dismissed on 30.08.1999 and on the same day as per the order in I.A.Nos. 1913 of 1998 and 1981 of 1998, the court held that the revision petitioners have violated the interim order passed by the trial court and they were ordered to be detained in the civil prison for a period of 30 days each. Learned counsel for the revision petitioners- defendants against whom applications under Order XXXIX Rule 2A were filed, relies on the decision in **Vasu vs. Thankamma** (**1981 K.L.T. 248).** Learned counsel for the respondents, on the other hand, relies on the decision of the Supreme Court in **Tayabbhai M. Bagasarwalla vs. Hind Rubber Industries Pvt. Ltd** (**A.I.R. 1997**

S.C.1240) and contends that the dictum laid down in **1981 K.L.T. 248** is no longer good in view of the Supreme Court decision.

2. In **Vasu vs. Thankamma,** the allegation was that the defendant, against whom an order of injunction was in force, violated that order. The violation was alleged to have been made in the year 1976 and the plaintiff filed an application under rule 2A Order XXXIX of the Code of Civil Procedure on 16.02.1978. The suit was dismissed on 25.02.1978 . Long there after, the trial court passed an order in the application for taking action for violation of injunction and held that the defendant had violated the order. In the revision filed by the defendant challenging that order, it was held that the trial court could not have passed the impugned order. This court held thus:

> *"3. The powers of the Civil Court to take action for disobedience of order of injunction are contained in O. 21 R. 32 of the Code of Civil Procedure and O. 39 R.2A of the Code of Civil Procedure . O. 21 R.32 deals inter alia , with a case where a decree for injunction has been passed and the person who is bound by the decree wilfully fails to obey. In other words, that arises in a case where there is a decree which calls for enforcement. That is not the case here. O. 39 R. 2A deals with consequences of disobedience or breach of injunction passed not by the final decree in the suit but on an interlocutory*

application. In case of disobedience of any injunction or other order made under R.1 or R.2 of O. 39 the Court granting the injunction or making the order or the Court to which the suit or proceeding is transferred is empowered to attach the property of the defaulting party and also to detain such party in civil prison for a term not exceeding three months. Sub-rule (2) of Rule 2A indicates that the attachment itself is only for the purpose of compelling obedience, for it provides that the attachment shall not remain in force for more than one year at the end of which time, if the disobedience or breach continues the property attached could be sold. In other words, if the disobedience does not continue by the time one year has passed there is no adverse consequence to the party. Attachment automatically ceases. Therefore attachment would not operate as an expropriatory measure or as a penal measure. In that setting detention in civil prison must also be held to be not intended as a penal measure but as a mode of enforcement of the injunction order. That is so is indicated by the Supreme Court in the decision in ***The State of Bihar vs. Rani Sonabati Kumari, AIR, 1961 SC 221.*** *In paragraph 23 of the judgment the court observes:*

> "Though undoubtedly proceedings under O.39 R.2 of the Code of Civil Procedure have a punitive aspect-as is evident from the contemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order"

If the provision in O.39 R.2A and the similar rule in O. 21 R.32 are intended to enable enforcement of the order or decree for injunction, as the case may be, there is no scope for invoking that rule when the order is no longer in force and by the decree in the suit the prayer for injunction stands negatived. Therefore the

order impugned could not have been passed."

3. The question that came up for consideration before the Supreme Court in **Tayabbhai M. Bagasarwalla vs. Hind Rubber Industries Pvt. Ltd** (**A.I.R. 1997 S.C.1240**) was whether an application under Order XXXIX Rule 2A of the Code of Civil Procedure could be maintained for violation of an order passed by the civil court when the civil court has ultimately held that it has no jurisdiction to try the suit. The High Court took the view that defendants could not be proceeded under Rule 2A Order XXXIX of the Code of Civil Procedure for violation of an interim order in such a case. The Supreme Court held that the High Court was not right in holding so. It was held thus:

> *"The first and foremost question in this appeal is whether the High Court was right in holding that since it has been found ultimately that the Civil Court had no jurisdiction to entertain the suit, the interim orders made therein are non est and hence Defendants 1 and 2 cannot be punished for their violation even if they had flouted and disobeyed the said interim orders when they were in force. We are of the considered opinion that the High Court was not right in saying so. "*
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> *"The question is whether the said decision of the*

> *High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of rule of law and would seriously erode the dignity and the authority of the Courts. We must repeat that this is not even a case where a suit was filed in wrong Court knowingly or only with a view to snatch an interim order. As pointed out herein above, the suit was filed in the Civil Court bona fide. We are of the opinion that in such a case the defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction".*

In **Tayabbhai's** case the Supreme Court referred to the decision of the Bombay High Court in **Dwarkadas Mulji v. Shadilal Laxmidas (1980 Mah. LJ. 404)** wherein it was held that where the court has no jurisdiction to try a suit, no person can be punished for flouting the interim orders made in such a suit. The Supreme Court held that the said decision was wrongly decided. **Tayabbhai's** case was referred to in **World Tanker**

Carrier Corporation vs. SNP. Shipping Services Pvt. Ltd and others (**1998 (5) SCC 310) (paragraph 45).** I am of the view that in view of the Supreme Court decision in **AIR 1997 SC. 1240,** the decision of this court in **1981 K.L.T.248** is no longer good.

4. Order XXXIX Rule 2A of the Code of Civil Procedure provides for consequence of disobedience or breach of injunction . That rule provides that the court 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. Sub rule (2) provides that no attachment made under the 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. The view taken in **Vasu's** case (supra) is that since the attachment could not be continued for a period of more than one year, Rule 2A is to be taken as a mode of enforcing the order and that on the same reasoning , the detention in the civil prison also must be taken as a mode of

enforcement of the injunction order. Rule 2A provides for two types of orders, one for attachment and other for detention in civil prison. Attachment is intended for compelling the party to obey the order. If the disobedience does not continue, the court could release the property from attachment. There may be cases where the consequence of disobedience or breach cannot be compensated. There are also cases where a party violating the order, cannot restore the status quo ante. For example, if the order of injunction is against cutting of trees and the trees are cut, there is no question of restoring the trees. In such a situation, the most effective course open is to consider the case for detention in civil prison of the person who violated the order. That the suit was dismissed after trial is not a ground to hold that the party who has violated the interim order should not be proceeded with under Rule 2A.

5. Coming to the facts of the case, the suit was filed by the respondents for a declaration that the election conducted to the first defendant 'Yogam' on 31.08.1997 was against the bye-laws of the first defendant and for consequential reliefs. In I.A. Nos. 3207 and 3208 of 1997, orders were passed by the trial court restraining the respondents –

defendants from spending amounts out of the funds of first defendant 'Yogam', except in accordance with the approved budget of the year 1997-98. It would appear that the order dated 29.11.1997 in I.A.No. 3208 of 1997 was modified by the order dated 29.08.1998 . The operative portion of the modified order reads as follows:

> *"Respondents are restrained from spending amounts out of the funds of first respondent Yogam except in accordance with the approved budget of the year 1997-98. Respondent may however apply to the court for spending any amount beyond the budgetary allocation, and may only spend such amounts after getting the permission of the court."*

I.A. Nos. 1913 of 1998 was filed on 10.08.1998 and I.A. No. 1981 of 1998 was filed on 17.08.1998 by the plaintiff complaining that the defendants violated the interim order passed by the court by spending huge amounts in excess of the budgetary allocation. It was also held that the defendants purchased an item of immovable property on 17.07.1998 as per the decision of the General Body meeting held on 22.03.1998. The plaintiff contended that the violation was wilful. The respondents in the I.A./ defendants contended that they have not wilfully violated the order of injunction and that they are not liable to be proceeded against under Rule

2A Order XXXIX of the Code of Civil Procedure.

6. Before the trial court, Exts. A1 to A33 and B1 to B72 were marked. The evidence of P.W.1 and D.W. 1 were recorded. The trial court held that the defendants have wilfully violated the order passed by the court. Accordingly defendants Nos. 2 to 4 were "sentenced to undergo imprisonment in civil prison" for 30 days each. The defendants filed appeals challenging the common order passed by the trial court in I.A. Nos.1913 and 1981 of 1998. The lower appellate court dismissed the appeals. However, it was held that the civil court has no jurisdiction to impose a sentence and that a person who violated the order could only be detained in civil prison.

7. Counsel for the revision petitioners contended that the trial court as well as the appellate court did not consider the pleadings and documentary evidence properly and several items of evidence were not even referred to by the courts below. The trial court found that the defendants violated the order, on the basis of the answers given in evidence by the second defendant as D.W.1. One of the questions was..... .....

..... (Q). The answer was ..... Relying on this question and answer, the trial court concluded that the defendants have wilfully violated the order. Dealing with the contention that there was no wilful violation, the trial court held that it has to be viewed in the light of the answer given by D.W.1,which is extracted above. The lower appellate court assumed without any definite finding that the defendants have wilfully violated the order passed by the court. The pleadings and documentary and oral evidence were not discussed at all by the appellate court to consider whether there was violation or whether violation was wilful. The appellate court held that *"I am not referring in detail to the various exhibits in the appendix since unnecessary for the resolution of the present controversy"*. It is clear from this statement itself that the appellate court has not considered the question involved in the case properly. The contention of the defendants is that there was no wilful violation of the order and that the purchase of the property on 17.07.1998 was not in accordance with the budgetary proposal but as per the decision of the General Body meeting held on 22.03.1998. Counsel for the revision petitioners contended that there is nothing in the injunction order which would indicate that it would

have operation in respect of any budgetary allotment or budget allocation in respect of the years 1998-99 onwards. This aspect was also not considered by the court below.

8. I am of the view that the matter requires reconsideration by the trial court . The order of the trial court and judgment of the appellate court are set aside and the matter is remanded to the trial court for fresh disposal. The parties are at liberty to adduce such other evidence as they wish to adduce.

The Civil Revision Petitions are allowed to the extent indicated above.

SD/-
K.T. SANKARAN,
JUDGE.

/true copy/

P.A. TO JUDGE

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K.T. SANKARAN, J.

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C.R.P.Nos. 2118 & 2119 of 2000

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Dated this the 24th May, 2006

O R D E R