
fail to make the payment of the dues, the respondents shall be free to initiate proceedings under Section 8-A of the Act read with Rule 12(3) of the 1973 Rules.

R.N.R.

Before N. K. Sোধi, J.

PARAMJIT KAUR,—*Petitioner*

versus

TARLOCHAN SINGH & OTHERS,—*Respondents*

C.O.C.P. No. 829 of 1995

28th October, 1998

Contempt of Courts Act, 1971—S. 12—Breach of undertaking given by respondent No. 2 before the High Court—Defence set up that respondent No. 2 not served in the appeal and had not engaged any advocate to appear on his behalf who gave the undertaking—Sale of part of suit land admitted—Court taking word as true and dismissing the petition but on examination of original file of the appeal recalling order on discovering that respondent No. 2 was served in the appeal and had engaged counsel who had given undertaking—Contempt by advocate & party—Oral apology tendered by advocate for making false statement at the Bar accepted—Respondent No. 2 held guilty of committing contempt of Court and punished to undergo simple imprisonment for four months & to pay a fine of Rs. 2,000 alongwith costs assessed as Rs. 10,000.

Held that it is unfortunate that Shri R. L. Sharma, Advocate, made a false statement at the Bar on 26th February, 1998 and it appears that he was trying to bail out respondent No. 2 when the latter had committed contempt of this Court by wilfully committing a breach of the undertaking given by him through his counsel in Civil Misc. 185-C of 1994. The conduct of Shri Sharma cannot but be deprecated. I was inclined to issue notice of contempt to him but in view of the oral apology tendered by him in Court, I refrain from doing so.

(Para 5)

Further held, that respondent No. 2 had been served in the appeal and that he engaged Shri Sharma as his counsel who had put in appearance on his behalf and filed his memorandum of appearance. In this view of the matter he wilfully flouted the undertaking given to this Court on 1st March, 1994 when he executed the two sale deeds in

favour of the aforesaid persons on 12th May, 1994 and 13th May, 1994. He is, thus, guilty of committing contempt of court. After having flouted the undertaking he chose to file a false affidavit in reply to the contempt petition stating therein that he had no knowledge of the order dated 1st March, 1994 and that he had not been served in the appeal. His averment to the effect that he had not engaged a counsel is, therefore, false to his knowledge. He has not only committed contempt of this Court but has aggravated the same by filing a false affidavit. He does not, therefore, deserve any leniency. Holding him guilty of contempt, I punish him to undergo simple imprisonment for four months and to pay a fine of Rs. 2,000. If default is made in the payment of fine, respondent No. 2 will undergo a further sentence for three weeks. Petition allowed with costs which are assessed at Rs. 10,000.

(Para 6)

P. S. Kang, Advocate, for the Petitioner.

R. L. Sharma, Advocate, for Respondents 1 & 4.

R. L. Aneja, Advocate, for Respondents 2 & 3.

JUDGMENT

N. K. Sodhi, J.

(1) This contempt petition arises out of the violation of an undertaking given by the respondents in R.S.A. 680 of 1991 whereby they had undertaken not to alienate the suit land in their possession during the pendency of the appeal.

(2) Petitioner filed a suit for joint possession of one-third share of the suit land in village Simbal Jhallian, Tehsil and District Ropar. She also claimed joint possession of one-sixth share of the land in village Majri Jatan in district Ropar. It was alleged that the petitioner and respondent 4 were the daughters of Bachan Singh son of Jata Singh and respondent 3 was his son. Respondent 1 is alleged to be the son of respondent 4 and respondent 2 the son of respondent 3. Bachan Singh son of Jata Singh who was admittedly the owner of the suit land is said to have executed a Will in favour of respondents 1 and 2 and the petitioner claimed that the said Will was fictitious, illegal and invalid and that the mutation sanctioned on its basis was also illegal. The suit was contested by the respondents who were arrayed as defendants therein and they relied upon the aforesaid Will and claimed that respondents 1 and 2 became the owners of the suit land on the death of Bachan Singh. It was denied that the petitioner was the daughter of Bachan Singh. The suit was decreed by the trial court on 18th December, 1984 and it was held that the petitioner was the daughter

of Bachan Singh deceased and that the execution of the Will set up by the respondents was not proved. Feeling aggrieved by the judgment and decree of the trial court respondent 1 filed an appeal which was allowed by the Additional District Judge, Ropar on 11th May, 1988 and the findings recorded by the trial court were reversed and the suit dismissed. Petitioner then filed RSA 680 of 1991 in this court which stands admitted and is pending. During the pendency of the appeal the petitioner apprehended that the respondents were about to sell the land to Harnek Singh son of Jeeva Singh and Gurmail Singh, Harnail Singh, Gurjit Singh sons of Bhagat Singh because an agreement to sell had been entered into by respondent 2 and the aforesaid persons. She then filed Civil Misc. 185-C of 1994 seeking an injunction to restrain the respondents from alienating the suit land during the pendency of the appeal. When this application came up for hearing on 18th January, 1994 notice was issued to the counsel for the respondents. Shri R. L. Sharma, Advocate appeared on behalf of the respondents who were also the respondents in the appeal and after obtaining instructions from his clients he stated that the suit land which had not been sold would not be alienated during the pendency of the appeal. It appears that before the filing of the miscellaneous application the respondents had sold a part of the suit land as there was no injunction restraining them from doing so. On the aforesaid statement being made by Shri R. L. Sharma, the application was disposed of on 1st March, 1994 and the following order was passed by V. K. Bali, J:—

“Counsel appearing for the respondents on the instructions of his clients, states that the remaining portion of the land which has not been sold will not be alienated during pendency of the appeal. That being the statement of the counsel, the application has been rendered infructuous and is accordingly dismissed.”

(3) The grievance now made in the contempt petition is that in spite of the aforesaid undertaking given by the respondents through their counsel, respondent 2 sold land measuring 17 kanals 15 marlas and 9 kanals 19 marlas through two different sale deeds dated 12th May, 1994 and 13th May, 1994 executed in favour of Harnek Singh son of Jeeva Singh and Gurmail Singh, Harnail Singh, Gurjit Singh sons of Bhagat Singh respectively. It is alleged that the land which has been sold after the undertaking had been given to this court is part of the suit property situated in village Majri Jatan, District Ropar. It is further alleged that on the basis of the sale deeds the mutations of transfer have been sanctioned on 19th May, 1994. Copies of the two mutations have been attached with the petition as Annexures P-2 and P-3.

(4) In response to the notice issued to the respondents, they have put in appearance through their counsel. Respondents 2 and 3 have filed their separate but identical written statements stating that they had no knowledge of the order dated 1st March, 1994 by which Civil Misc. 185-C of 1994 was disposed of by this court as infructuous. It is pleaded that the respondents never engaged any counsel to appear in RSA 680 of 1991 filed by the petitioner and that they had not been served in the said appeal. It is also pleaded that any statement given by the counsel on their behalf is not binding on them as they had not engaged any counsel to appear on their behalf. It is admitted that respondent 2 has sold a part of the suit land to the aforesaid persons as alleged by the petitioner.

(5) From the pleadings of the parties, it is clear that respondent 2 has alienated the suit land in spite of the undertaking given to this court in Civil Misc. 185-C of 1994. The only defence taken is that this respondent had not been served in the appeal nor had he engaged any counsel and, therefore, any statement made by the counsel Shri R. L. Sharma on his behalf is not binding on him. When this case came up for hearing on 26th February, 1998 I heard the counsel for the parties and dismissed the petition. Shri R. L. Sharma who appeared on behalf of the respondents in Civil Misc. 185-C of 1994 and on behalf of respondents 1 and 4 in this petition, stated that he had been engaged only by respondents 1 and 4 in the appeal and that his presence had been wrongly marked for respondents 2 and 3 as well therein and that the statement made by him was only on behalf of respondents 1 and 4. Later while dictating the order I examined the original file of RSA 680 of 1991 and found that Shri R. L. Sharma had been engaged by respondents 1 to 4 and his statement that he had been engaged only by respondents 1 and 4 was not correct. I, therefore, posted the case for re-hearing and the case was reheard on 13th August, 1998. When it was put across to Shri Sharma that as indicated from his memorandum of appearance of filed by him in the R. S. A., he had been engaged for respondents 1 to 4 and not only for respondents 1 and 4 as stated by him on 26th February, 1998, he admitted that his earlier statement was wrong and that he had been engaged for respondents 1 to 4. He also admitted that he did state before Bali, J. on 1st March, 1994 that he gave the undertaking after having received instructions from respondents 1 to 4. It is unfortunate that Shri R. L. Sharma, Advocate made a false statement at the Bar on 26th February, 1998 and it appears that he was trying to bail out respondent 2 when the latter had committed contempt of this court by wilfully committing a breach of the undertaking given by him through his counsel in Civil Misc. 185-C of 1994. The conduct of Shri Sharma cannot but be deprecated. I was inclined to issue notice of contempt to him but in view of the oral apology

tendered by him in Court, I refrain from doing so.

(6) Now coming to the conduct of respondent 2. It is clear from the statement of Shri R. L. Sharma, Advocate that this respondent had been served in the appeal and that he engaged Shri Sharma as his counsel who had put in appearance on his behalf and filed his memorandum of appearance. In this view of the matter he wilfully flouted the undertaking given to this court on 1st March, 1994 when he executed the two sale deeds in favour of the aforesaid persons on 12th May, 1994 and 13th May, 1994. He is, thus, guilty of committing contempt of court. After having flouted the undertaking he chose to file a false affidavit in reply to the contempt petition stating therein that he had no knowledge of the order dated 1st March, 1994 and that he had not been served in the appeal. His averment to the effect that he had not engaged a counsel is, therefore, false to his knowledge. He has not only committed contempt of this court but has aggravated the same by filing a false affidavit. He does not, therefore, deserve any leniency. Holding him guilty of contempt, I punish him to undergo simple imprisonment for four months and to pay a fine of Rs. 2000. If default is made in the payment of fine, respondent 2 will undergo a further sentence for three weeks. Fine, if recovered, shall be paid to the petitioner by way of compensation. Since no other respondent has been a party to the sale, the Rule against them stands discharged. It goes without saying that the transactions of sale executed by respondent 2 shall be subject to any order that may be passed by this court in RSA 680 of 1991. The petition, thus, stands allowed with costs which are assessed at Rs. 10,000 to be paid by respondent 2.

R.N.R

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

PUNJAB CIVIL & CONSUMER WELFARE FRONT (REGD.), BANUR
& ANOTHER,—*Petitioners.*

versus

UNION TERRITORY OF CHANDIGARH & OTHERS,—*Respondents.*

Civil Writ Petition No. 12328 of 1997

3rd February, 1998

Constitution of India, 1950—Arts. 21, 226/227—Right of life—Torts—Three years old child fell into open manhole and died—Theft of manhole covers—In the knowledge of the Administration—No proper