

Legal Issues in ‘Injunctions in Civil Proceedings’

Topic: ‘Is the Power of Court to Punish for Disobedience of an Injunction in Civil Proceedings akin to Civil Contempt?’

Relevant Legal Provisions

❖ Order XXXIX Rule 2A, Code of Civil Procedure, 1908 –

“2A. Consequence of disobedience or breach of injunction.— (1) 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.

(2) No attachment made under this 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 and shall pay the balance, if any, to the party entitled thereto.”

(Emphasis supplied)

Relevant Legal Provisions (Contd.)

❖ Section 2, Contempt of Courts Act, 1971 –

“(a) *“contempt of court” means civil contempt or criminal contempt;*”

“(b) *“civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;*” (Emphasis supplied)

Relevant Legal Provisions (Contd.)

❖ Section 12, Contempt of Courts Act, 1971 –

“Punishment for contempt of court.— (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

*(2) Notwithstanding anything contained in any law for the time being in force, **no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.***

*(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, **instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.**” (Emphasis supplied)*

Relevant Judicial Decisions

- ❖ **Food Corporation of India v. Sukh Deo Prasad [(2009) 5 SCC 665]**
 - *“24. The power exercised by a court under order 39, Rule 2A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under order 39 Rule 2A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the `order', on surmises suspicions and inferences.” (Emphasis supplied)*

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Relevant Judicial Decisions (Contd.)

- ❖ **Om Prakash v. Omwati & Ors. [CONT.CAS(C) 220/2017 & CM APPLs. 10405-10406/2017, Judgement dated March 16, 2017, Delhi High Court]**
- *“9. The only difference between the provisions under Order 39 Rule 2A CPC and the power of the court to punish for contempt under Sections 10, 11 and 12 of the Contempt of Courts Act, 1971, is the quantum of incarceration which a person can be sentenced to. Under the Contempt of Courts Act, 1971, a person can be sentenced for a period of six months, while under the provisions of Order 39 Rule 2A CPC, he can be sentenced to only three months apart from the fine component under both the provisions.” (Emphasis supplied)*

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Relevant Judicial Decisions (Contd.)

- ❖ **Whatman International Limited v. P. Mehta & Ors. [CS (COMM) 351/2016 and I.A. 5235/2018, Judgement dated February 1, 2019, Delhi High Court]**
- *“60. ...The allegations made in the application under Order XXXIX Rule 2A are clearly made out... The disobedience or breach of an injunction has to have consequences in law. If strict action is not taken, orders of Courts would not be complied with by litigants, as is evident in the present case. **Such disobedience not only constitutes violation of the provisions of Order XXXIX Rule 2A but also constitutes contempt under the Contempt of Courts Act, 1971.**” (Emphasis supplied)*

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Relevant Judicial Decisions (Contd.)

- ❖ **U.C. Surendranath v. Mambally's Bakery [(2019) 20 SCC 666]**
 - *“7. For finding a person guilty of willful disobedience of the order under XXXIX Rule 2A Code of Civil Procedure there has to be not mere "disobedience" but it should be a "willful disobedience". The allegation of willful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere "disobedience" but a "willful disobedience".” (Emphasis supplied)*

Relevant Judicial Decisions (Contd.)

❖ **Jagdishbhai Madhubhai Patel v. Saraswati Ben & Ors. [(2020) 1 Guj LR 304]**

- *“11. ...it is evident from the above discussion that **the proceedings are analogous to the proceedings under the Act, 1971. The only distinction is that as the Legislature, in its wisdom, has enacted a special provision enacting the provisions of Order XXXIX, Rule 2A, it would prevail over the provisions of the Contempt of Courts Act...**”*
(Emphasis supplied)
- *“15. **The primary object of Rule 2A of Order 39 of the Code is not to punish a person, who has disobeyed the order of injunction, but to enforce the order. The willful disobedience, no doubt, invites wrath of penal action as envisaged in the said provision, hence, where any action is done in violation of a order or stay or injunction, it is the duty of the Court, as a policy, to set the wrong right and not to allow perpetuation of the wrong doing. These provisions are intended to maintain majesty of judicial order, to preserve rule of law and to ensure the faith of litigants in the administration of justice. It is a curative provision and its purpose is to ensure that the direction of the Court is implemented, disobedience of order is remedied and status quo ante is restored.**”* (Emphasis supplied)

Relevant Judicial Decisions (Contd.)

❖ **Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd. [(2022) 1 SCC 209]**

- *“50. It is one thing to say that the power exercised by a court under Order 39 Rule 2-A is punitive in nature and akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. It is quite another thing to say that Order 39 Rule 2-A requires not "mere disobedience" but "wilful disobedience". We are prima facie of the view that the latter judgment in adding the word "wilful" into Order 39 Rule 2-A is not quite correct and may require to be reviewed by a larger Bench. Suffice it to say that there is a vast difference between enforcement of orders passed under Order 39 Rules 1 and 2 and orders made in contempt of court. Orders which are in contempt of court are made primarily to punish the offender by imposing a fine or a jail sentence or both. On the other hand, Order 39 Rule 2-A is primarily intended to enforce orders passed under Order 39 Rules 1 and 2, and for that purpose, civil courts are given vast powers which include the power to attach property, apart from passing orders of imprisonment, which are punitive in nature...” (Emphasis supplied)*

Relevant Judicial Decisions (Contd.)

- ❖ **Amazon.Com NV Investment Holdings LLC v. Future Retail Ltd. [(2022) 1 SCC 209] (Contd.)**
 - *“50. ...When an order for permanent injunction is to be enforced, Order 21, Rule 32 provides for attachment and/or detention in a civil prison. Orders that are passed under Order 21, Rule 32 are primarily intended to enforce injunction decrees by methods similar to those contained in Order 39 Rule 2-A. **This also shows the object of Order 39 Rule 2-A is primarily to enforce orders of interim injunction...**” (Emphasis supplied)*

Relevant Judicial Decisions (Contd.)

- ❖ **Bristol-Myers Squibb Holdings Ireland Unlimited Company and Ors. v. BDR Pharmaceuticals International Pvt. Ltd. & Ors. [2022/DHC/004948]**
- *“16. Thus as per the decisions noted above the power exercised by a Court under Order XXXIX Rule 2A CPC is punitive in nature and akin to power to punish for civil contempt under the Contempt of Courts Act and has to be exercised with great circumspection. As noted above, the purpose to take action under Order XXXIX Rule 2A CPC is to enforce the order of the Court, rather than punish the person. Further even though Order XXXIX Rule 2A CPC does not employ the word "wilfully" the law as laid down in the decision reported as U.C. Surendranath (supra) will prevail till overruled by the larger bench of the Hon'ble Supreme Court. Hence, if no "wilful" disobedience is made out, the respondents cannot be punished by passing an order of sentence or fine.” (Emphasis supplied)*

Relevant Judicial Decisions (Contd.)

- ❖ **Louis Vuitton Malletier v. Capital General Store and Ors. [AIR 2023 Delhi 139]**
- “4. ...*unlike provisions dealing with contempt of court, which are intended to be fundamentally punitive, Order XXXIX Rule 2A is intended to compel and enforce obedience of the order of interim injunction.*” (Emphasis supplied)
- “6. *It cannot, quite obviously, be said that Order XXXIX Rule 2A becomes inapplicable once the disobedience has ceased. In such a case, possibly, the gap between the exercise of power under Order XXXIX Rule 2A and exercise of power of contempt of Court might stand narrowed considerably as, once the disobedience has ceased, there can be no question of "enforcement" of the interim injunction, and all that remains is punishment for having committed the breach.*”

Conclusion

- ❖ There is a divergence of opinion, in judgments of the Courts, on whether Order XXXIX Rule 2A confers, or does not confer, a power of contempt i.e. whether Order XXXIX Rule 2A can be distinguished from the power of a court to punish a person for committing contempt.
- ❖ The Contempt of Courts Act, 1971 is a piece of legislation which essentially provides punitive measures to deal with contempt to uphold the majesty of law and reinforce the faith of people in the judicial institution.
- ❖ In stark contrast to it, the CPC is a procedural law complementing civil substantive law, and often romanticized as a handmaid of justice.
- ❖ Therefore, even though Order XXXIX Rule 2A of the CPC and the Contempt of Courts Act may deal with the issue of disobedience/willful disobedience, the *raison d'être* for the existence of both these laws is fundamentally different.

Thank you!
Questions?

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