



GAHC010171632023

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/118/2023

SANDHYA DEY
W/O- SRI RANJIT DEY,
R/O- RED CROSS ROAD,
BEHIND D.H.K.S. LAW COLLEGE,
DIBRUGARH TOWN,
P.O., P.S. AND DIST.- DIBRUGARH.

VERSUS

MOTILAL GHOSH
S/O- LATE MANORANJAN GHOSH,
R/O- BASHBARI PATHER,
DIBRUGARH TOWN,
P.O., P.S. AND DISTRICT- DIBRUGARH,
ASSAM.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioner : Shri Siddhant Dutta, Advocate

Advocates for respondent :

Date of hearing : 14.08.2023

Date of judgment : 14.08.2023



- 1.** Heard Shri Siddhant Dutta, learned counsel for the petitioner who by means of this petition filed under Article 227 of the Constitution of India has put to challenge an order dated 16.03.2023 passed by the learned Civil Judge, Dibrugarh in Misc. Appeal No. 02/2019 whereby the appeal has been dismissed and the order dated 27.07.2018 passed by the learned Munsiff No.1, Dibrugarh in Misc.(J) Case No. 42/2011 arising out of T.S. No. 58/2011 has been affirmed. By the aforesaid order, the learned Munsiff has passed an order of conviction of the petitioner for violation of the injunction order passed in Misc. (J) Case No. 36/2011.
- 2.** The learned counsel for the petitioner, by drawing the attention of this Court to the order impugned has submitted that a direction has been given for detention of the petitioner in Civil imprisonment. The learned counsel has submitted that the said direction may be substituted by any other direction by imposing penalty of payment of any cost or compensation and the petitioner being a lady, her case may be considered.
- 3.** The First Appellate Court vide the order dated 16.03.2023 has considered the case of the appellant and thereafter has dismissed the appeal.
- 4.** The submission made by the learned counsel is required to be examined in the context of the statutory provision given in Order 39 Rule 2 A of the CPC.

For ready reference, the aforesaid provision is extracted herein below:

“O 39 R 2A

(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.”

5. A reading of the aforesaid provision brings to a conclusion that the consequence of disobedience of any order of injunction is by attachment of property and detention in the civil prison.

6. The relevant expressions used are “and” and “may”. The expression “and” is conjunctive and therefore there is no other option as both the provisions are to be applied together. However, by use of the expression “may”, the exercise of discretion comes in. Therefore, the only element, which is required to be seen is whether such powers which are matters of discretion were exercised judiciously.

7. In the orders passed by the learned Munsiff, the conclusion arrived at is supported by discussions including the evidence of three numbers of witnesses. This Court has also noticed that the learned Munsiff has also taken into consideration the fact that the petitioner is a woman and therefore, 7 days of detention in Civil imprisonment has been directed. The First Appellate Court in the order dated 16.03.2023 has also made adequate discussion of the relevant

facts and circumstances.

8. This Court is of the view that exercise of such discretion appears to be done in a reasonable manner. Even otherwise, the powers vested on this Court by Article 227 of the Constitution of India is supervisory in nature and the orders of the Subordinate Courts are not to be interfered in a routine manner unless there is an error of jurisdiction or the orders passed are palpably erroneous.

9. The powers of revision to be exercised by this Court is circumscribed and is dependant upon certain conditions which are broadly given as follows:

- i. When the Subordinate Court exercises jurisdiction not vested by law.
- ii. When there is a failure to exercise a jurisdiction vested by law.
- iii. When there is exercise of jurisdiction illegally or with material irregularity.

The Amendment of 1999 has added a further restriction that such powers should not be exercised by the High Court except where the order, if made in favour of the party applying for the revision would have finally disposed of the suit or other proceedings. It is perhaps of the restrictions imposed by the Amendment that petitions are being filed under Article 227 of the Constitution of India.

10. The Hon'ble Supreme Court in the case of ***Rafat Ali v. Sugni Bai, reported in (1999) 1 SCC 133*** has laid down as follows:

“8. The appellation given to the section makes it unmistakably clear that the power conferred thereunder is revisional which means, it is a power of supervision. It is well-nigh settled that a revisional jurisdiction cannot be equated with appeal powers in all its parameters. The power to call for and examine the records is for the purpose of the High Court to satisfy itself as to the "legality, regularity or propriety" of the order of the lower authority. Even such a widely-worded frame of the section may at best indicate that the revisional powers are not so restricted as in the enactments wherein the words are not so widely framed. Nonetheless, they remain in the realm of supervisory jurisdiction...”

11. In the instant case, however it does not reveal that there has been any error of jurisdiction and the relevant factors appears to have been taken into consideration. Further, no irrelevant or extraneous factors have been taken into consideration.

12. In that view of the matter, this Court is of the opinion that there is no merit in this petition and accordingly the same is dismissed.

JUDGE

Comparing Assistant