

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.1711 of 2019**

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1. Hero Ecotech Limited, a company incorporated under the Companies Act having its office at Phase III, Focal Point, Village Mangli, Ludhiana, Punjab, through its Authorised Signatory Chandan Kumar, aged about 24 years (male), Son of Satya Nand Sharma, Resident of Flat No. 1, E-8 Chaudhary Market, Sector 49, Near Mother Dairy, Noida, Gautam Buddha Nagar Uttar Pradesh.
2. Vijay Munjal, Son of Late Dayanand Munjal Resident at 19-C, Sarabha Nagar, P.O. and P.S.- Sarabha Nagar, District- Ludhiana (Punjab).

... .. Petitioner/s

Versus

1. Hero Cycles Limited, a company incorporated under the Companies Act, having its office at Hero Nagar, G.T. Road, Ludhiana Punjab 141003, through its Managing Director Sri O.P. Munjal, aged about 60 years (male), Son of Late B.C. Munjal, resident at 26 Model Town, Ludhiyana, Punjab.
2. Sri Om Prakash Munjal Son of Late B.C. Munjal, resident at 26 Model Town, Ludhiyana, Punjab.
3. M/s Kumar Cycle Stores, Anisabad, P.O. and P.S.- Beur, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate Mr. Vijay Shanker Tiwari, Advocate Mr. Avinash Shekhar, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate
For the Respondent/s	:	Mr. Manish Vashisht, Sr. Advocate Mr. Mrigank Mauli, Sr. Advocate Mr. Ashish Giri, Sr. Advocate Mr. Anjani Kumar Jha, Advocate Mr. Bharat Goel, Advocate Mr. Durga Das Bhatla, Advocate Mr. Pushpindar Sodhi, Advocate Mr. Saket, Advocate Ms. Saloni Bhatt, Advocate Ms. Anshika, Advocate Mr. Sanket, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**

**CAV JUDGMENT**

**Date : 03-09-2025**

The instant civil miscellaneous petition has been



filed by the petitioners seeking following reliefs :

*“(i) To issue an appropriate order or direction for quashing and setting aside the order dated 07.09.2019 passed by the Learned Additional District Judge-XVI, Patna upon the application filed by the respondent/plaintiff under Order XXXIX Rule 2A of the Code of Civil Procedure, whereby and where under the Learned Additional District Judge-XVI, Patna, has ordered contempt proceedings to be initiated against the petitioners herein, on wholly erroneous grounds without looking into the facts and the circumstances of the case and without considering the materials available on the record.*

*(ii) To grant/award any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case”.*

2. Shorn of unnecessary details, the facts leading to institution of the present civil miscellaneous petition are that the plaintiffs/respondents 1<sup>st</sup> set filed a suit against the defendants/petitioners and respondent no.3/respondent 2<sup>nd</sup> set bearing Title Suit No.5031/2014 on 28.08.2014 seeking permanent and mandatory injunction, damages for infringement of trademark, passing off and rendition of accounts. For convenience, the petitioners and the respondents would be



referred by their original status hereinafter.

3. The plaintiff no.1 is a limited company duly registered under the Companies Act, 1956 and is the owner of the brand 'HERO' for manufacturer and marketing of the bicycle in the trade name of 'HERO CYCLES LIMITED'. The plaintiff no. 2 and the defendant no. 3 come from a business family of 'Munjal Brothers', who came to Amritsar from Pakistan in the year 1944 and they used to supply components to the local bicycle business and in 1947, the 'Munjal Brothers' moved to Ludhiana where they expanded their business. By the year 1956, the 'Munjal Brothers' were well entrenched in the business of manufacturing key components of bicycles and started assembling the entire bicycle at their manufacturing plant at Ludhiana under the trade name of 'HERO CYCLES LIMITED'. The four 'Munjal Brothers' were Brij Mohan Lal Munjal, Dayanand Munjal, Satyanand Munjal and Om Prakash Munjal, the plaintiff no.2. The Hero Group diversified into newer segments of trade and commerce and with an intention to bifurcating the vast conglomerate of companies and businesses amongst each of the four Munjal families in an amicable manner, a Family Settlement Agreement (hereinafter referred to as the 'FSA') dated 20.05.2010 was entered into amongst the



four branches naming the Group in following manner :

- (a) Shri Vijay Munjal as the Head of Late Dayanand Family Group (hereinafter referred to as the 'F-1 Family Group');
- (b) Shri Satyanand Munjal as the Head of Satyanand Family Group (hereinafter referred to as the 'F-2 Family Group');
- (c) Shri Brij Mohan Lal Munjal as the Head of Brij Mohan Family Group (hereinafter referred to as the 'F-3 Family Group'); and
- (d) Shri Om Prakash Munjal as the Head of Om Prakash Family Group (hereinafter referred to as the 'F-4 Family Group').

4. The FSA and Trademark and Name Agreement (hereinafter referred to as the 'TMA') dated 20.05.2010 were duly signed and executed by all the four family groups and came to be acted upon and allocation of the business and Trademark etc. vests into the respective shares of the Groups.

5. It also transpires that prior to execution of the FSA, all the four family Groups were using the trademark and/or trade name 'Hero'. However, the FSA, vide its Clause 17.2, provided for execution of a Trademark and Name Agreement (TMA) for allocation of rights and interests of each of the four Family Groups qua the trademark and trade name 'HERO'.

6. As per the plaintiffs, the plaintiff no. 1 was realigned



under the F-4 Family Group headed by the plaintiff no.2 and was made a 'confirming party' to the TMA. The plaintiffs further claim the Family Group F-1 is not allowed to manufacture bicycles and bicycles parts in India under any company as entity with the name of 'Hero' attached as prefix or suffix or in any other form. Further, Family Group F-1 is not allowed to use trademark 'Hero' directly or indirectly in manufacturing, sales and trading of bicycles and bicycle parts in India and it was prescribed that F-1 should use different monogram then that of Hero Cycles.

7. Thus, the plaintiffs claim that the plaintiffs have exclusive right of ownership, title and interest in respect of trademark and trade name 'Hero' including its suffixes in relation to bicycles, tricycles and parts thereof in terms of Sub-clause (I) of Clause 2 of the TMA.

To clarify the matter, it would be advantageous to reproduce Clause 1.1.7 and Clause 3 of TMA, which read as under :

*“1.1.7. “F1 Family Group Trade Marks”*

*means:*

*a. the trademark HERO EXPORTS registered or unregistered, owned and/or used upon or in relation to or in connection with the trading business of M/s Hero Exports for exports relating to sale,*



*marketing of its trading items, other than those items covered in clause 1.1.7(d) below, and import in India of two wheeler electric vehicles & parts thereof and bicycle parts;*

*b. the trademark HERO ELECTRIC, registered or unregistered owned and/or used upon or in relation to or in connection with the electric/environment friendly vehicles (i.e. non fuel land vehicles) and components, and related Infrastructure.*

*c. the trademark HERO ECO, registered or unregistered, owned and/or used upon or in relation to or in connection with the business relating to projects, plants & equipment, components in the field of Solar Energy, Wind Energy and other Renewable Energy, and Medical Products & Lifestyle Care equipment for Hospitals, Rehabilitation and Homes; and*

*d. the trademark HERO registered or unregistered and used for export of Bicycles and Bicycle parts by F1 Family Group for all territories, other than USA, Russia, Australia, New Zealand, Japan and European Union (except UK, Germany & Turkey), which exclusively are retained by F4 Family Group.*

### *3. EXECUTION OF UNDERSTANDING BETWEEN THE PARTIES.*

*3.1. In pursuance of this agreement and mutual promises and obligations contained hereunder, F4 Family Group shall cause the Confirming Party to irrevocably assign, transfer and convey to F3 Family Group, the entire right, title and interest in consideration of the Family Settlement Agreement in*



*and to:*

*i) The trade mark and name HERO claimed, owned or used upon or in relation to or in connection with the Other Products and Services including the entire goodwill associated therewith and appurtenant thereto; and*

*ii) The Other Products and Services Trade Marks and any corresponding applications, registrations and renewals and any corresponding applications and all associated goodwill, all income, royalties, damages, profits and payments then or thereafter due or payable with respect thereto, and all causes of action and the right to sue, counterclaim, for past, present and future infringement or unauthorised use of the rights and interest assigned under this Agreement.*

*3.2. The rights, title and interest assigned conveyed and transferred in 3.1 hereinabove shall be held and enjoyed by F3 Family Group, its successors and assigns for their ownership, use and benefit worldwide, as fully and entirely as same would have been held and enjoyed by F4 Family Group, if this assignment, transfer and conveyance had not been made F3 Family Group shall henceforth be entitled to apply for and obtain registration of trademark HERO for on in respect of or in relation to Other Products and Services as the proprietor thereof.*

*3.3. F4 Family Group and the Confirming Party shall fully cooperate with F3 Family Group in taking all steps necessary to procure ownership and proprietary rights in the other products and services trade marks and the corresponding registrations and*



*applications in F3 Family Group worldwide including signing and executing any or all deeds of assignment and other documents for smooth assignment and transfer thereof without further consideration, and shall extend all reasonable assistance as may be required or desirable to give effect to this Agreement. F3 Family Group shall have the right to file such executed deeds of assignment and all such notices and other documents as are necessary with the relevant trade mark offices and other authorities to perfect this assignment.*

*3.4. In case a Hero Mark that is registered / pending registration includes other products and services in addition to the Bicycle/ Automotive Products and Services and F1 Family Group Product and Services, it is expressly agreed amongst the parties that F1 Family Group, F2 Family Group and F4 Family Group (including the Confirming Party) shall duly assign, transfer and convey all its rights, title and interest therein to F3 Family Group.*

*3.5. The Parties agree that F1 Family Group would be entitled to continue using the Entity Name / Firm Name/Company Name HERO EXPORTS, HERO EXPORTS PRIVATE LIMITED, HERO ELECTRIC DEVICES PRIVATE LIMITED, HERO ECOTECH LIMITED. HERO ECO VEHICLES PRIVATE LIMITED, HERO ECO VENTURES PRIVATE LIMITED and HERO EXPORTS MIDDLE EAST LIMITED and all other Entity Name/ Firm Name/Company Name with prefixing or suffixing HERO EXPORTS or HERO ECO or HERO ELECTRIC. It is further clarified that F1 Family*



*Group can use these names with prefixes or suffixes for creating joint ventures and subsidiary companies, provided the F1 Family Group owns and continues to own a minimum of 26% share capital in each such company.*

*3.6. The parties agree that F4 Family Group would be entitled to continue using the Entity Name/ Firm Name/ Company Name HERO CYCLES LIMITED, HERO MOTORS LIMITED, HERO FINANCIAL SERVICES LIMITED, HERO GLOBAL DESIGN LIMITED, ZF HERO CHASSIS SYSTEMS PVT. LTD., and HERO TRANSMISSIONS PVT. LTD.*

*3.7. The parties agree that they shall execute all applications, agreements, deeds, authorisations and documents as may be necessary to fulfil the purposes of this Agreement and perform all further acts and things and execute and deliver such further documents, as may be required by law or as may be necessary or reasonably required by any of the Parties to implement and give effect to this Agreement, and for the purpose of vesting in F3 Family Group the full benefit of the ownership rights and benefits in such registrations and applications, and for the further purpose of vesting in F1 Family Group the perpetual right of ownership and use over F1 Family Group Trade Marks, including giving of all necessary waivers and consents and the passing of all resolutions and otherwise exercising all powers and rights available to them.*

*3.8. The parties understand that F4 Family Group retains all rights, title and interest in the trade mark and name HERO, to own and use in respect of*



*or relating to the Bicycle/ Automotive products and Services only”.*

8. In this background, the plaintiffs claim that F-1 Family Group can use the trademark ‘HERO ECO’ only in relation to business concerning renewable energy, medical products and lifestyle/ care equipment for hospitals, rehabilitation and homes. Thus, the plaintiffs claim that no other Family Group including the defendant no. 3 can enter the trade of bicycles, tricycles and parts thereof using the trademark and trade name ‘HERO’ and defendant no. 3 is entitled to use the trade name ‘HERO ECOTECH LIMITED’, and usage of the same cannot extend beyond the scope of trade described for the trademark ‘HERO ECO’ and the same does not include bicycles, tricycles and parts thereof. Moreover, the defendant no. 3 has been permitted to use ‘HERO ECOTECH LIMITED’ as a trade name and not in a manner which amounts to usage as a trademark and/or trade dress.

9. The plaintiffs further claim that defendant no.2, a group company of defendant no.3, deals with products comprising of bicycles for domestic and international markets, which is outright contradictory to the agreed terms and conditions laid down under Clauses 1.1.7 and 3.5 of the TMA.

10. Thus, the plaintiffs have been claiming that violating



the FSA and TMA, the defendant nos. 2 & 3 have launched a new range of bicycles in India under the brand name 'KROSS' and bicycles so manufactured and distributed by the defendant nos. 2 & 3, contain magnified reference to the trade name 'HERO ECOTECH' as a part of the trade dress on the product itself.

11. Therefore, the plaintiffs claim that there is misconduct and unfair trade practices on part of the defendants and their misconduct and breach of TMA has also led to violation of plaintiff no.1's statutory rights under the Trade Marks Act, 1999 followed by grave and irreparable loss of business and reputation to the plaintiffs. The plaintiffs' said trademark has become distinctive and associated with the aforementioned goods of the plaintiffs. The purchasing public trade and public at large associates, identifies and distinguishes the said trademark with the plaintiffs and the plaintiffs' said goods and business alone. The said trademark have acquired secondary significance denoting the said goods and business of the plaintiffs and are recognized with the plaintiffs' source alone. They have become synonymous with the goods and business of the plaintiffs alone. Thus, the plaintiffs have submitted that the impugned adoption and user by the defendant



is improper, sinister, ill-motivated, dishonest and fraudulent and the defendants, by such questionable adoption and usage, is disseminating deception and confusion in the markets, business and trade amounting to infringement and passing off and the plaintiffs have been suffering huge losses both in business and reputation of the brand of the plaintiffs. Coming to know about these instances of public confusion and deception in the months of May and June, 2014, upon receipt of formal complaints from the people of general public and trade, *qua* bicycles manufactured by defendant no.2 and sold by defendant no. 1, the plaintiffs filed the suit seeking permanent mandatory injunction apart from other reliefs for the impugned acts of infringements and passing off by the defendants.

12. In the aforesaid suit, an application was filed by the plaintiffs under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code') for ad interim *ex-parte* injunction. The learned District Judge, Patna, vide order dated 22.09.2014, granted ad interim injunction restraining the defendants, their Principal Officers, Directors, Partners, Officers, Servants, Employees, Franchisees, Agents, Representatives and all others acting for and on behalf of the defendants, from using, applying and/or engraving and/or



causing to be used, applied and/or engraved the registered trade mark 'HERO' either by itself or in conjunction or formation with any other word or marks or any deceptive variant of the registered trade mark 'HERO' or any mark of the plaintiffs as trade mark, trading style or trade dress in relation to bicycle or bicycle parts.

13. It further transpires that after appearance of the defendants, the defendants filed an application dated 18.12.2014 under Order XXXIX Rule 4 of the Code praying therein to vacate the *ex-parte* order dated 22.09.2014 of ad interim injunction against the defendants. After hearing the parties, the learned District Judge, Patna did not find any merit in the prayer of the defendants to vacate the injunction order and the prayer was refused and thus, ad interim injunction order was confirmed vide order dated 21.03.2015. Being aggrieved by the order dated 21.03.2015, the defendants preferred a miscellaneous appeal bearing M.A.No. 121/2015 before this Court. This Court, vide judgment dated 07.07.2015, allowed the said appeal and set aside the order dated 21.03.2015 passed by the learned District Judge, Patna. The plaintiffs preferred Civil Appeal No. 8478/2016, arising out of Special Leave Petition (Civil) No. 27778/2015 before the Hon'ble Supreme Court against the



judgment dated 07.07.2015 passed by this Court and the Hon'ble Supreme Court, vide order dated 31.08.2016, set aside the judgment dated 07.07.2015 passed by this Court and restored the order dated 22.09.2014 passed by the learned District Judge, Patna. Subsequently, the plaintiffs filed an application under Order 39 Rule 2A of the Code before the Hon'ble Supreme Court bearing Contempt Petition (C) No. 739/2017 in C.A.No.8478/2016, alleging therein that the defendants had been violating the order dated 31.08.2016 passed by the Hon'ble Supreme Court. The Hon'ble Supreme Court, vide order dated 08.05.2017, disposed of the contempt petition, refusing to entertain the contempt petition, however, leaving it open to the petitioners (plaintiffs) to move the learned trial court under Order 39 Rule 2A of the Code, if so advised. Thereafter, the plaintiffs filed an interlocutory application in Title Suit No.5031/2014 under Order 39 Rule 2A read with Section 151 of the Code before the learned Additional District Judge, XVI, Patna. The learned Additional District Judge-XVI, Patna, vide order dated 07.09.2019, held that a contempt proceeding be initiated against the defendants and directed the parties to lead evidence and also directed the office to open a separate record of trial of the contempt proceeding. Aggrieved by the order



dated 07.09.2019 passed by the learned Additional District Judge-XVI, Patna, the defendants have filed the present civil miscellaneous petition.

14. At the outset, it is pertinent to note here that lengthy argument has been advanced on behalf of the parties starting from maintainability of the present petition to the merits of the case of the respective parties. However, learned senior counsel appearing on behalf of the respondents/plaintiffs dropped the challenge to maintainability of the petition after some argument and, therefore, this Court is mainly concerned with the legality and propriety of the impugned order. It is also to be taken note of at this stage that in its supervisory jurisdiction under Article 227 of the Constitution of India, this Court is not supposed to enter into the disputed question of facts and merits of the case of the respective parties. In this backdrop, submission of the parties and challenge to the order dated 07.09.2019 are being considered.

15. The learned counsel for the defendants/petitioners submitted that the impugned order suffers from a number of illegalities and has been passed without application of judicial mind. The learned trial court, without instituting a miscellaneous case as required under Rule 459 (a) (xii) of the



Civil Court Rules of the High Court of Judicature at Patna (hereinafter referred to as 'the Civil Court Rules), straightway ordered for initiation of a contempt proceeding. No opportunity was given to the defendants to dispel the contention that there has been no disobedience of the orders of the learned trial court. There has been no violation of the orders dated 22.09.2014 and 21.03.2015. But the learned trial court, without considering the fact that unless a miscellaneous case is instituted under Rule 459 (a) (xii) of the Civil Court Rules and the procedure prescribed under Section 141 of the Code is adopted, which includes leading of evidence, formed an opinion that the defendants were under contempt. Such order could not be sustained. Without leading evidence, it cannot be said that whether any disobedience or breach has been committed.

16. The learned counsel further submitted that while passing the impugned order, the learned trial court relied on a number of decisions, but the same were not at all relevant for the purposes of proceeding initiated on an application filed under Order 39 Rule 2A of the Code. Since these decisions would have application only when the court arrived at the conclusion that there was willful disobedience by the defendants resulting into violation of interim order. But the learned trial



court presumed at the inception of the proceeding that the defendants are under contempt, hence, the impugned order is against the spirit of Section 141 read with Order XIII, Rule 1 of the Code.

17. The learned counsel further submitted that the learned trial court erred in disclosing its view that the defendants were in contempt without evidence being led by the parties to establish as to whether there has been any disobedience, much less willful dis-obedience. The aforesaid observation is contrary to the settled principles of fair-play. The learned trial court ought not to have passed the impugned order directing the parties to lead evidence after disclosing its view that *prima facie* contempt is made out. Moreover, the word 'contempt' is misconceived in the order impugned as the trial under Order 39 Rule 2A is meant to ascertain whether there has been any dis-obedience or not. Thus, the learned trial court further erred while passing the impugned order which is without adjudication of the issues raised by the parties.

18. The learned counsel further submitted that non-compliance of the statutory provisions tantamounts to procedural error, which cannot be cured in the present set of facts and goes to the root of the matter and, therefore, initiation



of the proceeding is wholly without jurisdiction. Not registering separate miscellaneous case under Rule 459 (a) (xii) of the Civil Court Rules, being a procedural error cannot be cured since there is separate provision for dealing with miscellaneous proceeding under Section 141 of the Code. Therefore, it is mandatory to produce original document as per Order 13 Rule 1 of the Code since Section 141 of the Code mandates that in a miscellaneous proceeding, the procedure provided with regard to suit shall be followed as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. Further, there has to be endorsement of such documents upon being admitted for the purposes of evidence as per Order 13 Rule 4 of the Code, which has not been carried out in the present case.

19. The learned counsel further submitted that the learned trial court did not apply its mind to the facts of the case. The defendants have not been using the brand 'HERO' anywhere as its trade name for selling its cycles which the defendants have been selling in the name of 'KROSS'. The words 'HERO ECOTECH LIMITED' were being used only to identify the name of manufacturer company which is mandatory under the Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011. Rule 6 thereof provides



that every package should bear the name and address of the manufacturer on it and violation thereof is dealt in Rule 32 by way of penalty.

20. The learned counsel further submitted that it is the settled law that there cannot be any estoppel against a Statute, the legal requirement to specify the name of the manufacturer cannot be scuttled by any private arrangement. But the learned trial court neither considered the FSA nor the business realignment agreement. Therefore, indicating the name of manufacturer on the product is not trademark use, but this fact has been missed by the learned trial court.

21. The learned counsel reiterated that neither the FSA nor the business realignment agreement restricts any of the family group from inscribing entity name/ corporate name/ manufacture's name on the product or packaging. But the learned trial court failed to take into consideration the fact that the interpretation being given by the plaintiffs/respondents is factually incorrect and legally impermissible.

22. The learned counsel further submitted that an impression has been given that since the order of this Court passed in M.A.No.121/2014 dated 07.07.2015 was set aside by the Hon'ble Supreme Court vide order dated 31.08.2016 and the



order of the learned trial court was restored, all the findings recorded by the Coordinate Bench of this Court had been wiped out but the same is not correct. The Hon'ble Supreme Court showed its reluctance to say anything on merit, considering the stage of the case and the order which was under challenge. The Hon'ble Supreme Court observed that the High Court fell into error in interfering with the interim order of the learned trial court and considering the stage of the case and interference by the High Court against an interim order, thus, deprecated interference at this stage.

23. The learned counsel referred to the decision of the Allahabad High Court in the case of ***Smt. Indu Tewari vs. Ram Bahadur Chaudhari and Ors., AIR 1981 All 309***, on the point of difference between contempt and disobedience under Order 39 Rule 2A of the Code. Reliance has been placed on the part of paragraph 3 which reads thus :

*“...The party which informs the Court about the alleged contempt can only assist the Court in coming to the conclusion whether any contempt has been committed or not. As opposed to this, if a person obtains an interim injunction or a final decree for injunction, he gets a right to enforce it. The provision for enforcement of an interim injunction is contained in Order XXXIX Rule 2-A, Civil P.C. and the provision for*



*enforcement of a decree for injunction is contained in Order XXI, Rule 32, Civil P.C.”.*

24. Learned counsel next submitted that the proceedings under the Contempt of Courts Act are of summary in nature. The proceeding under Order XXXIX Rule 2-A is an elaborate proceeding in which the parties can adduce their evidence and the witnesses can be examined and cross-examined and, therefore, there is no occasion for the learned trial court to record its finding that contempt has been committed by the defendants.

25. The learned counsel further referred to the decisions of the Hon'ble Supreme Court in the cases of ***Trimbak Gangadhar Telang & Another vs. Ramchandra Ganesh Bhide & Others, (1997) 2 SCC 437, Mohammed Abdul Wahid vs. Nilofar & another, (2024) 2 SCC 144 and Shalimar Chemical Works vs. Surendra Oil & Dal Mills, (2010) 8 SCC 423***, on the point of procedural error resulting into manifest injustice and ingredients of fair trial and result of non-application of judicial mind on the outcome of a case.

26. The learned counsel next submitted that in order to ensure that the basic principles of fair trial are not violated and for correction of manifest error, the impugned order is fit to be



interfered with by this Court under Article 227 of the Constitution of India and referred to a number of decisions of the Hon'ble Supreme Court in the cases of *Radhey Shyam & Anr. vs. Chhabi Nath and others, (2015) 5 SCC 423, Ramesh Chandra Sankla & Ors. vs. Vikram Cements & Ors., (2008) 14 SCC 58*, on the point of power and jurisdiction of this Court under Article 227 of the Constitution of India

27. Thus, learned counsel submitted that this Court is custodian of justice and in order to set things right, an intervention is required under Article 227 of the Constitution of India by quashing the impugned order and all consequential orders.

28. On the other hand, learned senior counsel appearing on behalf of the respondents 1<sup>st</sup> set vehemently contended that there is no illegality in the impugned order and there is no need to interfere with the said order. The learned senior counsel, at the outset, submitted that the defendants/petitioners by way of present petition has been trying to reopen the decided questions and issues relating to the trademark 'HERO'. The defendants/petitioners have been prohibited vide orders dated 22.09.2014 and 21.03.2015 by the learned trial court from using the mark 'HERO' in any form whatsoever in the field of



manufacturing and marketing of bicycles and bicycle products. These orders have been affirmed by the Hon'ble Supreme Court in Civil Appeal No. 8478/2016 dated 31.08.2016. This fact also becomes clear by the subsequent developments. This Court, vide its order dated 07.07.2015, came to a finding that there was no prohibition for the defendants to use corporate name 'HERO ECOTECH LIMITED' for manufacturing and marketing of bicycle and what was prohibited was the usage of mark 'HERO' with prefix and suffix with the trademark name 'KROSS'. But this finding was not accepted by the Hon'ble Supreme Court. Once the findings as passed by the learned trial court have attained finality in the light of the orders of the Hon'ble Supreme Court, the defendants/petitioners cannot be allowed to re-agitate the same point again and again.

29. The learned senior counsel further submitted that the defendants have put a lame excuse by stating that they are only using their corporate name (name of defendant no.2) to sell bicycles under the brand name 'KROSS'. But this defense has not been accepted by the Hon'ble Supreme Court. The learned senior counsel further submitted that in their pleadings, the defendants have taken a specious plea that there was no injunction against them to use the corporate name 'HERO



ECOTECH LIMITED' for manufacturing and sale of bicycles and they further admitted that the corporate name has been only mentioned on the packaging which cannot be considered as violation of any injunction order. The plea of defendants itself shows willful disobedience on the part of the defendants, who despite suffering the orders of injunction are not ready to abide by the directions passed by the courts. Therefore, the present petition is itself not maintainable.

30. The learned senior counsel further submitted that during the course of oral arguments, the defendants have taken a plea that the proceedings were vitiated as the same were not in consonance with the Civil Court Rules of the High Court of Judicature at Patna. The learned senior counsel further submitted that this objection was not taken in the present petition and has been raised by way of an afterthought by the defendants. Even otherwise, a bare perusal of the Civil Court Rules would indicate that the same deals with miscellaneous judicial cases and the case of the present nature is covered under the Code of Civil Procedure. Since the learned trial court has treated the application under Order XXXIX Rule 2A as a miscellaneous one and has also directed the recording of separate evidence and separate number to be given, i.e., 5031A



of 2014 different from T.S.No.5031 of 2014. Therefore, no prejudice has been caused to the defendants/petitioners as all the legal procedures and safeguards were scrupulously followed. The order was passed after granting opportunity of filing reply and after hearing. Thus, no fault can be found in the impugned order particularly when no such objections were raised before the learned trial court and no ground has been taken while filing the present petition.

31. The learned senior counsel further submitted that the defendants/petitioners have been blowing hot and cold at the same time. On one hand, they are claiming that the impugned order must be quashed as the same was passed without any jurisdiction by the learned trial court, but they did not file an appeal as provided under the Code as the defendants clearly understood that the impugned order only decided their objection relating to the jurisdiction. However, they are now claiming that the impugned order has held them guilty of committing the contempt. The powers under Article 227 of the Constitution of India are distinctive and different from the powers which are exercised as an appellate court. The court, which has passed the impugned order, has been provided with the statutory power under Order XXXIX Rule 2A of the Code to decide whether any



violation has been committed by the erring party. Such exercise of power by the competent court cannot be challenged by filing a petition under Article 227 of the Constitution of India.

32. The learned senior counsel further submitted that the trial in contempt proceeding was concluded and the matter is at the stage of argument of the parties and decision is yet to be taken on the petition filed under Order XXXIX Rule 2A of the Code by the learned trial court. Under these circumstances, the present petition is only an attempt to somehow derail the proceedings pending before the learned trial court.

33. The learned senior counsel further submitted that even before the Hon'ble Supreme Court, all the materials like, FSA, TMA, Business Realignment Agreement, were placed and considered by the Hon'ble Supreme Court. Hence, these issues were addressed by the Hon'ble Supreme Court and the order of the learned trial court was restored while the order dated 07.07.2015 passed by the High Court was set aside. Therefore, the defendants/petitioners have committed a willful disobedience of the order dated 22.09.2014 and 21.03.2015 and this fact is yet to be ascertained and orders are yet to be passed on the aforesaid issue by the learned trial court. If the learned trial court returns an adverse finding against the



defendants/petitioners, they will have a substantive remedy to challenge the same as per the law. In any event, this Court cannot exercise its jurisdiction of superintendence under Article 227 of the Constitution of India for recording a finding of fact and appreciation of evidence when the appropriate remedy by way of an appeal is always available to an aggrieved party.

34. The learned senior counsel also referred to the decision of the Hon'ble Supreme Court in the case of *Shalini Shyam Shetty* (supra) to submit that powers under Article 227 of the Constitution of India are circumscribed and cannot be used in casual manner by this Court.

35. The learned senior counsel next referred to the decision of the Hon'ble Supreme Court in the case of *Sameer Suresh Gupta vs. Rahul Kumar Agarwal, (2013) 9 SCC 374*, wherein the Hon'ble Supreme Court held that power to issue a writ of *certiorari* under Article 226 or the supervisory jurisdiction under Article 227 are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of



any suit or proceedings in a subordinate court.

36. The learned senior counsel next referred to the decision of the Hon'ble Supreme Court in the case of ***Dr. Kazimunnisa vs. Zakia Sultana and Ors., (2018) 11 SCC 208***, wherein the Hon'ble Supreme Court in paragraph 35 held as under :

*“35. Lastly, we find that the High Court while reversing the findings of the Special Court decided the writ petition under Article 227 like a first appellate court by appreciating the entire evidence little realising that the jurisdiction of the High Court while deciding the writ petition under Article 227 is not akin to appeal and nor can it decide the writ petition like an appellate court”.*

37. On the consequence of disobedience or breach of injunction under Order XXXIX Rule 2A and the position of law as enunciated by the Hon'ble Supreme Court, the learned senior counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Samee Khan vs. Bindu Khan, (1998) 7 SCC 59***, wherein the Hon'ble Supreme Court in paragraphs 12 to 15 held as under :

*“12. But the position under Rule 2-A of Order 39 is different. Even if the injunction order was subsequently set aside, the disobedience does not get erased. It may be a different matter that the rigour of such disobedience may be toned down if*



*the order is subsequently set aside. For what purpose is the property to be attached in the case of disobedience of the order of injunction? Sub-rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment, the court is empowered to sell the property under attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of a one-year period. If the disobedience ceases to continue in the meanwhile, the attachment also would cease. Thus even under Order 39 Rule 2-A, the attachment is a mode to compel the opposite party to obey the order of injunction. But detaining the disobedient party in civil prison is a mode of punishment for his being guilty of such disobedience.*

*13. The words “and may also” appearing in Rule 2-A were sought to be given a meaning that the course suggested thereafter in the Rule has to be resorted to as an optional additional step, a resort to which would be impermissible without complying with the first course suggested in the Rule. The word “also” has different attributes and its meaning is not to be confined to “furthermore”. In legalistic use, the word “also” can be employed to denote other meanings as well. In Black's Law Dictionary, the word “also” has the following variety of meanings:*

*“Also.—Besides; as well; in addition; likewise; in like manner; similarly; too; withal.*



*Some other thing; including; further; furthermore; in the same manner; moreover; nearly the same as the word 'and' or 'likewise'.*”

*14. Since the word “also” can have meanings such as “as well” or “likewise”, cannot those meanings be used for understanding the scope of the trio words “and may also”? Those words cannot altogether be detached from the other words in the sub-rule. Here again the word “and” need not necessarily be understood as denoting a conjunctive sense. In Stroud's Judicial Dictionary, it is stated that the word “and” has generally a cumulative sense, but sometimes it is by force of a context read as “or”. Maxwell on Interpretation of Statutes has recognised the above use to carry out the interpretation of the legislature. This has been approved by this Court in Ishwar Singh Bindra v. State of U.P. [AIR 1968 SC 1450 : 1969 Cri LJ 19] The principle of noscitur a sociis can profitably be used to construct the words “and may also” in the sub-rule.*

*15. Hence the words “and may also” in Rule 2-A cannot be interpreted in the context as denoting a step which is permissible only as additional to attachment of property of the opposite party. If those words are interpreted like that, it may lead to an anomalous situation. If the person who defies the injunction order has no property at all, the court becomes totally powerless to deal with such a disobedient party. He would be immuned from all consequences even for any open defiance of a court order. No interpretation shall be allowed*



*to bring about such a sterile or anomalous situation (vide Constitution Bench in Vidyacharan Shukla v. Khubchand Baghel [AIR 1964 SC 1099 : (1964) 6 SCR 129] ). The pragmatic interpretation, therefore, must be this: it is open to the court to attach the property of the disobeying party and at the same time the court can order him to be detained in civil prison also if the court deems it necessary. Similarly the court which orders the person to be detained in civil prison can also attach the property of that person. Both steps can be resorted to or one of them alone need be chosen. It is left to the court to decide on consideration of the fact situation in each case”.*

38. The learned senior counsel further submitted that willful conduct for disobedience of defendants/petitioners and filing of frivolous application before this Court made them liable for imposition of cost and referred to the decision of the Bombay High Court in the case of ***Bharat Infracement Limited & Ors. vs. Ultratech Cement Limited, 2022 SCC OnLine Bom 6687***, wherein the Hon’ble Bombay High Court imposed a cost of Rs.5 lacs while dismissing the appeal.

39. The learned senior counsel further referred to the decision of the Hon’ble Supreme Court in the case of ***Balwantbhai Somabhai Bhandari vs. Hiralal Somabhai Contractors & Ors., (2023) 17 SCC 543***, wherein the Hon’ble Supreme Court discussed what is willful



disobedience/contumacious conduct and civil contempt and explained the general principle regarding civil contempt under the Contempt of Courts Act.

40. The learned senior counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Laxmikant V. Patel v. Chetanbhai Shah, (2002) 3 SCC 65***, wherein the Hon'ble Supreme Court in paragraph 8 held as under :

*“8. It is common in trade and business for a trader or a businessman to adopt a name and/or mark under which he would carry on his trade or business. According to Kerly (Law of Trade Marks and Trade Names, 12th Edn., para 16.49), the name under which a business trades will almost always be a trade mark (or if the business provides services, a service mark, or both). Independently of questions of trade or service mark, however, the name of a business (a trading business or any other) will normally have attached to it a goodwill that the courts will protect. An action for passing-off will then lie wherever the defendant company's name, or its intended name, is calculated to deceive, and so to divert business from the plaintiff, or to occasion a confusion between the two businesses. If this is not made out there is no case. The ground is not to be limited to the date of the proceedings; the court will have regard to the way in which the business may be carried on in the future, and to its not being carried on precisely as carried on at the date of the proceedings. Where there is probability of confusion in business, an injunction will*



*be granted even though the defendants adopted the name innocently”.*

41. The learned senior counsel also referred to the decision in the case of ***Red Hat INC vs. Hemant Gupta and others, 191 (2012) DLT 421*** wherein it has been held in paragraph 30 as under :

*“29. Since the plaintiff is holding registration of the trade mark RED HAT as well as SHADOWMAN device under various classes, i.e. I.A. No.10679/2011 in CS(OS) No.1654/2011 Page No.15 of 27 classes - 9, 41 & 42 and the use of the trade mark RED HAT by the defendants as well as part of their corporate name, it is clear that prima-facie, the plaintiff has been able to make out a strong case for infringement of the trade mark, as the plaintiff has been able to satisfy the Court on producing of documents that the trade mark RED HAT is a well-known trademark and has acquired goodwill and reputation not only in India but also other parts of the world. Thus, it is also protected under Section 29(4) of the Act. As the defendants are using the trade mark RED HAT as part of their corporate name, they are also guilty of infringement under Section 29(5) of the Act”.*

42. Thus, learned senior counsel submitted that there is willful disobedience of injunction order passed by the learned trial court as trademark and business name of plaintiff has been infringed and violated by the defendants and hence, the



impugned order is perfect, valid and legal and the present civil miscellaneous petition is devoid of any merit and the same should be dismissed with heavy cost.

43. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

44. Though, lengthy submissions have been made on behalf of the parties and voluminous materials in the form of authorities have been placed for consideration of this Court, but the issue involved in the present *lis* is confined within a narrow compass. The issue before this Court is as to whether the learned trial court was justified in passing the impugned order dated 07.09.2019.

45. Now, Order 39 Rule 2A of the Code reads as under:

*“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”.*

46. The operative part mentioned in paragraphs 21 & 22 of the order dated 07.09.2019 reads as under :

*“21. In view of the aforesaid discussions, the documents placed by the parties concerned and the submissions advanced by the respective learned counsels appearing on behalf of the Plaintiffs and the Defendants, the court is of the view that a contempt proceeding be initiated against the Defendants and the parties are directed to lead evidence from their sides.*

*22. Office is directed to open a separate record for trial of the contempt proceedings. The trial of the contempt proceeding will proceed independently from Title Suit No. 5031/2014. Both parties are further directed to make sincere efforts for early disposal of Title Suit No. 5031 of 2014”.*

47. It is apparent from bare reading of aforesaid paragraph 21 that the learned trial court recorded its view that a contempt proceeding should be initiated against the defendants



and thereafter it directed the parties to lead evidence from their side.

48. Now, Rule 459 (a) (xii) of the Civil Court Rules reads as under :

*“459. Separate statements being provided to show applications for the execution of decrees, these will not be included under the head "miscellaneous (Judicial)" cases, and it is intended that such other cases only as required a judicial enquiry or order should be included. The following list shows the case which are to be entered under this head, and without the special orders of the High Court, no addition may be made thereto [G.L. 15/62]-*

*(a) Cases under the Code of Civil Procedure*

*(i) xxx*

*(ii) xxx*

*(iii) xxx*

*(iv) xxx*

*(v) xxx*

*(vi) xxx*

*(vii) xxx*

*(viii) xxx*

*(ix) xxx*

*(x) xxx*

*(xi) xxx*

*(xii) Proceedings under [Order XXXIX Rule 2(a)] [Substituted by C.S. No. 67, dated 27.12.1979.], clauses (3) and (4).*

49. Evidently, when an application is filed under Order



39 Rule 2A of the Code, then under Rule 459 of the Civil Court Rules of High Court of Judicature at Patna, a miscellaneous judicial case is to be instituted. But instead of following the procedure prescribed, the learned trial court proceeded in the matter in a manner foreign to the known canons of law. If the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. In this regard, a reference could be made to the decision of the Hon'ble Supreme Court in the case of ***Meera Sahni vs. Lieutenant Governor of Delhi and Ors., (2008) 9 SCC 177***. It would be relevant to quote paragraph 35 of the said decision :

*“35. It is by now a certain law that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed and in no other manner. In this connection we may appropriately refer to the decision of this Court in Babu Verghese v. Bar Council of Kerala [(1999) 3 SCC 422] wherein it was held as under : (SCC pp. 432-33, paras 31-32)*

*“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor [(1875) 1 Ch D 426] which was followed by Lord Roche in Nazir Ahmad v. King Emperor [(1936) 63*



*IA 372 : AIR 1936 PC 253 (2)] who stated as under : (IA pp. 381-82)*

*‘where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.’*

*32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindh Pradesh, AIR 1954 SC 322 and again in Deep Chand v. State of Rajasthan AIR 1961 SC 1527. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh AIR 1964 SC 358 and the rule laid down in Nazir Ahmad case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law”.*

50. Therefore, not following the procedure makes the impugned order bad in law. Though, learned trial court directed to open a separate record for trial of contempt proceeding, but the finding recorded by the learned trial court that a contempt proceeding is to be initiated against the defendants is itself unwarranted and certainly uncalled for. When the issue is still open as to whether any willful disobedience or breach of injunction orders dated 22.09.2014 and 21.03.2015 has taken place and unequivocal finding is yet to be recorded on the basis of evidence lead by the parties, the learned trial court committed



an error of jurisdiction in holding the defendants to be in contempt.

51. Further, opening of a separate record for trial of the contempt proceeding as Case No.5031A of 2014 is certainly not having sanction of any law. Moreover, there was no application for initiation of contempt proceeding in the year 2014. When an application was filed under Order XXXIX Rule 2A of the Code on behalf of the plaintiffs/respondents, the course open to the learned trial court was first to register a miscellaneous judicial case and, thereafter, proceed in that case in the manner prescribed under Section 141 of the Code and not to short-circuit the process by adopting a procedure without any legal sanction.

52. Though the intent of subordinate courts may be pious and praiseworthy, still the courts could only act within the four corners of law and could not bypass the procedure established by law and short-circuit the proceedings. If a miscellaneous judicial case has to be instituted, the subordinate courts could have proceeded in the matter after institution of the same and not otherwise. In this regard, a reference could be made to the decision of the Hon'ble Supreme Court in the case of *K.Valarmathi v. Kumaresan*, 2025 SCC OnLine SC 985,



wherein it has been held in paragraph 12 as under :

*“Procedural law provides the necessary legal infrastructure on which edifice of rule of law is built. Short-circuiting of procedure to reach hasty outcomes is an undesirable propensity of an overburdened judiciary. Such impulses rendering procedural safeguards and substantive rights otiose, subvert certainty and consistency in law and need to be discouraged”.*

53. Since this Court has not entered into the merits of the case, the submission made by the respective parties on merits of their respective case and authorities cited are not relevant for the purpose of disposal of the present petition.

54. Therefore, on the aforesaid short point, without going into the merits of the contention of the parties, I am inclined to interfere with the impugned order and, hence, the impugned order dated 07.09.2019 is held to be an erroneous exercise of jurisdiction by the learned trial court and the same is set aside.

55. Accordingly, the present petition is allowed.

56. The learned trial court is reminded of the orders of the Hon'ble Supreme Court wherein the learned trial court was requested to expedite the trial and complete the same as early as possible and more than nine years elapsed, hence, the learned



trial court would take note of this fact and proceed to dispose of  
Title Suit No. 5031 of 2014 at the earliest.

**(Arun Kumar Jha, J)**

V.K.Pandey/-

<b>AFR/NAFR</b>	NAFR
<b>CAV DATE</b>	08.08.2025
<b>Uploading Date</b>	04.09.2025
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