be allowed to raise this technical plea of non-compliance of provision of sub-section (2) of Section 8 of the 1996 Act.

(4) At this stage of dictation, learned counsel for the appellants does not press for other contentions raised by him. In view of the above, this appeal is without merit and deserves to be dismissed.

(5) In the result, this appeal is dismissed.

J.S.T.

Before V.K. Bali & M.L. Singhal, JJ

VIVEK SARIN,—*Appellant*

versus

MULTI METAL UDYOG,—*Respondent*

C.A.C.P. 3 of 1998

3rd November, 1998

Contempt of Courts Act, 1971—S. 12—Contemner had in winding up proceedings under Sections 433 & 434 of the Companies Act agreed to pay debt in instalments—Further agreed that in case of even one default in payment contempt proceedings could be initiated against him—Default occurred—Contempt proceedings initiated and appellant held guilty of contempt and also directed to deposit amount—Challenge to the order directing appellant to deposit money being without jurisdiction—Order under challenge stayed—Stay order modified upholding order to make payment.

Held, that principle of law by now that with a view to ensure full justice between the parties that wherein an act is done in violation of the order, it is the duty of the Court to set the wrong right and not allow the perpetuation of the wrong. In the present case, while giving an undertaking to the Court to pay an amount of rupees ten lacs in instalments the appellant had further stated that if default was made, he could be hauled up for contempt. The learned single Judge, rightly ordered the appellant to pay the defaulted amount. Such a direction was required to be given in this case. By no legitimate means it could at all be argued by Mr. Sahni that there was any justification in withholding of payment of defaulted amount by the appellant. We may mention here that in case the directions referred to as passed by the learned single Judge are stayed, it would virtually amount to even

non-execution of the order passed by the learned Company Judge. Surely, the appellant by simply filing the present appeal cannot get away from his liability to pay the amount which he undertook to pay to the Court. To stay the payment of such an amount would be doing injustice to the respondent.

(Paras 11 & 12)

O.P. Goyal, Sr. Advocate with S.K. Jaswal, Advocate,—*for the Appellant.*

U.S. Sahni, Advocate,—*for the Respondent.*

JUDGMENT

V.K. Bali, J.

(1) Respondent Multi Metal Udyog through present Misc. application filed by it under section 151 of the CPC read with provisions of Contempt of Court Rules, 1973 seeks vacation of stay order dated 8th June, 1998. While admitting appeal preferred by the appellant Vivek Sarin, the Bench stayed operation of the impugned judgment under appeal till further orders. CACP No. 3 of 1998 was filed by Vivek Sarin against the judgment of the learned single Judge,—*vide* which he has been held guilty of committing contempt and ordered to pay a fine of Rs. 500 within a period of two months or in default thereof to undergo simple imprisonment for one month. He was further directed to pay the entire balance amount within two months from the date of order.

(2) Before the contentions raised by the Counsel for the parties in support or opposition to Civil Misc. application are noticed, it will be useful to trace, although in brevity, facts giving rise to CACP No. 3 of 1998. Respondent Multi Metal Udyog had filed a petition under section 433 read with Section 434 of Companies Act, 1956 for winding up of M/s Apex Multitech Limited said to be indebted to the respondent for a sum in the tune of Rs. 12 lacs. The petition was admitted and was ordered to be published in two newspapers. Aggrieved M/s Apex Multitech preferred appeal. During the currency of the appeal the appellant gave an undertaking that the entire amount of Rs. Ten lacs would be paid in ten monthly instalments of Rs. One lac each and the first instalment was to be paid before 1st July, 1997 and thereafter each instalment on first of every month. An undertaking was also given that if M/s Apex Multitech Limited failed to make the payment of even one instalment on any account, the proceedings under the Contempt

of Courts Act could be initiated against it. The order of the Court depicting the undertaking of the appellant that came to be passed by the Court reads thus :—

> "The Counsel for the parties are agreed that this appeal be disposed of on the following terms and conditions :—
>
> The appellant would be liable to pay in all a sum of Rs. 10 lacs to the respondent. This amount shall include interest, excess discounting etc. etc. However, the appellant will give all the 'C' forms within one week from today.
>
> The appellant undertakes to pay the entire amount of Rs. 10 lacs in 10 monthly instalments of Rs. One lac each and further undertakes to pay the 1st instalment on or before 1st July, 1997 and thereafter each instalment on 1st of every month. If the appellant fails to make payment of even one instalment on any account, the proceedings would revive on an application in addition to the initiation of contempt proceedings.
>
> In view of the aforementioned agreement, the present appeal stands disposed of and the order passed by the learned company Judge would stand nullified."

(3) It is stated by the learned Counsel for the parties that a sum of Rs. Five lacs was paid and thereafter there was default in making the payment. That constrained the respondent to file a Contempt Petition in this Court with the result as indicated above.

(4) Mr. Goyal, learned Senior Advocate representing the respondent contends that at this stage he is not seeking vacation of stay so far as it pertains to payment of fine and the consequence of non-payment thereof nor is asking for the recalling of the order of admission. All that the respondents are claiming at this stage is that directions issued by the learned single Judge with regard to payment of remaining amount should not be stayed and by staying operation of the impugned judgment i.e. judgment under appeal, has certainly resulted into staying payment of the admitted remaining amount which was undertaken to be paid by the appellant. The Court issued notice of this application to the Counsel for the appellant and reply to the Misc. application has been filed. There is, however, no need to give any reference of the pleadings made in the Misc. application and the reply thereto as in so far as the facts are concerned, there is hardly any dispute between the parties.

(5) Mr. Sahni, learned Counsel representing the appellant, however, contends that order passed by the learned single Judge directing payment of the defaulted amount is without jurisdiction as the learned single Judge while exercising his jurisdiction under the Contempt of Courts Act, 1971 could only convict the appellant for contempt but through the said coercive measures could not order payment of remaining amount. His other contention is that once the appeal has been admitted and the stay granted by the motion Bench, the stay must continue till the lis may last and cannot be vacated in between. He has raised some submissions with regard to applicability of the provisions of the Contempt of Courts Act in entertaining the contempt petition and holding the appellant guilty of contempt, but at this stage we are not concerned with the said contention of the learned Counsel as any expression of opinion on the said point would certainly prejudice either of the parties when the matter is to be finally heard. At this stage, the only question that needs to be determined is as to whether the learned single Judge had jurisdiction to order payment of defaulted amount and if so as to whether the order of the Division Bench while admitting the petition staying operation of the judgement as such needs modification in the facts and circumstances of this case. After hearing the learned Counsel representing the parties and going through the records of the case, we are of the firm view that order staying operation of the judgment passed by the learned single Judge needs modification and either under law or equity the appellant does not deserve withholding payment of the defaulted amount. Mr. Sahni for his proposition that the learned single Judge could not pass order regarding payment relies upon the judgment of Madras High Court in *Abdul Razack* vs. *Azizunnissa Begum* (1). The facts of Abdul Razack's case (supra) would reveal that a revision was filed for a direction to the respondent to deposit the arrears of rent for four years at the rate of Rs. 226.37 per year and future rent at the rate of Rs. 250 per year pending the civil revision. In a Civil Misc. petition filed in the revision aforesaid, the Court on 28th January, 1986 after hearing counsel on both sides passed the following order :—

> "The respondent will deposit the arrears of rent at Rs. 226.37 due up-to-date in the Rent Court within two months from this date and continue to deposit future rent at the same rate as and when falls due."

(6) The respondent failed to deposit the arrears of rent in terms of the order aforsaid and applied for extension of time. His prayer was declined. Thereafter a petition was made for committal of the tenant

(1) AIR 1970 Madras 14

for Contempt of Court inasmuch as he had disobeyed the order of the Court dated 28th January, 1966. In response to the notice issued in the contempt petition, the contemner filed an affidavit pleading *inter alia* that he was unable to pay the amount as he was not in possession of the land and that he was very old and had paralytic attack and was bed ridden. When the application for committal came for hearing the learned single Judge who passed the original order for deposit, time was granted to deposit the amount in the following terms :—

> "Adjourned two weeks to enable the respondents to pay as directed by this Court."

(7) On 13th November, 1967 when the matter was taken up again, the learned Counsel representing the appellant reported no instructions. The following order was passed by the Court :—

> "On the facts stated above, it is clear that the respondent has not deposited, the amount as directed. He also admitted his liability and prayed for extension of time for, depositing the amount. Till now, it does not appear that the respondent has deposited any amount as directed by this Court. The respondent is, therefore, guilty of contempt of Court."

(8) Even though contemner has not appeared on the date aforesaid but his son who appeared represented to the Court that some amount had been deposited and he would arrange to make the deposit as per orders of the Court. On the representation made by the son of the contemner, the Court observed that if the amount is deposited as directed, it would not be necessary to inflict any punishment on the respondent taking into consideration that he was 82 years old. The petition was then fixed on 27th November, 1967. When the matter came up for hearing on 28th November, 1967, the Court passed the following order :

> "The pronouncement of punishment was adjourned so as to enable the respondent or his son to deposit the amount directed. The money has not been deposited. The respondent is clearly guilty of contempt. Considering the extreme old age of the respondent, I sentence the respondent to two weeks simple imprisonment."

(9) It is this order of the learned single Bench that came up for hearing in appeal before the Division Bench of the Madras High Court in Abdul Razack's case (supra). From the facts as have been detailed above, it was held that "non-compliance by the appellant with the order of this Court directing him to deposit the arrears of rent due to

the petitioners within the time prescribed and continue to deposit the future rent, does not amount to any contempt of Court. The penal sanction under the contempt procedure should not be invoked for default of compliance with such an order. It is not for us to suggest the processes that may be resorted to in such a case. The appeal is, therefore, allowed."

(10) We are of the view that the judgment rendered by the Madras High Court in Abdul Razack's case (supra) is not at all relevant for deciding the point raised by Mr. Sahni, learned Counsel representing the appellant. The point under consideration in the present case is whether the learned Single Judge could order payment of the defaulted amount which was undertaken to be paid while deciding the contempt petition for violating the undertaking, as such, never came for consideration. It was, of course, observed in para 3 of the judgment, "having regard to the high function of a Court of justice, proceedings by way of contempt of Court should not be used as a 'legal thumbscrew' by a party against his opponent for enforcement of his claim." But said observations came to be made in the context of the facts of the case. It may be recalled that by an order, the contemner was asked to pay the rent for the last four years and to continue paying it in future. If this order could be executed, the provisions of the Contempt of Courts Act should not have been pressed into service appears to be the strain of judgment and the portion of judgment as extracted above.

(11) Mr. Goyal the learned Counsel representing the applicant has relied upon four judgments of the Supreme Court in *DDA* vs. *Skipper Construction Company (P) Ltd.* (2), *Mohmmad Idris and another* vs. *Rustam Jahangir Bapuji and others* (3), *Ram Pyari* vs. *Jagdish Lal* (4) and *Firm Ganpat Ram Raj Kumar* vs. *Kalu Ram and others* (5). The Apex Court in DDA *vs.* Skipper Construction Company (P) Ltd. (supra) held that for violation of the orders of the Court, in addition to punishing the contemners, the Court could pass directions to remedy the breach of its orders. It was further held that it is well settled principle that a contemner ought not to be permitted to enjoy and/or keep the fruits of his contempts. The facts of the case reveal that a plot was put to auction by DDA in October, 1980. Skipper Construction Company offered the highest bid in a sum of Rs. 9.82 Crores. The company deposited 1/4th of the amount payable but did not deposit the balance. It asked for extension repeatedly which was granted. But since the company failed to deposit the balance consideration amount even within

(2) 1996 J.T. (4) S.C. 479
(3) AIR 1984 S.C. 1826
(4) AIR 1992 S.C. 1537
(5) AIR 1989 S.C. 2285

the last extended period, proceedings were taken for cancelling the bid. The company went to Court and obtained stay of cancellation. DDA then applied for vacation of stay. The company was simultaneously making representations to DDA to give it more time. In January, 1983 DDA constituted a committee to consider the request of the company to devise a formula to ensure timely payments by such purchasers. The committee reported that cancellation of bids in such matters usually land DDA in protracted litigation and suggested that enabling them to pay the amount due to DDA, the purchasers be given permission to commence development/construction on the plot subject to the condition that the property of the land would remain with the DDA until entire consideration was paid. If the entire consideration was not paid according to the revised schedule, the DDA should be entitled to re-enter the plot and take over alongwith construction, if any, made thereon. The compnay was, thus, asked to sign a revised agreement. The company, however, raised all sorts of objections and executed the revised agreement only in 1987. Even before permission to enter upon the plot and to make construction thereon was granted, the company started selling the land to various persons and receiving moneys. It did not pay the first instalment in time but paid it after some delay. It did not pay the second instalment. Thereafter ensued a long correspondence between the company and the DDA. Meanwhile company filed Civil Writ Petition in the High Court asking for a writ of *mandamus* directing DDA to sanction the building plans or in the alternative to grant permission to start construction at its own risk. In March, 1990, the High Court passed an order permitting the company to commence construction in accordance with sanctioned plan subject to deposit of a sum of Rs. 1,94,40,000 within one month. Against the said order DDA filed Special Leave Petition. Meanwhile CWP 2371 of 1989 came up for hearing before the Delhi High Court. The High Court made an order on 21st December, 1990 directing company to pay to DDA a sum of Rs. 8,12,88,798 within thirty days and to stop all further construction with effect from 9th January, 1991 if the said amount was not paid. It was provided that in default of such payment, the licence (revised agreement) would stand determined and the DDA would be entitled to re-enter the plot. The company failed to deposit the amount as per directions of High Court. It approached the Supreme Court by way of Special Leave Petition and the Court granted interim order subject to company depositing a sum of Rs. 2.5 Crores. Another sum of Rs. 2.5 crores was to be deposited before 8th April, 1991. In spite of the prohibitory orders of the Court, the company issued an advertisement on 4th February, 1991 in leading newspapers of Delhi inviting persons to purchase the space in the proposed building. Special Leave Petition was ultimately dismissed on 25th January, 1993. DDA re-entered the

plot and took physical possession of property on 10th February, 1993 alongwith the building thereon. Before 29th January, 1991, the company had, however, collected Rupees fourteen crores from various parties agreeing to sell the space in the proposed building. Even after 29th January, 1991, the company issued several advertisements and collected substantial amounts. The orders of the court dated 29th January, 1991 were violated. When this conduct of the company was reported to the Supreme Court *suo moto* contempt proceedings were initiated against Tejwant Singh and his wife, Surinder Kaur, Directors of the company. They were asked to explain why did they institute suit No. 770 of 1993 in respect of the very same subject-matter which was already adjudicated by the Supreme Court on 23rd January, 1993 and why did they enter into agreements for sale and create interest in the third parties in defiance of the order of the Supreme Court dated 29th January, 1991. Hon'ble Supreme Court found them guilty and they were punished. It was further ordered that all the properties and the bank accounts standing in the names of the contemners and the Directors of the company and their wives, sons and unmarried daughters would stand attached. Subject to the conditions indicated by the counsel representing the appellants the Supreme Court deferred the sentence of imprisonment. Contemners thereafter also even though deposited a sum of Rupees two crores but failed to deposit the balance. They also failed to furnish the bank guarantee. As a result of their failure to abide by commitments made by them, they were committed to prison. Thereafter number of Misc. applications from various concerned parties came to be filed in the Supreme Court giving rise to some substantial questions to be decided. One such question was as to whether the contemner should not be allowed to enjoy or retain the fruits of his contempt. While dealing with the said point, the Supreme Court held that the Court must ensure full justice between the parties before it and it is duty of the Court to set the wrong right and not allow the perpetuation of the wrong doing. The Supreme Court placed reliance upon a judgment of the Madras High Court in *Century Flour Mills Limited* vs. *Suppiah & Ors.* (5). There is no need to refer to other judgments cited by the learned Counsel representing the applicant/ respondent. It is too well settled principle of law by now that with a view to ensure full justice between the parties that wherein an act is done in violation of the order, it is the duty of the Court to set the wrong right and not allow the perpetuation of the wrong.

(12) In the present case while giving an undertaking to the Court to pay an amount of rupees ten lacs in instalments, the appellant had further stated that if default was made, he could be hauled up for

(5) AIR 1975 Madras 270

contempt. The learned single Judge, in our view, rightly ordered the appellant to pay the defaulted amount. Such a direction was required to be given in this case. By no legitimate means it could at all be argued by Mr. Sahni that there was any justification in withholding of payment of defaulted amount by the appellant. We may mention here that in case the directions referred to as passed by the learned single Judge are stayed, it would virtually amount to even non-execution of the order passed by the learned Company Judge. Surely, the appellant by simply filing the present appeal cannot get away from his liability to pay the amount which he undertook to pay to the Court. To stay the payment of such an amount would be doing injustice to the respondent.

(13) In so far as the contention of Mr. Sahni that once an appeal has been admitted and stay granted, it should continue till the appeal might last is concerned, suffice it to say that it is no judicial heroism to stick to an order having been earlier passed particularly when the same was passed without hearing the other side and has manifestly caused injustice to the party not heard in the matter. Such an order whenever might come to the notice of the Court either on application made by the affected party or otherwise has to be recalled or modified as the circumstances may be.

(14) In view of what has been said above, we modify order dated 8th June, 1998 to say that whereas order of conviction recorded by the learned single Judge shall remain stayed during the pendency of the appeal, the direction given by the learned single Judge on payment of defaulted amount shall stand. In other words, there shall be no stay with regard to the payment aforesaid. The application stands disposed of accordingly.

J.S.T.

Before Jawahr Lal Gupta & N.K. Agrawal, JJ.

STATE OF HARYANA & ANOTHER,—*Petitioners*

versus

P.O.L.C. ROHTAK & ANOTHER,—*Respondents*

C.W.P. No. 16416 of 1998

9th March, 1999

Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—S. 25-F—Daily wagers—Worked for more than 240 days—Letter of appointment silent on terms and conditions—Nothing on record