

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1798 of 2009

Kanwar Singh Saini

...Appellant

Versus

High Court of Delhi

...Respondent

J U D G M E N T

Dr. B.S. Chauhan, J.

1. 'Liberty' - the most cherished fundamental right, a basic human right, a "transcendental", inalienable, and 'primordial' right, should not be put in peril without following the procedure prescribed by law and in a casual and cavalier manner. Instant case is an example where all proceedings in the suit as well as under the Contempt of Courts Act, 1971, (hereinafter called as 'Act 1971'), have been taken without adverting to the procedure known in law.

2. This Criminal Appeal has been preferred under Section 19 (1) (b) of the Act 1971 against the impugned judgment and order dated 20.7.2009 passed by the High Court of Delhi at New Delhi in Contempt Case (Crl.) No.9 of 2004, whereby the appellant has been convicted for committing contempt of court by violating the undertaking given by him to the Court at the time of disposal of the suit and awarded him simple imprisonment for four months.

3. Facts and circumstances giving rise to this appeal are:

A. The appellant executed a sale deed in favour of one Mohd.

Yusuf on 5.9.2002 in respect of the premises bearing No. 148,

village Khirki, Malviya Nagar, New Delhi for a sum of

Rs.2,10,000/- and got the said deed registered.

B. Mohd. Yusuf filed suit No. 106/2003 in the Civil Court,

Delhi, on 26.4.2003 for permanent injunction alleging that the

appellant tried to dispossess him on 24.4.2003 from the said suit premises. His application for interim relief was rejected.

The Civil Court issued summons and notice to the appellant/defendant.

C. In response to the said summons and notice, the appellant filed a written statement on 29.4.2003 admitting the execution of sale deed in respect of the suit premises for a sum of Rs.2.10 lacs and handing over its possession to the plaintiff but denied the allegation that he had made any attempt to dispossess the plaintiff. However, the appellant raised the grievance that the entire consideration of sale has not been paid to him as a sum of Rs.25,000/- still remained outstanding.

D. The Civil Court while taking his written statement on record also recorded the statement of the appellant/defendant in person that he had neither threatened to dispossess nor he would

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dispossess the plaintiff. The plaintiff's counsel accepted the statements made by the appellant/defendant in the court and the case was adjourned for 12.5.2003. On 12.5.2003, plaintiff asked the court to dispose of the suit in view of the statement made by the appellant/defendant. The court disposed of the suit directing the appellant/defendant not to breach the undertaking given by him.

E. Appellant's son filed a suit on 11.8.2003 for partition in respect of two plot Nos. i.e. 147A and 148 claiming that he had a share in the said properties.

F. Mohd. Yusuf-plaintiff in the Suit No. 106/2003 filed an application before the High Court under the provisions of Act 1971 alleging the violation of the undertaking given by the appellant to the civil court. The application came up for hearing on 11.9.2003 but none appeared to press the same. The High Court disposed of the application vide order dated 11.3.2003 giving liberty to the said applicant to approach the civil court. The said order was passed without issuing notice to the appellant or anyone else.

G. Mohd. Yusuf filed an application dated 15.9.2003 under Order XXXIX Rule 2A of Code of Civil Procedure, 1908 (hereinafter called 'CPC') read with Sections 10, 11 and 12 of the Act 1971 against the appellant, his wife and two sons alleging that when he visited the suit premises on 4.8.2003, he found that the

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locks of the main door had been broken by them. The appellant filed reply to the said application on 22.10.2003 alleging that the execution of the sale deed dated 5.9.2002 and his written statement and the statement made before the court on 29.4.2003 had been obtained by fraud.

H. While hearing the said application, the Court vide order dated 16.2.2004 recorded that as the appellant had taken inconsistent pleas to his written statement filed earlier and violated the undertaking while making his oral statement, a prima facie case of contempt was made out and referred the matter to the High Court to be dealt with under the provisions of Act 1971.

I. The appellant filed a suit on 23.2.2005 for cancellation of the sale deed dated 5.9.2002.

J. The High Court while accepting the reference as Criminal Contempt, issued show cause notice to the appellant on 2.2.2005 directing him to appear in person on 16.2.2005.

The Court vide impugned judgment and order dated 20.7.2009 held the appellant guilty of criminal contempt on the basis of inconsistent pleas taken by him and also for the breach of undertaking and imposed simple imprisonment for four months. The appellant was granted bail by this Court on 29.9.2009.

Hence, this appeal.

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4. Mr. Tanmaya Mehta, learned counsel appearing for the appellant has raised the grievance mainly, that it was a case of

civil contempt which could have been dealt with by the Trial Court itself and by no means could be treated as a criminal contempt case. The High Court erred in treating the same as criminal contempt and awarded the punishment to the appellant which was not warranted under the facts and circumstances of the case and therefore, the judgment and order of the High Court convicting the appellant is liable to be set aside.

5. Mr. Shree Prakash Sinha, learned counsel appearing for the plaintiff - Mohd.Yusuf, intervener, has opposed the appeal contending that the appellant and his family members had made false and misleading statements to scuttle the interest of justice. The appellant has not only committed criminal contempt but also abused the process of the court. Thus, no interference is called for.

6. The suit was filed on 26.4.2003 and notice was issued returnable just after three days, i.e. 29.4.2003 and on that date the written statement was filed and the appellant appeared in person and his statement was recorded. Order X Rule 1 CPC provides for recording the statement of the parties to the suit at the "first hearing of the suit" which comes after the framing of the issues and then the suit is posted for trial, i.e. for production of evidence. Such an interpretation emerges from the

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conjoint reading of the provisions of Order X Rule 1; Order XIV Rule 1(5); and Order XV Rule 1, CPC. The cumulative effect of the above referred provisions of CPC comes to that the "first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties and the settlement of issues. On the date of appearance of the defendant, the court does not take up the case for hearing or apply its mind to the facts of the case, and it is only after filing of the written statement and framing of issues, the hearing of the case commences. The hearing presupposes the existence of an occasion which enables the parties to be heard

by the Court in respect of the cause. Hearing, therefore, should be first in point of time after the issues have been framed. The date of "first hearing of a suit" under CPC is ordinarily understood to be the date on which the Court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit. Thus, the question of having the "first hearing of the suit" prior to determining the points in controversy between the parties i.e. framing of issues does not arise. The words the "first day of hearing" does not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at

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the time when either the issues are determined or evidence is taken. [Vide: Ved Prakash Wadhwa v. Vishwa Mohan, AIR 1982 SC 816; Sham Lal (dead) by Lrs. v. Atma Nand Jain Sabha (Regd.) Dal Bazar, AIR 1987 SC 197; Siraj Ahmad Siddiqui v. Shri Prem Nath Kapoor, AIR 1993 SC 2525; and M/s Mangat Singh Trilochan Singh thr. Mangat Singh (dead) by Lrs. & Ors. v. Satpal, AIR 2003 SC 4300]

7. From the above fact situation, it is evident that the suit was filed on 26.4.2003 and in response to the notice issued in that case, the appellant/defendant appeared on 29.4.2003 in person and filed his written statement. It was on the same day that his statement had been recorded by the court. We failed to understand as to what statutory provision enabled the civil court to record the statement of the appellant/defendant on the date of filing the written statement. The suit itself has been disposed of on the basis of his statement within three weeks of the institution of the suit. The order sheets of the suit read as under:

26.4.2003:

"Present: Ld. counsel for the plaintiff.

Arguments on injunction application heard. No ground for granting ex-parte stay order at this stage, request in this regard is declined. Issue summons of the suit and notice of the interim application to the defendants on PF and RC, courier, UPC and dasti also for 29-04-2003.

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Sd/-
CJ/Delhi
26-04-2003"

29.4.2003:

"Counsel for the plaintiff.

Defendant in person.

He states that he is not likely to dispossess the plaintiff from the suit premises as he has already sold the same. However, he has stated that he has to take certain amount from the plaintiff towards expenses which has not been paid by the plaintiff. There is counter claim of the defendant affixing the court fee and in any case, he has legal remedy to exercise it. The defendant is ready to make the statement. Let it be recorded.

CJ/Delhi

"Statement of Shri Kanwar Singh Saini, Defendant on S.A.

Neither I have threatened the plaintiff nor I will dispossess him as I have already sold the suit property vide sale deed. The suit of the plaintiff may kindly be dismissed as there is no merit in the same.

R.O. &A.C.

Sd/

(Kanwar Singh Saini)

Sd/-
CJ/DELHI
29.4.2003"

"Statement of Ld. Counsel for plaintiff Shri Iqbal Ahmed without oath:

I have heard the statement of defendant and I have instruction from the plaintiff to accept the same. The suit of the plaintiff may kindly be disposed of.

R.O.&A.C.

Sd/-

(Iqbal Ahmed)

Sd/-
CJ/DELHI
29.4.2003

12.5.2003:

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"I have heard the statement of defendant and I accept the same. My suit be disposed of in terms of statement of defendant.

RO&AC

Sd/-
(Mohd. Yusuf)

Sd/-
CJ/DELHI
12.5.2003"

Thereafter the learned Judge passed the following order:-

" 12.5.2003

Present: Plaintiff in person.
Ld. Counsel for the defendant.

Statement of plaintiff is recorded on a separate sheet. Statement of defendant is already recorded. Keeping in view of the statements of parties, the suit of the plaintiff is disposed of. Parties are bound by their statements as given in the court. No orders as to costs. File be consigned to Record Room.

Sd/-
CJ/DELHI
12.5.2003"

8. Be that as it may, the so-called statement/undertaking given by the appellant/defendant culminated into the decree of the Civil Court dated 12.5.2003. Thus, the question does arise as to whether the application under Order XXXIX Rule 2A CPC or under the Act 1971 could be entertained by the Civil Court and whether the matter could be referred to the High Court at all.

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9. Application under Order XXXIX Rule 2A CPC lies only where disobedience/breach of an injunction granted or order complained of was one, that is granted by the court under Order XXXIX Rules 1 & 2 CPC, which is naturally to enure during the pendency of the suit. However, once a suit is decreed, the interim order, if any, merges into the final order.

No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. (Vide: Dr. A.R. Sircar v. State of U.P. & Ors., 1993 Suppl. (2) SCC 734; Shiv Shanker & Ors. v. Board of

Directors, UPSRTC & Anr., 1995 Suppl (2) SCC 726;

Committee of

Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager & Anr. v. Sree Kumar Tiwary & Anr., AIR 1997 SC 3071; M/s. GTC Industries Ltd. v. Union of India & Ors., AIR 1998 SC 1566; and Jaipur Municipal Corpn. v. C.L. Mishra, (2005) 8 SCC 423).

10. In case there is a grievance of non-compliance of the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order XXI Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and

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can examine and cross-examine the witnesses as opposed to the proceedings in contempt which are summary in nature. Application under Order XXXIX Rule 2A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order XXI Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the Act 1971 when an effective and alternative remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings. There is a complete fallacy in the argument that the provisions of Order XXXIX Rule 2A CPC would also include the case of violation or breach of permanent injunction granted at the time of passing of the decree.

11. In Food Corporation of India v. Sukha Deo Prasad, AIR 2009 SC 2330, this Court held that the power exercised by a court under

Order XXXIX Rule 2A is punitive in nature, akin to the power to punish for civil contempt under the Act 1971. Therefore, such powers should be exercised with great caution and

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responsibility. Unless there has been an order under Order XXXIX Rule 1 or 2 CPC in a case, the question of entertaining an application under Order XXXIX Rule 2A does not arise. In case there is a final order, the remedy lies in execution and not in an action for contempt or disobedience or breach under Order XXXIX Rule 2A. The contempt jurisdiction cannot be used for enforcement of decree passed in a civil suit.

12. The proceedings under Order XXXIX Rule 2A are available only during the pendency of the suit and not after conclusion of the trial of the suit. Therefore, any undertaking given to the court during the pendency of the suit on the basis of which the suit itself has been disposed of becomes a part of the decree and breach of such undertaking is to be dealt with in execution proceedings under Order XXI Rule 32 CPC and not by means of contempt proceedings. Even otherwise, it is not desirable for the High Court to initiate criminal contempt proceedings for disobedience of the order of the injunction passed by the subordinate court, for the reason that where a decree is for an injunction, and the party against whom it has been passed has wilfully disobeyed it, the same may be executed by attachment of his property or by detention in civil prison or both. The provision of Order XXI Rule 32 CPC applies to prohibitory as well as mandatory injunctions. In other words, it applies to cases where the party is directed to do some act and also to the

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cases where he is abstained from doing an act. Still to put it differently, a person disobeys an order of injunction not only when he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing. Execution of an injunction decree is to be made in pursuance of

the Order XXI Rule 32 CPC as the CPC provides a particular manner and mode of execution and therefore, no other mode is permissible. (See: Hungerford Investment Trust Ltd. (In voluntary Liquidation) v. Haridas Mundhra & Ors., AIR 1972 SC 1826).

13. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. (Vide: The United Commercial Bank Ltd. v. Their Workmen AIR 1951 SC 230; Smt. Nai

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Bahu v. Lal Ramnarayan & Ors., AIR 1978 SC 22; Natraj Studios Pvt. Ltd. v. Navrang Studio & Anr., AIR 1981 SC 537; Sardar Hasan Siddiqui & Ors. v. State Transport Appellate Tribunal, U.P., Lucknow & Ors. AIR 1986 All. 132; A.R. Antulay v. R.S. Nayak & Anr., AIR 1988 SC 1531; Union of India & Anr. v. Deoki Nandan Aggarwal, AIR 1992 SC 96; Karnal Improvement Trust, Karnal v. Prakash Wanti (Smt.) (Dead) & Anr., (1995) 5 SCC 159; U.P. Rajkiya Nirman Nigam Ltd. v. Indure Pvt. Ltd. & Ors., AIR 1996 SC 1373; State of Gujarat v. Rajesh Kumar Chimanlal Barot & Anr., AIR 1996 SC 2664; Kesar Singh & Ors. v. Sadhu, (1996) 7 SCC 711; Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors., AIR 1999 SC 2213; and Collector of Central Excise, Kanpur v. Flock (India) (P) Ltd., Kanpur, AIR 2000 SC 2484).

When a statute gives a right and provides a forum for

adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, "that performance cannot be enforced in any other manner". Thus for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act. (See: *Doe d. Rochester (BP) v. Bridges*, 109 ER 1001; *Barraclough v. Brown*, 1897 AC 615; *The Premier Automobiles Ltd. v. K.S.Wadke & Ors.*,

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AIR 1975 SC 2238; and *Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) thr. L.Rs.*, (1990) 1 SCC 193).

14. In *Samee Khan v. Bindu Khan*, AIR 1998 SC 2765, this Court explained the distinction between a civil and criminal contempt observing that enforcement of the order in civil contempt is for the benefit of one party against another, while object of criminal contempt is to uphold the majesty of law and the dignity of the court. The scope of the proceedings under Order XXXIX Rule 2A CPC is entirely different. It is a mode to compel the opposite party to obey the order of injunction by attaching the property and detaining the disobedient party in civil prison as a mode of punishment for being guilty of such disobedience. Breach of undertaking given to the court amounts to contempt in the same way as a breach of injunction and is liable to be awarded the same punishment for it.

15. It is a settled legal proposition that the executing court does not have the power to go behind the decree. Thus, in absence of any challenge to the decree, no objection can be raised in execution. (Vide: *State of Punjab & Ors. v. Mohinder Singh Randhawa & Anr.*, AIR 1992 SC 473).

16. The case requires to be considered in the light of the aforesaid settled legal proposition.

Whatever may be the circumstances, the court decreed the suit vide judgment and decree dated 12.5.2003. The said decree was passed on the basis of admission/undertaking made by the appellant on 29.4.2003 and the pleadings taken by him in his written statement. Therefore, in a case where there was any disobedience of the said judgment and decree, the application under Order XXXIX Rule 2A CPC should not have been entertained. Such an application is maintainable in a case where there is violation of interim injunction passed during the pendency of the suit. In the instant case, no interim order had ever been passed. Thus, the appropriate remedy available to the decree holder-Mohd. Yusuf had been to file application for execution under Order XXI Rule 32 CPC. The procedure in execution of an injunction decree is same as prescribed under Order XXXIX Rule 2A i.e. attachment of property and detention of the disobedient to get the execution of the order. In view thereof, all subsequent proceedings were unwarranted.

17. Application of the decree holder had been for violation of the undertaking which at the most could be civil contempt as defined under Section 2(b) of the Act 1971 as it includes the wilful breach of an undertaking given to a court. Therefore, the Trial Court failed to make a distinction between civil contempt and criminal contempt. A mere disobedience by a party to a civil action of a specific order made by the court in the suit

is civil contempt for the reason that it is for the sole benefit of the other party to the civil suit. This case remains to the extent that, in such a fact situation, the administration of justice could be undermined if the order of a competent court of law is permitted to be disregarded with such impunity, but it does not involve sufficient public interest to the extent that it may be treated as a criminal contempt. It was a clear cut

case involving private rights of the parties for which adequate and sufficient remedy had been provided under CPC itself, like attachment of the property and detention in civil prison, but it was not a case wherein the facts and circumstances warranted the reference to the High Court for initiating the proceedings for criminal contempt.

18. The High Court in para 29 of the impugned judgment has taken note of various judgments of this Court including *Dhananjay Sharma v. State of Haryana & Ors.*, (1995) 3 SCC 757; *Rita Markandey v. Surjit Singh Arora*, (1996) 6 SCC 14; and *Murray & Co. v. Ashok Kr. Newatia & Anr.*, (2000) 2 SCC 367, wherein it has been held that filing of a false affidavit or taking false pleadings in the court amounts to criminal contempt. The High Court failed to appreciate the nature/status of proceedings in which the alleged false affidavit had been filed. The instant case is quite distinguishable on facts from those cases. In the instant case, proceedings under Order XXXIX Rule 2A CPC were

not maintainable at all. Had the complainant Mohd. Yusuf filed the execution proceedings under Order XXI Rule 32 CPC, the court could have proceeded in accordance with law without going into the averments raised therein by the appellant.

19. In a given case if the court grants time to a tenant to vacate the tenanted premises and the tenant files an undertaking to vacate the same after expiry of the said time, but does not vacate the same, the situation would be altogether different. (See: *Sakharan Ganesh Aaravandekar & Anr. v. Mahadeo Vinayak Mathkar & Ors.*, (2008) 10 SCC 186; and *Mahender Kumar Gandhi v. Mohammad Tajer Ali & Ors.*, (2008) 10 SCC 795).

In an appropriate case where exceptional circumstances exist, the court may also resort to the provisions applicable in case of civil contempt, in case of violation/breach of undertaking/judgment/order or decree. However, before passing any final order on such application, the court must satisfy

itself that there is violation of such judgment, decree, direction or order and such disobedience is wilful and intentional. Though in a case of execution of a decree, the executing court may not be bothered whether the disobedience of the decree is wilful or not and the court is bound to execute a decree whatever may be the consequence thereof. In a contempt

proceeding, the alleged contemnor may satisfy the court that disobedience has been under some compelling circumstances, and

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in that situation, no punishment can be awarded to him. (See: Niaz Mohammad & Ors. v. State of Haryana & Ors, (1994) 6 SCC 332; Bank of Baroda v. Sadruddin Hasan Daya & Anr., AIR 2004 SC 942; and Rama Narang v. Ramesh Narang & Anr., AIR 2006 SC 1883)

Thus, for violation of a judgment or decree provisions of the criminal contempt are not attracted.

20. The application filed under Order XXXIX Rule 2A CPC bearing Misc. No.89/2003 by the decree holder contains the following pleadings and prayer was made to punish the said contemnors:

"To his utter amazement, the petitioner-applicant on 4th of August 2003 on visiting the site (148, Village Khirki, New Delhi) learnt that the respondents in league and collusion with one another in deliberate and wilful breach of the aforementioned statement, assurance and/or undertaking had broken open locks and doors of the premises in reference 148, Village Khirki, New Delhi and taken possession thereof, thereby committing grave contempt of the Hon'ble Court (by breach of the aforementioned statement, assurance and/or undertaking furnished on 29th of April 2003 as accepted by the learned Civil Judge on 12th May 2003)."

The Civil Court considered the said application; took notice of the facts and in its order dated 16.2.2004 held:

"It also shows that plaintiff was in possession of the suit property on the date of making the statement. As on today, the respondents are in possession of the suit property. Even the respondent had not denied this fact rather their contention is that plaintiff was never in possession of the suit property. Further, a local commissioner was appointed and has also corroborated the fact that respondents are in

possession. Therefore, prima facie, it appears that plaintiff has been dispossessed from the suit property by the respondents. The contention of the respondent no.1 that plaintiff was never in possession runs counter to the written statement of defendant filed in the original suit. Moreover, this fact needs evidence and evidence will be led only before Hon'ble High Court. Therefore, prima facie case for reference of the contempt petition has been made out."

The Court reached the following conclusion :

"As to the contention of learned counsel for respondent no.1 that evidence is required before making a reference, the provision of section 11 of the Contempt of Courts Act, 1971 are to be noted. Section 11 says that it is the Hon'ble High Court which has jurisdiction to inquire into or try the contempt petition. Therefore, the contention has no force. This Court has only to see that prima facie case exist for referring the contempt."

The Court made the reference as under:

"However, against other respondents there is no material for making the reference. In view of the above, a reference is made to the Hon'ble High Court with humble prayer to try the contempt petition against respondent no.1 and to punish the guilty accordingly. Application is disposed of accordingly."

21. In view of the above discussion, as such proceedings were not maintainable, the order of reference itself was not warranted.

It also becomes crystal clear that the appellant had been subjected to unfair procedure from the institution of the suit itself. The suit had been "disposed of" in great haste without following the procedure prescribed in CPC. Once the suit has

been decreed, the court could not entertain the application under Order XXXIX Rule 2A CPC as the suit had already been decreed and such an application is maintainable only during the pendency of the suit in case the interim order passed by the court or undertaking given by the party is violated. In the instant case, no interim order had ever been passed and the undertaking given by the appellant/defendant not to dispossess the said plaintiff culminated into a final decree and thus, if

any further action was required, it could be taken only in

execution proceedings.

There has been manifest injustice in the

case and the doctrine of ex debito justitiae has to be applied

in order to redress the grievances of the appellant/defendant.

Judgment and order impugned cannot be sustained under any
circumstance.

22. The courts below have proceeded with criminal contempt

proceedings not for disobeying any judgment or order but for

taking inconsistent pleas in the reply filed by the appellant to

the application under Order XXXIX Rule 2A CPC, accepting it to

be a false affidavit. Purposes of initiation of contempt

proceedings are two-fold: to ensure the compliance of the order

passed by the court; and to punish the contemnor as he has the

audacity to challenge the majesty of law.

In the instant case,

admittedly, the grievance of the complaint had been disobedience

of decree/order of the civil court dated 12.5.2003.

The High

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Court convicted the appellant and sent him to jail but did not

grant any relief so far as the enforcement of the order dated

12.5.2003 is concerned.

We failed to understand as under what

circumstances, the High Court did not even consider
it

appropriate to enforce the judgment/order/decreed if it had been

disobeyed by the appellant.

The instant case is a glaring

example of non-application of mind and non-observance
of

procedure prescribed by law for dealing with such matters.

Entire proceedings have been conducted in most casual
and

cavalier manner.

23. Learned counsel for the contesting respondent has placed a

very heavy reliance on the judgments of this Court in Palitana

Sugar Mills Private Limited & Anr. v. Vilasiniben Ramachandran &

Ors., (2007) 15 SCC 218; and C. Elumalai & Ors. v.
A.G.L.

Irudayaraj & Anr., AIR 2009 SC 2214, wherein this court held

that wherever there is a wilful disobedience/contumacious conduct - deliberate flouting of the order of the court, it amounts to contempt and it becomes the duty of the court to exercise its inherent power to set the wrong right as a party cannot be permitted to perpetuate the wrong by disobeying the order further.

In the case at hands, the court initiated criminal contempt proceedings but ultimately after convicting the

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appellant did not enforce the order passed by the Civil Court dated 12.5.2003.

24. In Daroga Singh & Ors. v. B.K. Pandey, (2004) 5 SCC 26, this Court rejected the plea of the contemnors that the High Court could not initiate the contempt proceedings in respect of the Contempt of the Courts subordinate to it placing reliance upon earlier judgments in Bathina Ramakrishna Reddy v. State of Madras, AIR 1952 SC 149; Brahma Prakash Sharma & Ors. v. The State of U.P., AIR 1954 SC 10; and State of Madhya Pradesh v. Revashankar, AIR 1959 SC 102. The Court further explained the scope of contempt proceedings observing:

"..... For the survival of the rule of law the orders of the courts have to be obeyed and continue to be obeyed unless overturned, modified or stayed by the appellate or revisional courts. The court does not have any agency of its own to enforce its orders. The executive authority of the State has to come to the aid of the party seeking implementation of the court orders. The might of the State must stand behind the court orders for the survival of the rule of the court in the country. Incidents which undermine the dignity of the courts should be condemned and dealt with swiftly..... If the judiciary has to perform its duties and functions in a fair and free manner, the dignity and the authority of the courts has to be respected and maintained at all stages and by all concerned failing which the very constitutional scheme and public faith in the judiciary runs the risk of being lost."

25. The contempt proceedings being quasi-criminal in nature, the standard of proof requires in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the Criminal Jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures.

In *Debabrata Bandopadhyay & Ors. v. The State of West Bengal & Anr.*, AIR 1969 SC 189, this Court observed as under:

"A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished..... Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged."

(Emphasis added)

26. In view of the above, as the application under Order XXXIX Rule 2A CPC itself was not maintainable all subsequent proceedings remained inconsequential. Legal maxim "sublato

fundamento cadit opus" which means foundation being removed structure falls is attracted. 24

27. Thus, taking into consideration, the fact situation involved in the case, the appeal is allowed. The impugned judgment and order dated 20.7.2009 passed by the High Court of Delhi at New Delhi in Contempt Case (Crl.) No. 9 of 2004 is hereby set aside. His bail bonds stand discharged.

28.However, we clarify that any observation made in t
his

judgment shall not affect, in any manner, merit of other cases

pending between the parties in regard to the Suit property.

.....J.
(P. SATHASIVAM)

.....J.
(Dr. B.S. CHAUHAN)

New Delhi,
September 23, 2011

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ITEM NO. 1-B COURT No.6 SECTION II
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.1798 OF 2009

KANWAR SINGH SAINI .. Appellant(s)

Versus

HIGH COURT OF DELHI .. Respondent(s)

DATE : 23/09/2011 This APPEAL was called
on for pronouncement of judgment today.

For Appellant(s) Mr. Tanmay Mehta, Adv.
Ms. Purnima Bhat, Adv.

For Respondent(s) Mr. Shree Prakash Sinha, Adv.
Mr. Shekhar Kumar, Adv.

Hon'ble Dr. Justice B.S. Chauhan pronounced the
judgment of the Bench comprising Hon'ble Mr. Justice P.
Sathasivam and His Lordship.

The appeal is allowed.

The bail bonds stand discharged.

[Usha Bhardwaj]
Court Master

[Savita Sainani]
Court Master

[Signed reportable judgment is placed on the file]

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