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the parties, he will proceed to decide that question and would not be deterred by the fact that the tenants seek to raise the complicated question of title. This, in our view, is the correct approach to the problem; and the decided cases support this view.

(21) For the reasons recorded above, we see no force in this petition; the same fails and is dismissed with no order as to costs.

K. S.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

P. D. GAUR,—*Appellant*

versus

N. BALASUNDRAM,—*Respondent*

Letters Patent Appeal No. 106 of 1968.

August 1, 1968

Contempt of Courts Act (XXXII of 1952)—S. 3—Contempt of Court for disobedience of a prohibitory order—Information of such order to the person complained against—Whether necessary—Letters Patent—Clause X—Single Judge holding a person guilty of contempt—Letters Patent appeal against that order—Whether competent—Chief Justice and Judges of the High Court—Whether necessary parties to such appeal.

Held, that in the matter of a prohibitory order it is well settled that it is not necessary that the order should be served upon the party against whom it is granted in order to justify committal for breach of such an order, provided it is proved that the person complained against had notice of the order aliunde. It is, therefore, necessary that before a person is convicted for contempt of court for disobedience of a prohibitory order, it must be proved that he had information or the knowledge of such an order. (Para 9)

Held, that an appeal under clause 10 of the Letters Patent against the order of a Single Judge of the High Court holding a person guilty of contempt of Court is competent. Such an order is not made in the exercise of the criminal jurisdiction of the High Court. (Para 4)

Held, that it is not necessary that the Chief Justice and the Judges of the High Court should be made parties to an appeal against the order of a Single Judge convicting a person of the offence of having committed the contempt of the High Court in a case initiated on a complaint made by a private person and not initiated by the Court on its own motion. The High Court, in such a case, is the Court of Record entrusted with the power of punishing contempt under the Contempt of Courts Act and the Court whose judgment or order is under appeal is not made a respondent to that appeal. (Para 5)

Letters Patent Appeal under Clause X of the Letters Patent against the order, dated 3rd January, 1968, passed by the Hon'ble Mr. Justice R. P. Khosla, in Criminal Original No. 111 of 1967.

U. D. GAUR, ADVOCATE, for the Appellant.

D. D. VERMA AND S. K. AGGARWAL, ADVOCATES, for the Respondent.

JUDGMENT.

TULI, J.—On a petition under section 3 of the Contempt of Courts Act, 1952, filed by N. Balasundram, the appellant was held guilty of committing the contempt of this Court and was administered a severe warning by R. P. Khosla, J. The appellant has filed this Letters Patent appeal against his conviction.

(2) The petitioner, N. Balasundram, is the proprietor of Messrs Eastern Electronics, Faridabad, and he had obtained an *ad interim* stay order from the Vacation Judge in Civil Writ No. 979 of 1967 staying recovery of the amount of sales tax due on the petitioner's furnishing bank guarantee for the amount in question within two months from the date of order. This order was confirmed on 21st of July, 1967, by Sarkaria, J., and the time was extended by three weeks for putting in the security i.e., up to 18th of August, 1967. On 18th of August, 1967, further extension of two months was granted in the presence of the Advocate for the State and the Departmental Authorities. On 22nd August, 1967, P. D. Gaur, appellant, went to the office of the Eastern Electronics to find out whether the period for furnishing security had been further extended by the High Court. The petitioner, N. Balasundram, alleged in his petition that P. D. Gaur went to his factory on 22nd August, 1967 at about 10.00 a.m. and threatened Shri B. N. Sharma, Manager, with arrest of the petitioner and attachment of his property. The

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Manager told him that the Taxation Department was time and again wilfully disobeying the order of this Court whereupon P. D. Gaur asked the Manager to submit an affidavit to the effect that the stay was still operative and valid and time for furnishing the bank guarantee had been further extended. As the petitioner had already left by air for Madras, his Manager regretted his inability to comply with the direction of P. D. Gaur. Ultimately, the Manager gave him a letter addressed to K. R. Awasthy, Excise and Taxation Officer, Faridabad, stating that the time for furnishing bank guarantee had been further extended till 16th October, 1967. P. D. Gaur filed his reply to the contempt petition in which he stated that on 22nd August, 1967, he did not go to execute any warrant against the petitioner but visited his office for eliciting information if any extension order had been issued and he was informed that a further extension had been allowed on 18th August, 1967. He pleaded that he had not committed any contempt and that the rule might be discharged.

(3) The learned Single Judge, who tried the contempt petition held that since the order for extension of the time for furnishing bank guarantee had been extended on 18th August, 1967, in the presence of the counsel for the Departmental Authorities including P. D. Gaur, there was no justification for the appellant to plead that he had no information about the order having been passed. The learned Single Judge, therefore, held him guilty of contempt and administered severe warning in view of the fact that the appellant had thrown himself at the mercy of the Court and had tendered an unconditional apology.

(4) Feeling aggrieved from the order of conviction, the appellant has filed this appeal under clause 10 of the Letters Patent. The learned counsel for N. Balasundram, respondent, has raised four preliminary objections which are dealt with hereafter. The first preliminary objection is that no Letters Patent Appeal is competent. The charge against the appellant was of disobedience of an order of stay granted by this Court in a pending Civil Writ which is a civil proceeding. It has been held by a Divisional Bench of this Court (Gosain and Grover, JJ.) in *Shri Ram Narain Mathur v. The Hon'ble The Chief Justice and the Hon'ble Judges of the High Court at Chandigarh* (1), that an appeal under clause 10 of the Letters Patent against

(1) I.L.R. (1958) Pb. 2104.

the order of a Single Judge of the High Court holding the appellant guilty of contempt of the High Court is competent. Such an order is not made in the exercise of the criminal jurisdiction of the High Court. Even if a distinction between civil and criminal contempts is to be accepted, the order of the Single Judge in this case would still be appealable inasmuch as the punishment awarded by him is for disobedience of the orders of the High Court in civil proceedings which constitutes civil contempt. We are in respectful agreement with the proposition of law laid down in that judgment and hold that the Letters Patent Appeal is competent in the present case.

(5) The second objection raised by the learned counsel for the respondent is that the Chief Justice and other Judges of this Court were necessary parties to the appeal as the contempt had been committed of this Court. I find no substance in this objection. The petition for contempt was filed by the respondent and was prosecuted by him. It is not necessary that the Chief Justice and the Judges of the High Court should be made parties to an appeal against the order of a Single Judge convicting a person of the offence of having committed the contempt of the High Court in a case initiated on a complaint made by a private person and not initiated by the Court on its own motion. The High Court, in such a case, is the Court of Record entrusted with the power of punishing contempt under the Contempt of Courts Act and the Court whose judgment or order is under appeal is not made a respondent to that appeal.

(6) The third objection raised by the learned counsel is that the appeal was not competent as the appellant had tendered unqualified apology. There is no substance in this contention either. The appellant had pleaded that he had not committed any contempt for the reason that he did not know of the extension of time granted by this Court and that he had gone to the office of the respondent merely to elicit information whether the time had been extended. During the course of the trial, he tendered unqualified apology to avoid any severe punishment. The appellant was not let off on the acceptance of his apology but was convicted of the offence of having committed contempt of Court and for this reason he has the right to file an appeal against his conviction.

(7) The fourth objection is that the appeal has been filed by the State and is, therefore, incompetent. The memorandum of appeal

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shows that the appellant is P. D. Gaur and the memorandum of appeal at the end is signed by the Assistant Advocate-General and Public Prosecutor, Haryana. It means that the State of Haryana provided its own counsel to the appellant which is not at all objectionable. Even before the learned Single Judge, the appellant was defended by a State counsel. I do not find anything objectionable in the State providing a counsel to its official for his defence in a contempt petition or for presenting and prosecuting his appeal against conviction if it considers that the officer has not committed any contempt or his conviction is unjustified.

(8) There being no force in the preliminary objections raised by the learned counsel for the respondent, I proceed to determine whether any contempt was committed by the appellant.

(9) Admittedly the stay order passed by Sarkaria, J., on 21st July, 1967, had extended the period for furnishing the bank guarantee till 18th of August, 1967, and on the latter date, the time was further extended by two months in the presence of the Advocate for the State and the Departmental Authorities. 18th August, 1967, was a Friday and it has not been proved on the record that any intimation of the extension of time had been given to the appellant on the 18th August, 1967, or that he had got the information of the order extending the time before he went to the office of the respondent on 22nd August, 1967. The appellant stated that he had no such knowledge of the order extending the time and had gone to the petitioner's office to elicit information whether the time had been further extended on the 18th August, 1967, or not. It has been held by the Supreme Court in *Hoshiar Singh and another v. Gurbachan Singh and others* (2), that in the matter of a prohibitory order it was well-settled that it was not necessary that the order should have been served upon the party against whom it had been granted in order to justify committal for breach of such an order, provided it was proved that the person complained against had notice of the order aliunde. It was, therefore, necessary for the respondent to prove that the appellant had the information or the knowledge of the extension of the order for furnishing bank guarantee prior to 22nd August, 1967, when he went to the office

(2) A.I.R. 1962 S.C. 1089.

of the petitioner. This fact not having been proved, the appellant had not disobeyed the order of this Court by going to the office of the petitioner on 22nd August, 1967, and he cannot be said to have committed any contempt of Court.

(10) For the reasons given above, this appeal is allowed and the conviction of the appellant is set aside. There will, however, be no order as to costs.

MEHAR SINGH, C.J.—I agree.

K. S.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

BEHARI LAL,—*Petitioner*

versus

THE ESTATE OFFICER, CAPITAL PROJECT, CHANDIGARH

AND OTHERS,—*Respondents*

Civil Writ No. 2311 of 1963.

August 13, 1968

Chandigarh (Sale of Sites and Buildings) Rules, 1952—Rule 9—Transfer of a site under—Rule amended subsequently in 1960—Transferee—Whether bound by the amended rule—Estate Officer—Whether can ask such transferee to carry only the specified trade or industry—Punjab Capital (Development and Regulation) Rules, 1952—Rule 2(xvi)—“Commercial building”—Meaning of—Booth used for manufacture and sale of sweet meats—Such booth—Whether used for commercial purpose—Deed—Construction of—Conveyance deed not mentioning the conditions given in the letter of allotment—Allottee—Whether bound by such conditions.

Held, that under Rule 9 of Chandigarh (Sale of Sites and Buildings) Rules, 1952, the transferee could not use the site for a purpose other than that for which it had been sold to him. This rule was amended in 1960 and an additional