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Supreme Court: disobedience of injunction must be wilful for criminal liability to apply

India - [Khaitan & Co](#)

- **The trial court issued an interim injunction against UC Surendranath after Mambally's Bakery filed a suit to restrain him from using the MAMBALLY'S BAKERY mark**
- **The trial court subsequently found that UC Surendranath had violated the injunction and sentenced him to imprisonment for one week**
- **The Supreme Court found that "wilful disobedience" could not be demonstrated and set aside the imprisonment order**

In *UC Surendranath v Mambally's Bakery* (Civil Appeal 5775/2019 arising out of SLP(C) 2910/2016), through an order of 22 July 2019, the Supreme Court of India has held that "wilful disobedience" must be proved to the satisfaction of the court before a person can be held criminally liable for violating an injunction order.

Facts

The dispute arose when Mambally's Bakery – popularly recognised as India's first bakery – filed a suit to restrain UC Surendranath from passing off its goods by using the MAMBALLY'S BAKERY mark or any other similar or deceptively similar mark. In an order dated 4 November 2015, the trial court ruled in favour of Mambally's and the appellant was faced with an interim injunction, a copy of which was served upon him on 9 November 2015.

A court commissioner was also appointed to attend the appellant's premises. He duly paid two visits, one on 7 November 2018 and another on 20 November 2019. His inspection of the appellant's shop prior to the service of the order indicated that the appellant was still using the mark MAMBALLY'S BAKERY on cake wrappers/coverings and also on a shop hoarding. Upon the second inspection – which was subsequent to the service of the injunction order – the commissioner reported that the cake wrappers/coverings bearing the mark in question had been discontinued, although the hoarding remained on the store front. In view of this, the trial court found that the appellant had violated the injunction and sentenced him to imprisonment for one week, which was confirmed on appeal by the Kerala High Court.

The appellant appealed to the High Court and, in his defence, argued that he was not even aware of the order on the commissioner's first visit. With regard to the hoarding that was still in use after the service of the order, the appellant pleaded that he was 40% disabled and unable to climb to remove the hoarding, which was situated at a height of 13 feet. It was further submitted that there was scarcity of labour at the time, which prevented him from complying with the injunction order and immediately removing the hoarding.

Decision

The court accepted the appellant's explanation observing the following:

For finding a person guilty of wilful disobedience of the order there has to be not mere 'disobedience' but it should be a 'wilful disobedience'. The allegation of wilful 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 'wilful disobedience'.

The court took notice of the fact that, at the first visit, the appellant had no knowledge of the injunction order and hence there was no disobedience. On the second visit, the use of the mark at issue on the wrappers/labels had been discontinued; as for the non-removal of the hoarding displayed in front of the appellant's shop, the appellant had offered an explanation which was accepted. The order of imprisonment was accordingly set aside.

Comment

The case relates to O.XXXIX R.2A of the Civil Procedure Code, which deals with disobedience of interim orders – although this provision makes no mention of the qualifier 'wilful'. The court's decision imports the term 'wilful' used in the Contempt of Courts Act 1971. While the decision was passed on the facts of the case, the observations of the court may be seen as imposing a stricter burden of proof upon claimants, akin to that in a criminal proceeding, to demonstrate wilful disobedience of an order to the satisfaction of the court.

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