

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA
AT BHUBANESWAR.**

CMAPL No. 268 of 2012.

(Arising out of F.A.O. No.143 of 2012.)

Chittaranjan Swain, aged about 50 years, Son of Sri Pravakar Swain, Plot No.320//3342, At - Govindaprasad, P.S. - Laxmisagar, Care Sri Pravakar Swain, Plot No.1774/3740, At - Sabar Sahi Lane, Kalpana Square, P.S. - Laxmisagar, Bhubaneswar - 751 006, Dist. - Khurda.

... **Appellant/Petitioner.**

-V e r s u s-

1. Smt. Jayanti Dash, aged about 48 years, W/o. Ananta Chandra Das, Village - Gahapala, P.O. - Bari Cuttack, P.S. - Binjharpur, Dist. - Jajpur, Odisha.

2. Smt. Jayanti Mahalik, aged about 39 years, W/o. Bhagirathi Mahalik, At - Jagannath Basti, Bomikhal Canal Road (Near Matha), P.O. - Rasulgada, P.S. - Laxmisagar, Bhubaneswar, Dist. - Khurda.

... **Respondents/Opp.**

Parties.

Counsel :

For Petitioner -- Smt. A. Swain & Associates.

For Opp. Parties -- Shri D. Panda & Associates.

Date of Argument : 07.08.2014.

Date of Order : 04.09.2014.

This is an application under Order 39, Rule 2-A of the C.P.C. filed by the petitioner against the opposite parties for violation of the order of status quo dated 05.11.2012 passed by this Court in I.A. No.259 of 2012, arising out of F.A.O. No.143 of 2012.

2. The factual matrix leading to the case of the petitioner is that he being the plaintiff-petitioner filed I.A. No.297 of 2012 under Order 39, Rules 1 & 2 read with section 151 of the C.P.C., arising out of C.S. No.441 of 2012, in the Court of Civil Judge (Sr. Division), Bhubaneswar praying to pass an order of interim injunction against the present opposite parties, who are the defendant-opposite parties in the Court below. The learned Civil Judge (Sr. Division), Bhubaneswar refused to grant injunction and dismissed the said I.A. No.297 of 2012 vide order dated 01.11.2012. Challenging the said order, the present petitioner has preferred appeal before this Court vide F.A.O. No.143 of 2012. It is averred, inter alia, that the appeal was admitted on 05.11.2012 and, on the same day, in I.A. No.259 of 2012, as an interim measure, this Court was pleased to direct for maintenance of status quo over the suit land till 23.11.2012. Notices in appeal and status quo order were served on the opposite parties on 06.11.2012. Knowing fully well about the status quo order, on 07.11.2012, the

opposite parties with their followers deliberately and willfully disregarding the order of the Court, raised forcible construction over the suit passage. The petitioner went to the local Police Station and gave in writing with copy of the order of this Court.

But, the local police advised him to bring order from the Court for implementation of the order of status quo in question. The opposite parties, knowing fully well about the order of status quo consequent upon its service on 06.11.2012, wilfully violated the status quo order dated 05.11.2012 by unauthorisedly constructing house on the road and by blocking the right of way of the petitioner. So, the petitioner filed the present petition for attachment and sale of the properties of the opposite parties and also for their civil imprisonment, as they have violated the Court's order. Hence the petition.

3. The opposite parties have filed objection, refuting the allegations made by the petitioner. According to them, they have never disobeyed the order of this Court passed in I.A. No.259 of 2012, arising out of F.A.O. No.143 of 2012. They have never used any hired goondas or labourers on 07.11.2012 to construct their house over their plot. According to the opposite parties, consequent upon dismissal of I.A. No.297 of 2012, arising out of C.S. No.441 of 2012, opposite party No.2 started constructing one roomed living house with asbestos roof

covering a portion of the suit plot in the evening of 01.11.2012 and completed the same by 04.11.2012. Thus, the said house was not constructed on 07.11.2012. It is further averred in the objection that the petitioner has filed this petition to grab the suit property and cleverly no eye witness to the occurrence has been named in the said petition. It is thus prayed to dismiss the petition.

4. After going through the pleadings of both parties, the following points emerge for consideration :

- (i) Whether on 05.11.2012, there was order of status quo passed and the same was served on the opposite parties on 06.11.2012 ?
- (ii) Whether construction over the suit passage was made on 07.11.2012 violating the order dated 05.11.2012 ?
- (iii) What punishment can be awarded if there is violation of the order of status quo by the opposite parties ?

Point No.(i) :

5. The petitioner, in order to prove the case in his favour, has examined three witnesses, out of whom P.W.1 is an eye witness; P.W.2 is a Police Officer, who has entered Station Diary; and P.W.3 is the wife of the petitioner. The opposite parties have not examined any witness on their behalf.

6. On going through the record, it is revealed that on

05.11.2012, F.A.O. No.143 of 2012 was filed before this Court against the order dated 01.11.2012 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in I.A. No.297 of 2012, arising out of C.S. No.441 of 2012, to set aside the same. The order-sheets vide Sl. No.2 dated 05.11.2012 shows that on the same day, another application under Order 39, Rule 1, C.P.C. read with section 151, C.P.C. was filed by the petitioner, praying to restrain the opposite parties and their men from interfering with his peaceful possession over the suit land. On that day, both the Appeal and the Interim Application were admitted and it was ordered in I.A. No.259 of 2012, arising out of F.A.O. No.143 of 2012, to maintain status quo over the suit land till 23.11.2012. It appears from the record that notice and status quo order were served on the brother of opposite party No.2, as opposite party No.2 was absent and both of them were living in joint mess. Of course, the S.R. of summons has not been proved and admitted in evidence by the petitioner; but it is available in the record. At the same time, it appears that on 23.11.2012, opposite party No.2 appeared in I.A. No.259 of 2012 and prayed for time to file objection. Had summons and status quo order not been served on opposite party No.2 on 06.11.2012 by the Process Server, she would not have appeared on 23.11.2012. It is, therefore, proved from the materials on

record that the status quo order dated 05.11.2012 has been duly served on opposite party No.2 on 06.11.2012 as per the report of the Process Server. S.R. against opposite party No.1 did not back. On subsequent date on 11.12.2012, opposite party No.1 appeared and filed a petition seeking time. Thus, it is found that the status quo order dated 05.11.2012 was served on opposite party No.2 on 06.11.2012; but it is not found that the said status quo order was served on opposite party No.1 on 06.11.2012. Point No.(i) is answered accordingly.

Point No.(ii) :

7. It is pleaded in the petition that after the status quo order on 05.11.2012, the opposite parties along with their manpower constructed house on the suit property on 07.11.2012, violating the order dated 05.11.2012. On the other hand, in their objection, the opposite parties have pleaded that after dismissal of I.A. No.297 of 2012 in the Court below, they have constructed the house during the period 01.11.2012 to 04.11.2012 and, as such, they have not violated the order of this Court. In view of allegation and counter allegation, we have to find out upon whom onus lies to prove the violation of the order in question.

8. In the case of *Smt. Purnima Bhanja Deo and others* Vs. *Smt. Bishnupriya Senapati and others* [84 (1997) C.L.T.

783], His Lordship has been pleased to observe that “the provisions for punishment for violating the order of injunction are to be strictly applied and this should be proved by preponderance of probability. The onus to prove the essential parts of violence is on the petitioner”. With due respect to the said decision, I find in the instant case, it is for the petitioner to prove that on 07.11.2012 the order dated 05.11.2012 was violated by the opposite parties.

9. As stated earlier, the petitioner, in order to discharge onus, has examined three witnesses, out of whom P.W.1 is an outsider; P.W.2 is a Police Officer; and P.W.3 is the wife of the petitioner. It is revealed from the evidence of P.W.1 that he has got his house near the house of the petitioner and to his knowledge, there is a narrow road to the west of the house of the petitioner. According to him, on 07.11.2012 in the morning at 8.30 A.M., while he was passing in front of the house of the petitioner on the aforesaid road, he found opposite party No.2 and her husband Bhagirathi Mahalik, who were living in nearby slum area, being supported by some unsocial persons, were raising construction on the aforementioned road at the entrance. He further stated that after some time, police came, stopped illegal construction and left the spot. After departure of police, opposite party No.2 and her men resumed construction

work. A care taker, who is living on the ground floor of the petitioner's newly constructed building, objected the said construction; but opposite party No.2 quarrelled with him for which he left the spot. In cross-examination, the veracity of this witness has been tested. In cross-examination, he has stated the holding number of the house of the petitioner as 320/3342; but could not say the plot number and khata number of that narrow passage. He has further stated that the road runs on the north and south of that suit passage. In para-9 of his cross-examination, he has stated that 07.11.2012 was a working day for their school and the school opens at 7 A.M. and it runs upto 4.30 P.M. But, his working time starts at 10.30 A.M. There is nothing unusual for a person working in school to attend his duty at 10.30 A.M. That apart, nowadays, schools run shift-wise. So, his presence at 8.30 A.M. at the spot cannot be ruled out when he goes to school at 10.30 A.M. He has further stated in his cross-examination that on 07.11.2012, when he went near the construction, some persons, other than the parties, were present; but he could not say their names. In para-11 of his cross-examination, he has stated that at 8.30 A.M., police was not seen at the spot and he could not say the exact time of arrival of the police. When there is evidence of P.W.1 that after the construction was started by opposite party No.2 and her

husband at 8.30 A.M. and, thereafter, police came, it is quite clear that at 8.30 A.M., the presence of police must not be there. But, in para-11 of his cross-examination, he has categorically stated that he has seen the arrival and departure of police. Denying the suggestion of the opposite parties, he has stated to have seen the construction of the opposite parties over the suit passage on 07.11.2012. I find, on the whole, the credibility of this witness could not be disturbed by the strenuous cross-examination from the side of the opposite parties. Moreover, he has proved by cogent, clear and consistent evidence that at 8.30 A.M. on 07.11.2012, opposite party No.2 and her husband with their manpower made construction over the suit passage. However, he has not proved the presence of opposite party No.1 at the spot.

10. P.W.2, who is a Police Officer attached to Laxmisagar Police Station, has stated to have made Station Diary Entry vide Nos.81, 146 & 34 dated 04.11.2012, 07.11.2012 & 02.12.2012 respectively. He has proved the said entries vide Exts.1, 2 & 3 respectively. Not only this, but also he has categorically stated about the entries made by different police officers, with whose signatures he is acquainted. Of course, in cross-examination, he has stated that he has no personal knowledge regarding the above entries. Even if he has

no personal knowledge about the entries, but the same have been duly proved by him. On going through Ext.1, it appears that the wife of the petitioner has alleged about construction by opposite party No.2. Ext.2 shows that at 12.30 P.M., there was a Station Diary Entry made by the wife of the petitioner that there was construction made by opposite party No.2 and her husband of a building on the suit passage in spite of the order passed in I.A. No.259 of 2012, arising out of F.A.O. No.143 of 2012 and the date has been fixed to 23.11.2012. Of course, the date is not mentioned in the said entry; but P.W.2 has stated that it relates to 07.11.2012. There is no challenge to such evidence of P.W.2. So, the entries vide Exts.1 and 2 must have been related to 04.11.2012 & 07.11.2012 respectively. Ext.3 shows that again the wife of the petitioner complained before police that opposite party No.2 and her family members are doing whitewashing of the building. It is only proved from the evidence of P.W.2 read with the documents that the wife of the petitioner has, from time to time, complained about violation of the status quo order before the police.

11. P.W.3, who is the wife of the petitioner and looking after the case of her husband, has stated that after dismissal of I.A. No.297 of 2012 on 01.11.2012, her husband filed appeal on 05.11.2012 and, on the same day, this Court was pleased to

direct, as an interim measure, that status quo be maintained over the suit land till 23.11.2012. According to her, notice about the order of status quo was served on the opposite parties on 06.05.2012, which is not fact but it was served on 06.11.2012, as revealed from record. This matter has already been verified and discussed in the foregoing point. She has further stated about deliberate and wilful violation of the order of this Court by the opposite parties with the help of hired goondas on 07.11.2012, raising of forcible construction over the suit passage and completion of one living room with asbestos roof covering a portion of the suit passage by the evening of that day. She has further stated to have reported the matter before the police; but police advised her to take shelter in the Court of law. In cross-examination, she was asked about her authenticity to file such C.M.A. where her husband is not the petitioner. But, subsequently, in further examination-in-chief, she has corrected that her husband is the petitioner. The opposite parties have given more stress as to her identity as the wife of the petitioner, Chittaranjan Swain. But, she has categorically stated that she is the wife of petitioner Chittaranjan Swain. In fact, on going through the C.M.A., it appears that Chittaranjan Swain is the petitioner himself, who has signed the original Appeal Memo and also I.A. No.259 of

2012, out of which the present C.M.A. arises; but he has not signed the present petition in C.M.A. On going through the same, it appears that P.W.3 being his wife has filed the petition with affidavit clearly mentioning that she is the wife of the petitioner and is looking after the case and the facts stated in the petition are true to her knowledge and belief. Not only this, but also it appears from the papers of the Appeal and the I.A. that she is Advocate for the petitioner. When original Appeal Memo and petition for injunction have been signed by the petitioner and P.W.3 has filed affidavit to be his wife and has alleged about violation of the order of this Court through the present petition, I do not find any ambiguity about P.W.3's appearance as a witness and filing the petition. Whenever there is violation of the order of the Court, any person on behalf of the petitioner can bring to the notice of the Court that its order has been disobeyed and violated. Order 39, Rule 2-A of the C.P.C. does not enshrine about filing of petition by original petitioner. So, in my considered view, there is no illegality for the wife of the petitioner to file such petition and also appear as a witness for her husband. That apart, there is no fruitful cross-examination to this witness about the occurrence. On the other hand, the evidence of P.W.3 is very clear, cogent and consistent to show that after the status quo order was passed on

05.11.2012, opposite party No.2 and her men violating such order made construction of a room over the suit passage on 07.11.2012.

12. From the aforesaid analysis, it is found that the petitioner has proved by cogent, consistent and clear evidence that on 07.11.2012 at about 8.30 A.M., opposite party No.2 and her men have constructed the house on the suit passage. But, the petitioner has not led any evidence to prove the personal involvement of opposite party No.1 in violating the order of status quo on 07.11.2012.

13. The opposite parties have claimed that they have made construction between 01.11.2012 & 04.11.2012; but no evidence is led by them to that effect. When there is no evidence led by the opposite parties, it appears that they have failed to prove their plea that prior to status quo order, they have made construction over the suit passage.

14. In view of the aforesaid analysis, I find in the instant case, the status quo order dated 05.11.2012 has been violated by opposite party No.2 by constructing house on the suit passage on 07.11.2012 in spite of protest by the wife of the petitioner. This point is answered accordingly.

Point No.(iii) :

15. I have already held in the aforesaid paragraphs that

there was status quo order on 05.11.2012 and it was duly served on opposite party No.2 on 06.11.2012. It is also held that opposite party No.2 has violated the status quo order dated 05.11.2012 on 07.11.2012 by constructing house on the suit passage. In such situation, she is found guilty under Order 39, Rule 2-A of the C.P.C. whereas there is no evidence to prove the liability of opposite party No.1. Although there is prayer by the petitioner to attach the properties of the opposite parties in the event they are found guilty, but no details of such properties have been furnished. In such circumstance, opposite party No.2 can be awarded punishment for her detention in civil prison for a period of eight days, but no punishment is provided for opposite party No.1, as the allegation against her is not proved. Hence ordered :

O R D E R

The CMAPL is allowed against opposite party No.2 and dismissed against opposite party No.1 without cost. Opposite party No.2 is directed to undergo detention in civil prison for a period of eight days. Before that, the petitioner is to take steps within a period of five days hence for deposit of the required amount for the purpose.

**District Judge, Khurda
at Bhubaneswar.**

04.09.2014.

Dictated, corrected by me and pronounced in the open Court
this day the 04th September, 2014.

**District Judge, Khurda
at Bhubaneswar.**

04.09.2014.

List of witnesses examined for petitioner.

P.W.1 -- Shyam Sundar Jena,
P.W.2 -- Pravakar Mallick, &
P.W.3 -- Anusuya Swain.

List of documents admitted in evidence for petitioner.

Ext.1 -- Station Diary Entry No.81 dated 04.11.2012,
Ext.2 -- Station Diary Entry No.146 dated 07.11.2012,
 &
Ext.3 -- Station Diary Entry No.34 dated 02.12.2012.

**District Judge, Khurda
at Bhubaneswar.**

04.09.2014.