

Before V. Ramaswami, CJ and G. R. Majithia, J.

ANANT RAM AND OTHERS,—Appellants.

versus

MURARI LAL,—Respondent.

Contempt Appeal No. 15 of 1988
and Civil Misc. No. 4401-CII of 1988.

November 22, 1988.

Contempt of Courts Act (LXX of 1971)—S. 2(b)—Scope—Civil contempt—Meaning of—Undertaking to the Court—Mode of giving such undertaking—Lis decided on the basis of compromise—No undertaking given to the Court—Disobedience of decree passed on compromise—Whether amounts to contempt.

Held, that in order to constitute civil contempt there has to be wilful breach of an undertaking given to a Court. A person appearing before the Court can give an undertaking in two ways; (a) by filing an affidavit or an application clearly setting out the undertaking; (b) by a clear and express oral undertaking given by him and incorporated by the Court in its order. (Para 9).

Held that breach of even an oral undertaking given to the Court will constitute a contempt, if it is incorporated in the order of the Court. In the present case, the Rent Controller from the statement of the parties drew an inference that there was an undertaking which was given to the Court, but, in fact, no such undertaking was given. The Rent Controller passed a consent order pursuant to a compromise arrived at between the parties. Any of the parties could enforce the compromise order by taking out execution and not by resorting to contempt proceedings. If the compromise order passed by the Rent Controller was not complied with, the respondent could enforce it by suing out execution.

(Para 11)

Appeal under section 19(1) (a) of the Contempt of Courts Act, 1971, praying that:—

- (i) records of the case be summoned;
- (ii) after perusal of the same the impugned order be set aside and the contempt petition be ordered to be dismissed.
- (iii) any other order which this Hon'ble Appellate Bench deems fit in the facts and circumstances of the case be passed;
- (iv) The present appeal be allowed with costs throughout.

CIVIL MISC. NO. 4401-CII of 1988.

Application under section 151 CPC praying that this application be allowed ex-parte stay order granted on 26th July, 1988 may kindly be vacated and appellants be directed to hand over the possession of the shop in dispute forthwith.

Any other relief to which the respondent found entitled be also granted to him against the appellant, which this Hon'ble Court may deem fit and proper on the facts and circumstances of the case.

S. S. Rathore, Senior Advocate (Raj Mohan Singh, Advocate with him), for the appellants/petitioners.

C. B. Goel, Advocate, for the respondents.

JUDGMENT

G. R. Majithia, J.

(1) The stay application (Civil Misc. No. 4401-CII of 1988) in C.A. (C) No. 15 of 1988 came up for hearing before us today. With the consent of the parties we decided to dispose of the main appeal itself.

(2) This appeal is directed against the order of the learned Single Judge dated May 31, 1988.

(3) A brief resume of the important facts is necessary in order to appreciate the points of law that arise in the appeal.

(4) On August 21, 1987, the respondent made the following statement before the Rent Controller and its correct english translation is as under :—

“Statement of Murari Lal son of Kanwar Bhan, aged 47, years, Tailor Master, r/o Thanesar on oath and counsel Shri R. K. Sachdeva without oath.

I am ready to vacate the nearest shop for the time being. The respondent will reconstruct the shop within one month from the date of delivery of possession and will

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rent out to me on a monthly rent of Rs. 260 in addition to house tax. The day I deliver the possession, the respondent will deposit Rs. 10,000 by way of security. The day, the respondent delivers possession of the shop. I will return Rs. 10,000 on the same day. The arrears of rent after deducting the cost of litigation will be paid by me to the respondent by August 31, 1987 against receipt. The suit be disposed of accordingly and I have got no objection to it.

Sd/Murari Lal

Sd/- R. K. Sachdeva",
Advocate

(5) On the same day, one of the appellants Shri Anant Ram made a statement before the Rent Controller on oath and his counsel without oath and its correct translation is as follows :—

"I have understood the statement of the respondent which is correct. We will reconstruct the shop within one month from the date of taking of possession from him and rent out the same to him on payment of rent at the rate of Rs. 260 p.m. exclusive of house-tax. The respondent will be our tenant. The suit be disposed of accordingly. The parties should bear their own costs.

Sd/- Anant Ram.

Sd/- S. C. Jain."

(6) On the basis of these statements, the Rent Controller passed the following order :—

"Parties have arrived at a compromise. Statements of Murari Lal and Anant Ram, and their counsel have also been recorded in this regard. Respondent has undertaken to vacate the shop in dispute within a month from today, and the petitioners have undertaken to reconstruct the same and they will also pay Rs. 10,000 to the respondent and again they will rent out this shop to the respondent at the rate of Rs. 260 per month plus house tax and the petitioners will also be entitled to take back the amount of Rs. 10,000 which will be paid by

them to the respondent after handing over the possession of the shop after reconstructing the same. File be consigned to record-room."

It appears that the parties did not adhere to the compromise made by them before the Rent Controller. The respondent filed a contempt petition in this Court resulting in passing of the following order :—

"They are directed to handover the possession within two **months as undertaken by them** on or before 1st August, 1988. Failing which they will be liable for contempt. The petitioner will also deposit the sum of Rs. 10,000 in the Court of Rent Controller, Kurukshetra, before the said date, but the same will not be paid to the respondents till the possession is handed over. To come up on 5th August, 1988."

(7) The gravamen of the charge against the appellant was that he had committed a serious breach of undertaking given to the Court.

(8) The learned counsel for the appellants raised an important question before us. He submitted that no express undertaking was given by the appellants to the Court and none was recorded in the order of the Rent Controller. The lis was disposed of on the basis of a compromise arrived at between the parties. The compromise was taken to be an undertaking given to the Court by the Rent Controller which did not flow from the statements made by the parties. The appellants had not committed any breach of undertaking given to the Court.

(9) It will be useful to reproduce the definition of 'Civil contempt' as **contained in Sub-Clause B of Section 2 of the Contempt of Courts Act, 1971** :—

"2(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."

An examination of the statements of the parties before the Rent Controller indicates that the dispute between the parties stood

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adjudicated on the basis of the statements made by them. The tenant was to hand over possession and the landlord was to reconstruct the shop and lease out the same on payment of rent at the rate of Rs. 260 p.m. in addition to house tax. The undertaking, if any was not given to the Court but by the landlord to the tenant. A person appearing before the Court can give an undertaking in two ways; (a) by filing an affidavit or an application clearly **setting out the undertaking**; (b) by a clear and express oral undertaking given by him and incorporated by the Court in its order.

(10) In order to constitute civil contempt, there has to be wilful breach of an undertaking given to a Court.

(11) In the instant case, no such undertaking was given to the Court either by way of an affidavit or on a petition filed in Court by the parties to the lis. Breach of even an oral undertaking given to the Court will constitute a contempt, if it is incorporated in the order of the Court. In the present case, the Rent Controller from the statement of the parties drew an inference that there was an undertaking which was given to the Court, but, in fact, no such undertaking was given. The Rent Controller passed a consent order pursuant to a compromise arrived at between the parties. Any of the parties could enforce the compromise order by taking out execution **and not by resorting to contempt proceedings**. If the compromise order passed by the Rent Controller was not complied with, the respondent could enforce it by suing out execution.

(12) Clause (b) of section 2 of the Contempt of Courts Act came up for interpretation before the Hon'ble Supreme Court in *Babu Ram Gupta v. Sudhir Bhasin and another* (1), and it arose under the following circumstances :—

(13) Two partners namely Sudhir Bhasin and Jagatri Lal Bhasin were carrying on business in partnership. The partnership deed contained the usual arbitration clause. Disputes arose between the parties and, as a result, an application under section 20 of the Arbitration Act was made before the High Court and the dispute was referred to sole arbitration of a retired Judge of the Allahabad High Court. On the application for appointment of a Receiver, the High Court appointed Sudhir Bhasin as a Receiver of Laxmi Talkies. Against the order appointing Sudhir Bhasin as

(1) A.I.R. 1979 S.C. 1528.

a Receiver, Letters Patent Appeal was filed and in appeal with the consent of the parties, Shri Mahabir Prasad Advocate was appointed as a Receiver of Laxmi Talkies pending the decision of the Arbitrator. The Receiver was to run the said cinema after taking possession from the appellant. He was to submit quarterly reports regarding running of the cinema and was also to approach the Deputy Commissioner for grant of licence for running the cinema. There was no direction to the appellant to hand over possession to the Receiver although certain directions were given by the Court to the Receiver. The Receiver was not delivered possession of the cinema and this led to filing of a contempt petition. The charge was that the appellant had committed a breach of undertaking given to the Court since he had not delivered possession of the cinema to the Receiver. It was in this context that the Hon'ble Supreme Court was pleased to observe as under:—

“In the instant case, however, as indicated above, there is no application nor any affidavit nor any written undertaking given by the appellant that he would co-operate with the receiver or that he would hand over possession of the cinema to the receiver. Apart from this, even the consent order does not incorporate expressly or clearly that any such undertaking had been given either by the appellant or by his lawyer before the Court that he would hand over possession of the property to the receiver. In the absence of any express undertaking given by the appellant or any undertaking incorporated in the order impugned, it will be difficult to hold that the appellant wilfully disobeyed or committed breach of such an undertaking. What the High Court appears to have done is that it took the consent order passed which was agreed to by the parties and by which a receiver was appointed, to include an undertaking given by the contemner to carry out the directions contained in the order. With due respects, we are unable to agree with this view taken by the High Court. A few examples would show how unsustainable in law the view taken by the High Court is. Take the instance of a suit where the defendant agrees that a decree for Rs. 10,000 may be passed against him and the court accordingly passes the decree. The defendant does not pay the decree. Can it be said in these circumstances that merely because the defendant has failed to pay the decretal amount he is

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guilty of contempt of Court? The answer must necessarily be in the negative. Take another instance where a compromise is arrived at between the parties and a particular property having been allotted to A, he has to be put in possession thereof by B. B does not give possession of this property to A. Can it be said that because the compromise decree has not been implemented by B, he commits the offence of contempt of Court? Here also the answer must be in the negative and the remedy of A would be not to pray for drawing up proceedings for contempt of court against B but to approach the executing court for directing a warrant of delivery of possession under the provisions of the Code of Civil Procedure."

The ratio of the above decision is fully attracted to the facts of the present case. We do not find that the appellants had given any undertaking to the court and the question of any breach does not arise. The learned Rent Controller erroneously assumed that the compromise arrived at between the parties before it was in the nature of an undertaking given to it.

(14) The learned Single Judge is in error in issuing the directions stated above. We set aside the order of the learned Single Judge. However, we make it clear that the order of the Rent Controller is executable and the respondent if so advised, can take out execution of the order. The appeal is allowed. The rule is discharged. As and when the execution petition is filed the learned Rent Controller will expeditiously dispose of the same.

S.C.K.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

RAM SINGH ARORA,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 590 of 1988

November 29, 1988.

Constitution of India, 1950—Arts. 226 and 227—Writ of Mandamus—Scope—Petitioner representing for effecting a change in his date of birth—Enquiry into complicated question of facts—Representation rejected by Government—Such rejection whether can be challenged by filing a writ of Mandamus.