



<p><i>Court to which the suit or proceeding is transferred if finds <u>malafide</u> 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. That means, the Court may first order the property of the person guilty of such disobedience or breach to be attached and thereafter it may also order such person to be detained in the civil prison for a term not exceeding three months.</i></p>	
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**ORDER**

**(Passed on 29<sup>th</sup> January, 2019)**

This revision under Section 115 of Civil Procedure Code, 1908 has been preferred by the petitioner against the order dated 5.7.2018 passed by learned First Additional District Judge, Gwalior in Civil Misc. Appeal No. 160/2017, whereby the order dated 21.11.2017 passed by Fifteenth Civil Judge Class-2, Gwalior in MJC No.6/2016 has been confirmed, however sentence of one month civil imprisonment of the petitioner has been reduced to two weeks.

2. Brief facts of the case are that the respondent No.1 instituted a suit for declaration and injunction against various persons including the present petitioner, who was the defendant No.1. The suit was in respect of

certain land in survey No. 30, area 0.784 hectare at village Ghatampur, Tahsil and District Gwalior. An application for temporary injunction under Order 39 Rule 1 and 2 CPC was filed along with the suit. The said application was decided on 28.2.2015, that was Saturday and the defendants therein were restrained from alienating the suit land during pendency of the suit. The order was passed on Saturday and before the petitioner or her counsel could get the knowledge of the order, a small portion of 5000 sq.ft. land was sold by the power of attorney holder of the present petitioner two days later of the order, i.e., on 2.3.2015, that was Monday. The respondents moved an application under Order 39 Rule 2-A of CPC for committing the petitioner to civil jail for having allegedly committed breach of injunction order passed by the Court. The petitioner contested the application on the ground that she obtained knowledge of the order on 3.3.2015 and when she told her power of attorney holder about the same, she was conveyed that power of attorney holder had already executed the sale deed on 2.3.2015. It is also submitted that after getting knowledge of the order no further sale of any parcel of the land has been made and the order is being duly complied with.

**3.** After hearing the parties, trial Court held the petitioner guilty under Order 39 Rule 2-A of CPC and sentenced her to civil jail for one month. The petitioner filed appeal before the lower appellate Court and the lower appellate Court while upholding the guilt of the petitioner has reduced the tenure of civil jail to a period

of fifteen days. Being aggrieved by the orders dated 5.7.2018 and 21.11.2017, the present revision is filed by the petitioner.

**4.** It is submitted by learned counsel for the petitioner that the impugned orders passed by the Courts below are manifest illegal, contrary to law and record and are also against the settled principle of law. The application under Order 39 Rule 2A of CPC filed by the respondent has been wrongly allowed and order sentencing the petitioner is also perverse. The Courts below have not appreciated the fact that the alleged sale deed dated 2.3.2015 had been executed by the power of attorney holder and not by the petitioner herself. It is a settled position of law that the Principal is not criminally liable for the acts of her agent and the Principal only incurs civil liability for the acts of her agent. Therefore, the Courts below erred in overlooking and discarding the defence of the petitioner that she had no knowledge of the order on the said date. Therefore, learned counsel for the petitioner has prayed for setting aside the aforesaid orders of the Courts below and the application under Order 39 Rule 2-A of CPC be dismissed with costs.

**5.** On the other hand, learned counsel for the respondents supported the orders impugned and prayed for dismissal of the present revision.

**6.** Heard the counsel for Perused the documents available on record.

**7.** It is submitted by learned counsel for the petitioner that the power of attorney holder had executed a sale deed as he was not informed of the order of the Court. It is observed in **Surjya v. Leela Nath [AIR 2004 GAU**

**35]** that “for the punishment to be imposed for breach of injunction the party who complained of the breach has to establish that the order of injunction issued by the Court is not open for two interpretations and is unambiguous and the action complained about is not bona fide in good faith”. In the present case, the action complained about is prima facie bona fide in good faith and petitioner has also assured that after getting knowledge of the order no further sale of any parcel of the land has been made and the order is being duly complied with.

**8.** Order 39 Rule 2A (1) CPC provides that 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, 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. That means, the Court may first order the property of the person guilty of such disobedience or breach to be attached and thereafter it may also order such person to be detained in the civil prison for a term not exceeding three months.

**9.** As mentioned above, the sale deed was executed by the power of attorney holder. He was not having knowledge of the order of the Court and the act done by him was in good faith. Petitioner has also assured after getting knowledge of the order that no further sale of

any part of the land would be made. Hence, it could not be said that that disobedience or non-compliance was made with malafide intention.

**10.** Considering the aforesaid facts and circumstances of the case, the Court below has erred in passing the impugned orders directing civil imprisonment of the petitioner.

**11.** Resultantly, the civil revision is allowed. The order dated 5.7.2018 passed in Misc. Civil Appeal No.160/2017 and order dated 21.11.2017 passed in MJC No.6/2016 are hereby set aside.

**12.** From going through the record, it reveals that the petitioner had deposited Rs.1,00,000/- in compliance of the order dated 23.7.2018 passed by this Court while staying the impugned orders. Since the orders impugned are being set aside by this order, the amount of Rs.1,00,000/- deposited by the petitioner be refunded to her after due verification.

No costs.

(yog)

**(Rajeev Kumar Shrivastava)**  
**Judge.**