

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 21st OF APRIL, 2023

WRIT APPEAL No. 1057 of 2022

BETWEEN:-

**SMT. PRIYA CHOUHAN D/O NOT MENTION
OCCUPATION: TEACHER C/O SMT. SEEMA TOMAR, 31
SHIKSHAK COLONY, CHERITAL JABALPUR (MADHYA
PRADESH)**

.....APPELLANT

(BY SHRI RAJESH CHOUDHARY - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
THE PRINCIPAL SECRETARY DEPARTMENT OF
CO OPERATIVE, SECRETRIATE, VALLABH
BHAWAN MANTRALAYA BHOPAL (MADHYA
PRADESH) 462004**
- 2. THE DY. REGISTRAR (CO-OPERATIVE) 1ST
FLOOR, APEX BANK, CIVIC CENTRE, JABALPUR
(MADHYA PRADESH) 482 002**

.....RESPONDENTS

(BY SMT. JANHAVI PANDIT - ADDITIONAL ADVOCATE GENERAL)

This appeal coming on for admission this day, the Court passed the following:

ORDER

Assailing the order dated 19.03.2021 passed by the learned Single Judge in dismissing the Writ Petition No.12933 of 2020, the writ petitioner is in appeal.

- 2. Vide order dated 16.09.2022, the writ appeal was dismissed. Thereafter,**

review petition was filed being Review Petition No.1147 of 2022. Vide order dated 10.11.2022, the review petition was allowed and the order dated 16.09.2022 in Writ Appeal No.1057 of 2022 was reviewed and recalled. The writ appeal was restored to file. Thereafter, the writ appeal was disposed off by a final order dated 30.01.2023. In view of the fact that certain important questions of law were not considered by this Court and since the judgment was not yet signed, the order dated 30.01.2023 was recalled. The matter was listed for reconsideration. Thereafter, the matter was heard on various dates.

3. The case of the writ petitioner is that an application was filed under Order 39 Rule 2A of the Code of Civil Procedure, 1908 (in short "the CPC") before the Deputy Registrar, Cooperative Societies, Jabalpur on the ground that the opposite party has violated the order of status quo. The Deputy Registrar, Cooperative Societies considered the application under Order 39 Rule 2A of the CPC and held the accused guilty of the same. The matter was referred to the High Court. The Registrar (Judicial) of the High Court on the administrative side passed an order on 09.11.2016 directing the Deputy Registrar to transmit the records of the case in a proper reference (memo) to the Registry of the High Court for taking appropriate action. Thereafter, the instant writ petition was filed. The instant writ petition was dismissed on the ground that the suit itself has been dismissed and as the order on the application under Order 39 Rule 2A of the CPC was an interlocutory order, the same does not survive. Aggrieved by the same, a review petition was filed which was also rejected by order dated 28.7.2022. Hence, this appeal.

4. The learned Single Judge by the impugned order came to the conclusion that when the main proceedings pending before the Deputy Registrar, Co-

operative, Jabalpur were disposed off, the question of entertaining the violation of any interim order will not arise for consideration. Questioning the same, the instant appeal was filed.

5. Learned counsel for the appellant contends that the question of contempt will remain irrespective of the disposal of the proceedings. The contempt would arise in view of the fact that there was an interim order granted on 24.02.2003. That the petitioner had filed an application under Section 67(1) of the Madhya Pradesh Co-operative Societies Act, 1960 read with Order 39 Rules 1 and 2 of the CPC which was allowed by the Deputy Registrar. The status quo was ordered to be maintained by the respondents therein over the plot in dispute. The said order was not complied with. That in spite of the order directing status quo, the respondents therein continued the construction over the property in question. Therefore, an application was filed by the appellant under Order 39 Rule 2A of the CPC alleging breach of injunction. The application was referred to the District Judge, who returned the matter to the Deputy Registrar for sending it to the High Court being a contempt matter. The matter was sent to the Principal Registrar of the High Court, who returned the file to the Government to submit a proper reference as contemplated under the Contempt of Courts Act, 1971. The matter was tried and by order dated 04.08.2016 the opposite party was found guilty of breach of injunction by the Deputy Registrar. The matter was resent to the Principal Registrar of the High Court, who again returned the matter to the Deputy Registrar for submission of a proper reference as per the provisions of Contempt of Courts Act. Thereafter, the appellant filed the instant writ petition seeking a direction to the Deputy Registrar to act in accordance with the letters issued by the High Court. The learned Single Judge dismissed the petition on

the ground that no relief could be granted as the main proceedings have been concluded.

6. The plea of the appellant herein is that once there is an order of violation as brought under Order 39 Rule 2A of the CPC, necessary orders on punishment requires to be passed by the concerned court. However, the same has been returned to the Deputy Registrar for submission of a proper reference under appropriate provision of the Contempt of Courts Act. In support of his plea, appellant's counsel relies on the judgment of a Division Bench of Madras High Court in the case of *V. Uma Vs. V. Balaji* reported in *AIR 2011 MADRAS 197*. The same is opposed to by the learned Additional Advocate General, firstly, on the ground that when the proceedings are concluded, the question of trying for a contempt does not arise for consideration. That, so far as the imposition of punishment as contemplated under Order 39 Rule 2A of the CPC is concerned, the concerned authority would have no jurisdiction to pass such an order. In support of her case, she relies upon the judgment passed by the Hon'ble Supreme Court in the case of *Thakur Jugal Kishore Sinha Vs. The Sitamarhi Central Co-operative Bank Ltd. and Another* reported in *AIR 1967 SC 1494*.

7. We have considered the contentions as well as the aforesaid judgments.

8. So far as the instant case is concerned, the question of jurisdiction to entertain an application under Order 39 Rule 2A of the CPC when the main proceeding itself is concluded, in our considered view, may not be appropriate. The question of contempt arises when an order of a court or authority has been disobeyed. It is really of no consequence whether those proceedings are subsequently allowed or dismissed. The contempt would still remain on record.

Therefore, the dismissal of the writ petition by the learned Single Judge on the ground that the proceedings itself have been concluded and, therefore, the matter has become infructuous, namely, the application under Order 39 Rule 2A of the CPC, in our considered view, is not what the law intended. The contempt proceedings are maintainable irrespective of the dismissal or allowing of the proceedings under which an application under Order 39 Rule 2A of the CPC has been filed.

9. So far as the procedure adopted in the instant case is concerned, the matter has already been tried under Order 39 Rule 2A of the CPC by the Deputy Registrar. The matter was referred to the High Court for further orders which has again been sent back to the Deputy Registrar for submission in the proper format. Therefore, so far as the instant case is concerned, in view of the peculiar facts and circumstances involved, we are of the considered view that the petition should be registered under the provisions of the Contempt of Courts Act for imposition of punishment as contemplated under Order 39 Rule 2A of the CPC. Thereafter, the High Court to pass appropriate orders.

10. So far as the general contention being advanced as to the manner and procedure in which disobedience of the orders has to be considered is concerned, we have been informed that most of the acts being done by the authorities are more under practice rather than supported by any statutory rules or regulations. Ultimately, these are matters where the common man requires some relief. At the level at which the proceedings are being conducted, the parties cannot be embroiled into a legal interpretation of the various provisions of the Act.

11. *Prima facie*, we are of the view that the power to grant an interim order is as contemplated under Section 67(1) of the Co-operative Societies Act, 1960.

The same reads as follows :-

"(1) The Registrar or his nominee or board of nominees shall have the power of making interlocutory orders including grant of a temporary injunction. In exercising this power, the Registrar or his nominee or board of nominees, as the case may be, shall follow the procedure laid down in the Code of Civil Procedure, 1908 (V of 1908), for the purpose of making such orders and granting an injunction."

Therefore, the same contemplates that the procedure as envisaged in the Code of Civil Procedure requires to be followed. It is not the substantive power that the authority exercises under Section 67(1) of the Co-operative Societies Act. Therefore, only because the language used in this Section is a 'temporary injunction' does not necessarily mean that the order is one to be passed under Order 39 Rules 1 and 2 of the CPC. On an assumption that it is an order passed under Order 39 Rules 1 and 2 of the CPC, the provisions of Order 39 Rule 2A of the CPC are sought to be applied in order to enforce any disobedience of the order. This we feel may not be a proper application of law. The grant of temporary injunction need not necessarily be under the provisions of Order 39 Rules 1 and 2 of the CPC. It can be under other powers also. It is only when there is an assumption that the interim order has been granted under Order 39 Rules 1 and 2 of the CPC that the consequences of holding that the disobedience has to be rectified only under Order 39 Rule 2A of the CPC comes into play. This we feel may not be appropriate.

12. Therefore, we hold that whenever an order has been passed under Section 67(1) of the Co-operative Societies Act and the same is disobeyed or violated the opposite party is entitled to seek an order that the interim order granted under Section 67(1) of the said Act has been disobeyed. That such an

application has to be considered as an application on the ground of disobedience of the order and has to be referred to the High Court for necessary orders. It is for the High Court to consider whether there has been any disobedience of the order passed and shall proceed in accordance with contempt law. This we feel would rather simplify the procedure and bring relief to the parties before the concerned authorities. If not, the present practice that is being followed of the applications being considered under Order 39 Rule 2A of the CPC being tried by the authority and thereafter being referred for the purpose of punishment under Order 39 Rule 2A of the CPC becomes more cumbersome and less effective so far as the concerned party is concerned. Therefore, so far as the contempt proceedings are concerned, whenever an application is filed seeking disobedience of the order under Section 67(1) of the M.P. Co-operative Societies Act, 1960, the same is required to be referred to the High Court for necessary orders with regard to disobedience of such an order. Thereafter, the High Court is entitled to pass such orders as it deems fit.

13. For all these reasons, the writ appeal is allowed. The order dated 19.03.2021 passed by the learned Single Judge in Writ Petition No.12933 of 2020 is set aside. The writ petition is partly allowed. The Registry of this Court is directed to accept the requisition sent by the Deputy Registrar and to register the same as a Contempt of Court case and to place it before the appropriate court for necessary orders.

14. Writ appeal disposed off accordingly.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

