

CIVIL REVISION
Present:The Hon'ble Mr. Justice Bhaskar Bhattacharya
And
The Hon'ble Mr. Justice Jayanta Kumar Biswas
Judgment on: 11th June, 2010.
CRC 270 of 2003
Alcatel India Ltd. & Anr.
Versus
Krishna Narayan Yadav & Ors.

POINTS

Criminal Contempt – Interference with process of the court – No consent of the Ld. Advocate General obtained earlier – Contempt application, if maintainable – Constitution of India Art.215 – Contempt of Courts Act,1971 ,S 10,15.

FACTS

This Rule has been issued on an application for contempt filed under Art. 215 of the Constitution of India read with Section 10 of the Contempt of Court Act, 1971 alleging commission of criminal contempt. It is alleged that the respondents filed a frivolous suit being Title Suit No.764 of 2002 and in connection with the same, moved an application for injunction by affirming false affidavit and obtained an *ex parte* interim order of stay, *inter alia*, of further proceeding of the arbitration, which was being conducted in London. It was further alleged that subsequently, the respondents consented to return of plaint of the said suit and such acts amounted to lowering the authority of and interfering with due process of judicial proceedings and obstructing the administration of justice, *inter alia*, of the learned City Civil Court at Calcutta. A Rule was issued. Appearing for the alleged contemnors maintainability of the Rule was questioned mainly on the ground of the absence of the consent of the Ld.Advocate General.

HELD

It is now settled by the Supreme Court that without taking consent of the learned Advocate General a person cannot come up with an application for criminal contempt and pray for issue Rule thereon. However, even if the learned Advocate General has not given any consent, it is competent for any aggrieved party to draw attention of the High Court showing interference with due process of law or administration of justice at the instance of respondents. However, in such a case, the Court is required to issue Sua Motu Rule and after drawing attention of the Court to the contumacious act, the petitioner will have no role to play in the Sua Motu contempt proceedings.

Para 6

In this case, it appears that the Division Bench while issuing Rule did not issue any Sua Motu Rule and at the same time, the Rule was issued based on the application of the contempt filed by the petitioners. The Form of the Rule drawn up by the office also shows that the Contempt Rule was based on the allegation made in the application, which was not in conformity with the form of Rule prescribed in the contempt rules framed by this Court for issue of a Sua Moto Rule.

Para 7

Cases Cited

Court of its Own Motion vs. Biman Bose & Others, reported in 2010 (2) CHN page 8

For the Petitioner: Mr. S.B. Saraf,
Mr. Debnath Ghosh,
Mr. B.N. Jajodia.

For the Respondent: Mr. Mr. Sakti Nath Mukherjee,
Mr. L. K. Gupta,
Mr. Tapan Mukherjee,
Mr. Soumik Mukherjee,
Mr. Manas Kumar Kundu,
Mr. Sudhastava Banerjee,
Mr. Tapas Ghosal.

Bhaskar Bhattacharya, J.:

THE COURT. 1) This Rule has been issued on an application for contempt filed under Section 215 of the Constitution of India read with Section 10 of the Contempt of Court Act, 1971 alleging commission of criminal contempt. It is alleged that the respondents filed a frivolous suit being Title Suit No.764 of 2002 and in connection with the same, moved an application for injunction by affirming false affidavit and obtained an *ex parte* interim order of stay, *inter alia*, of further proceeding of the arbitration, which was being conducted in London. It was further alleged that subsequently, the respondents consented to return of plaint of the said suit and such acts amounted to lowering the authority of and interfering with due process of judicial proceedings and obstructing the administration of justice, *inter alia*, of the learned City Civil Court at Calcutta.

2) Although the said application was stated to be one alleging criminal contempt, the consent of the learned Advocate General was not received prior to moving the said application. A Division Bench of this Court on the aforesaid application on 5th February, 2003 issued the aforesaid Rule in the following term:

“Mr. Shib Das Banerjee,
Mr. S.B. Sarof,
Mr. G.N. Jagodia,
Mr. D. Basu. for the petitioners.

Let a Notice for Contempt be served upon the alleged contemnors nos.1 to 3 calling upon them to show cause as to why they should not be committed to prison or otherwise penalised or dealt with for lowering the authority of the judiciary in India particularly of the learned City Civil Court at Kolkata by interfering with the due course of judicial proceeding and obstructing the administration of justice by the learned City Civil Court at Kolkata. The learned Advocate on Record for the petitioners is directed to put in necessary requisites for service of notice upon the allegation contemnors by the office within a week from date. The notice is returnable four weeks hence.”

3)Mr. Sakti Nath Mukherjee, the learned Senior Advocate appearing on behalf of the respondents, has taken a preliminary objection as to the maintainability of the Rule issued on the said application on the following grounds:-

1)The learned Advocate General having refused consent in terms of Section 15 of the Contempt of Court Act, the present application was not maintainable and consequently, the Rule issued thereon was incompetent;

2) The applicant neither prayed for issuing Suo Motu Rule nor was any Suo Motu Rule being issued, on the basis of the application for contempt filed by the petitioner the Rule is liable to be dismissed;

3) Even in the Rule issued by this Court, the charges against the respondents were not framed and as such, on the basis of such vague Rule the respondents are not in a position to effectively deal with the allegations.

4)The learned advocate appearing on behalf of the petitioner, however, tried to convince upon us that the learned Division Bench essentially issued a Suo Motu Rule on such application, although it was not specifically described as a Suo Motu Rule. He further contends that the objections are technical in nature and as such, those should be ignored.

5)After hearing the learned counsel for the parties, we find substance in the preliminary objections taken by Mr. Mukherjee.

6)It is now settled by the Supreme Court that without taking consent of the learned Advocate General a person cannot come up with an application for criminal contempt and pray for issue Rule thereon. However, even if the learned Advocate General has not given any consent, it is competent for any aggrieved party to draw attention of the High Court showing interference with due process of law or administration of justice at the instance of respondents. However, in such a case, the Court is required to issue Sua Motu Rule and after drawing attention of the Court to the contumacious act, the petitioner will have no role to play in the Sua Motu contempt proceedings.

7)In this case, it appears that the Division Bench while issuing Rule did not issue any Sua Motu Rule and at the same time, the Rule was issued based on the application of the contempt filed by the petitioners. The Form of the Rule drawn up by the office also shows that the Contempt Rule was based on the allegation made in the application, which was not in conformity with the form of Rule prescribed in the contempt rules framed by this Court for issue of a Sua Motu Rule.

8)We further find even the exact allegations against the respondents were not quoted either in the order, issuing Rule or in the Rule that has been served upon the respondents.

9)For all the reasons aforesaid, we find that the present case comes squarely within the decision of a Division Bench of this Court in the case of the Court of its Own Motion vs. Biman Bose & Others, reported in 2010 (2) CHN page 8 where the law on this point has been elaborately discussed.

10)We, thus, uphold the preliminary objection taken by Mr. Mukherjee and discharge the Rule only on the above mentioned ground as at this stage there is no scope of curing the said defects because of the bar of limitation prescribed under Section 20 of the Contempt of Court Act.

11)Rules are discharged.

12)In the facts and circumstances, there will be, however, no order as to costs.

(Bhaskar Bhattacharya, J.)

I agree.

(Jayanta Kumar Biswas, J.)