

(1977) 05 DEL CK 0003

In the Delhi High Court

Case No : Civil Revision Appeal No. 0.87 of 1972

Central Bank of India

APPELLANT

Vs

Current Transport Finance (P) Ltd.

RESPONDENT

Date of Decision : 05-05-1977

Acts Referred:

Citation : (1977) CriLJ 266 : (1977) 13 DLT 164 : (1978) 1 ILR Delhi 233 : (1978) RLR 34

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : C.L. Chopra, R.M. Gupta, M.S. Gandhi, Kuldeep Singh, P.C. Khanna and Reva Khanna, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) These are contempt of court proceedings. On 19/11/1974, Yogeshwar Dayal J. issued a notice to Kuldeep Singh (defendant No. 7) calling upon him to show cause why he should not be punished for contempt for breach of the undertaking given to this court on 17/07/1972 and 4/05/1973.

(2) On 26/05/1972, the Central Bank of India brought a suit for the recovery of Rs. 4,73,873 against (1) Current Transport and Finance Private Limited, and (2) Current Transport Service and (3) the directors of the company. One of the directors admittedly is Kuldeep Singh, defendant No. 7. The suit is for the recovery of money which the bank had advanced to the defendants on the hypothecation of the following five buses :

(i) Vehicle No. Dlp 4128 make T.M.B. Model 1968 Chassis No. 342.050.86.14299, engine No. 312.978.86.07011. (ii) Vehicle No. Dlp 4265 make T.M.B. Model 1969 Chassis No. 342.050.86.14299, engine No. 312.978.86.14979. (iii) Vehicle No. Dlp 4383 make T.M.B. Model 1969 Chassis No. 342.050.96.03021, engine No. 312.978.86.02779. (iv) Vehicle No. Dlp 4488 make T.M.B. Model 1969 Chassis No. 342.050.96.03854, Engine No. 312.978.96.03958. (v) Vehicle No. Dlp 4091 make

T.M.B. Model 1968 ChassisNo. 342.050.86.03183, Engine No. 312.978.86.02148.

(3) On 26/05/1972, itself the bank moved an application under 0.38 rule 5 (IA 991 of 1972) praying that the aforesaid buses maybe attached before judgment. This application came up for ex parte hearing on 17/07/1972 before B. C. Misra J. He ordered notice of the application to issue to defendants 1 and 2. For the meanwhile he passed an order restraining them from transferring, alienating or parting with the possession of the motor vehicles in suit. The suit was adjourned to 9/10/1972.

(4) On 9/10/1972, Mr. R. M. Gupta, Advocate appeared on behalf of some of the defendants. He filed his power of attorney on behalf of defendants 1, 2, 7, 8, 15 to 19 dated 9/10/1972. This power of attorney is admittedly signed by Kuldeep Singh defendant No. 7. It appeared that the service of the application was not affected on all the defendants. The court Therefore ordered notice to issue again to the defendants. At this stage Mr. R. M. Gupta gave an undertaking to T. P. S. Chawla J. who was seized of the case. The order reads:

"MR. Gupta gives an undertaking that the buses mentioned in para 2 of this application will not be alienated in any manner whatsoever until this application is heard and decided."

(5) is 991 of 1972 then came up before V. D. Misra, J. In his order dated 4/05/1973 he said :

"MR. R. M. Gupta states that he was under the impression that his undertakings not to sell away the vehicles in question would be enough to decide the application. It was for that reason that he did not file the reply. He requests for an opportunity to file a detailed reply because Mr. Chopra is not willing to accept any undertaking given by Mr. Gupta."

(6) The defendants were allowed to file their reply. On 9/05/1973, a reply to the attachment application was filed on behalf of defendants 1 and 2. In this reply it was stated in paragraph 3 that

"PARA 3 of the application is not denied. But it is suggested that the possession of defendants 1 and 2 is actual with respect to some and constructive with respect to the others."

(7) On 17/05/1973, the application for attachment before judgment came up for hearing before me. I took the view that defendants 1 and 2 should not be allowed to part with the vehicles as that will diminish the security of the plaintiff bank. I, Therefore, ordered that the five vehicles be taken into possession by a receiver. I appointed Mr. H. S-Mac as the receiver to take possession of the five vehicles.

(8) Mr. Mac made his report on 23/05/1973. He made efforts to find out the vehicles. He went to the premises of defendants 1 and 2. He met Kuldeep Singh. He enquired from him about the whereabouts of the vehicles. Kuldeep Singh made a statement which the receiver recorded. In his statement Kuldeep Singh stated that

he did not know where the vehicles were. He was also unable to state whether other directors were aware of the whereabouts of the vehicles or not. His words are:

"I can help the court in securing the possession of the vehicles only if I am made aware of the whereabouts of these vehicles. So far as I am concerned I do not know where they are."

He gave the names and addresses of other four directors and said :

"I cannot say whether these directors will be able to give information about these vehicles."

(9) On 30/07/1973, the bank made another application under Orders 38, 39 and 40 and s. 151, CPC (IA 1860 of 1973). In this application the bank prayed that defendants 1 and 2 be asked to produce the vehicles in court so that the receiver may take possession.

(10) On 30/08/1973, V. D. Misra J. passed a detailed order. The learned judge felt satisfied that defendants 1 and 2 and some of their directors were trying to flout the order of the court dated 17/05/1973, directing the receiver to take possession of the vehicles. He, therefore, directed all the directors to file their affidavits. In the affidavits the directors were required to state the whereabouts of the vehicles in question and the names of the persons in whose possession these have been from time to time. This order was made in order to trace the vehicles so that the orders of the court could be enforced and possession of the vehicles obtained.

(11) Kuldeep Singh, defendant No. 7, Sukhpal Ahluwalia defendant No. 3, Narain Dass Khattar defendant No. 8, Jassa Singh defendant No. 9, and Amar Singh defendant No. 4 filed their affidavits. They are all directors of the company defendant No. 1.

(12) Kuldeep Singh in his affidavit denied all knowledge about the whereabouts of the vehicles. In paragraph 4 he said :

"THAT I do not know the present whereabouts of the following vehicles that are in dispute, but after the death of Shri Arjit Lal Dhillon, the Transport Department was looked after by Shri Jassa Singh, director of Current Transport & Finance Private Ltd. and he was also in possession of the same. 1. DLP-40912. DLP-41283. DLP-42654. DLP-43835. DLP-4488"

This was the stand of Kuldeep Singh.

(13) Other defendants positively stated on oath that Kuldeep Singh was in complete control of the affairs of the company and that the entire fleet of vehicles including the vehicles in dispute was in his possession and control. Jassa Singh in his affidavit stated that he had never participated in the business or management of the company and that "Kuldeep Singh and his associates" were managing and controlling the affairs of the company. As regards the vehicles he said : "These

buses are being runby Kuldeep Singh Along with his associates."

(14) On 17/10/1973, the statement of Kuldeep Singh was recorded by V. D. Misra, J. In his examination-in-chief Kuldeep Singh admitted that he had signed a power of attorney on behalf of the company in favor of his lawyer, Mr. R. M. Gupta. As regards the undertaking he said:

"It is correct that I directed Mr. Gupta to make a statement before the court that buses in question will not be alienated in any manner whatsoever. These included the buses which were either in actual or constructive possession. At the time my lawyer made the statement in Court, Jassa Singh, director, was in actual possession of two of the buses in dispute and since I was acting on behalf of the company the statement that some were in actual possession were to that extent correct, I had hoped that Jassa Singh or any other person will not be able to transfer these buses without my knowledge since I was the only person acting on behalf of the company. After the death of Anrit Lal Dhingra, director, Jassa Singh was made in charge of all the departments of the company. At that time the other three buses were lying in a most dilapidated condition. In the meantime application for winding up had been moved. I approached Jassa Singh and convinced him that if he could use the buses and earn some money, we will be able to pay off our debts. Jassa Singh also suggested that instead of selling the buses, we should be able to ply them because the sale in those circumstances would not fetch adequate price. In these circumstances Jassa Singh got the three buses repaired at his own cost and thereafter started plying them. Before the Company Court, Jassa Singh director had made an application alleging that he wanted to dispose of these buses. I told the Company Court that I was not going to sell or dispose of these buses. At the time my lawyer made the statement in Court, those three buses were being got repaired and it is in these circumstances that the statement was made. It was thereafter that Jassa Singh suddenly took those buses out of Delhi. I say that" all the five buses are in the possession of Jassa Singh."

(15) While Kuldeep Singh was being cross-examined by Mr. P. C. Khanna, counsel for Jassa Singh, V. D. Misra J. asked Kuldeep Singh if he was willing to act as a receiver and help in finding out the buses in dispute. Kuldeep Singh agreed to act as a receiver. V. D. Misra, J. adjourned the remaining cross-examination. He made an order appointing Kuldeep Singh and Prithvi Raj Sachdeva, Advocate, as joint receivers of the buses in dispute.

(16) Prithvi Raj Sachdeva made efforts to search the vehicles in question. He went to Hapur. He made enquiries. He also met Jassa Singh and talked to him. Jassa Singh told Mr. Sachdeva that

"Kuldeep Singh the co-receiver had taken away the vehicles and had disposed them of after probably changing the number on their engines and chassis."

Sachdeva was of opinion that both Jassa Singh and Kuldeep Singh were blaming each other and it was not possible for him to find out the vehicles. He submitted

his report stating all this on 22/11/1973.

(17) On 27/11/1973, Kuldip Singh appeared before V. D. Misra, J. He stated the buses in question were at Hapur and he was ready to point out the buses to the receiver and the officials of the bank. Kuldip Singh expressed his willingness to go to Hapur on 3/12/1973, to point out the buses in question. V. D. Misra, J. directed the co-receivers to go to Hapur or such other place as is pointed out by Kuldip Singh in order to find out the buses. On 11/12/1973, Sachdeva reported that while they were proceeding to Hapur their car met with an accident. In the accident Kuldip Singh was injured. Kuldip Singh was again directed to locate the buses and take them in his possession as a receiver.

(18) On 25/02/1974, I directed defendants 3, 7, 8, 9 and 12 to be present in person on 6/03/1974. On that date Kuldip Singh appeared. He again appeared on 11/04/1974. On that date I recorded the statement of Kuldip Singh. In his statement he said this:

"In the winding up proceedings launched by Jassa Singh, Jassa Singh made an application restraining the company from transferring the vehicles including the vehicles mortgaged with the Central Bank. I made a reply in the company court and I said that vehicles Dlp 4069, Dlp 4128 and Dlp 4265 which are mortgaged with the Central Bank may be allowed to be sold by me so that payment may be made to the Central Bank. It is not correct that I sought permission to sell all the five vehicles mortgaged with the bank. I sought permission only in respect of the three vehicles numbers of which I have indicated above. The other two vehicles were already with Jassa Singh and, therefore, I did not ask for permission to sell them. It is correct that I did not make the assertion in my reply that the remaining two vehicles were with Jassa Singh. I did say in my reply that I was in actual possession of the above three vehicles and was constructively in possession of two vehicles which were actually with Jassa Singh. These were Dlp 4383 and Dlp 4488."

Then he said that Jassa Singh "took away the three vehicles from the company's office." on the pretext that he would sell them in Meerut at much higher prices than what he (Kuldip Singh) had proposed. Kuldip Singh admitted that the statement made by him before Mr. H. S. Mac was correct. At the end of his statement Kuldip Singh said :

"I deny the suggestion that the five disputed vehicles are with me or were sold by me. These five vehicles are with Jassa Singh."

Kuldip Singh had not stated before Mr. H. S. Mac that all the five vehicles were with Jassa Singh. To this his reply was :

"SINCE the receiver did not enquire from me as to whether Jassa Singh had taken away the vehicles I did not state so."

(19) The statements of Sukhpal Ahluwalia, Narain Dass Khattar and Gurbux Singh were also recorded on 11/04/1974. Both Ahluwalia and Narain Dass stated that

Kuldip Singh was managing the affairs of the company and that he had the possession of the buses. Narain Dass Khattar said :

"To my knowledge Jassa Singh did not take control of the buses."

In his affidavit dated 24/09/1973 Sukhpal Ahluwalia had stated:

"The entire fleet of vehicles, including the vehicles in dispute had always been in possession and under the control of Shri Kuldip Singh."

(20) On 19/11/1974, Yogeshwar Dayal J. issued a show cause notice suo moto to Kuldip Singh, as I have said. On 20/12/1974, Kuldip Singh filed his reply. In defense he took a number of objections. He denied that he had committed contempt or had in any manner disobeyed the orders of the court.

(21) Now the question is : Has Kuldip Singh committed contempt? Kuldip Singh's case is that he has not violated the orders of the court and as such has incurred no liability.

(22) It will be recalled that on 9/10/1972, Kuldip Singh had given the undertaking before T. P. S. Chawla, J. that the buses will not be alienated. On the earlier date of hearing, 17/07/1972, defendants 1 and 2 had been "restrained from transferring, disposing of or otherwise parting with the possession of the motor vehicles mentioned in the application." It is in the backdrop of this order of B. C. Misra J. that we have to see the value and worth of the undertaking given by Kuldip Singh's counsel on 9/10/1972.

(23) The application for attachment before judgment came up before V. D. Misra J. on 4/05/1973, as we have seen. Counsel said that he thought that his undertaking was sufficient to dispose of the application but if it was not so then he would file a reply. The reason for this was that counsel for the bank was interested in the actual possession of the vehicles. I accordingly on 17/05/1973, made an order appointing a receiver to take possession of the vehicles.

(24) This in brief is the course of the proceedings. Let me now examine the effect of the undertaking. Can a man set the authority of law at defiance ? That is the question.

(25) Kuldip Singh, it appears to me, has been shifting his stand from time to time. It is an admitted case that on 9/10/1972, his counsel Mr. R. M. Gupta gave the undertaking at his instance. This evidence showed that Kuldip Singh had possession of the five buses. But when the court wanted to obtain possession of the vehicles and appointed H. S. Mac as the receiver, Kuldip Singh disclaimed all knowledge about the whereabouts of the buses. In his affidavit dated 24/09/1973 and in his examination on 17/10/1973 he set up this case. In para 4 of the affidavit he said :

"I do not know the present whereabouts of the following vehicles that are in dispute....."

Then Kuldeep Singh took another stand. Now he said that these vehicles were in charge of Jassa Singh since after the death of Amrit Lal Dhingra, Jassa Singh had been put in charge of the transport section of the company. Subsequently he again changed his position. Now his case was that out of the five vehicles three were with him and two were with Jassa Singh. Later on in his statements dated 17/10/1973 and 11/04/1974 his final stand was that all the five buses were in the possession of Jassa Singh.

(26) The affidavits of the directors and their statements recorded in court clearly prove the following :

1. Kuldeep Singh was in control of the buses of the company. 2. That Kuldeep Singh had possession of the buses. 3. That at least three buses were with Kuldeep Singh in his actual possession at one time on his own admission. 4. According to the statement of Kuldeep Singh two buses were with Jassa Singh. 5. But Jassa Singh denies the possession of any bus and in this he is supported by other directors.

(27) Kuldeep Singh was given several opportunities both by Justice V. D. Misra and myself to help the court in getting possession of the buses. While his statement was being recorded on 17/10/1973 by V. D. Misra J. Kuldeep Singh showed his willingness to help the court in getting possession of the buses. V. D. Misra J. adjourned the hearing. Kuldeep Singh was asked to assist the court receiver Sachdev in getting possession of the vehicles. Similarly, when this case came up before me on 3/02/1977, February, 14, 1977 and March 3, 1977 each time Kuldeep Singh prayed for time to find out the whereabouts of the buses. I gave him as much as three months' time to find out the buses. These opportunities were of no avail. Indulgence shown bore no fruit. The court was faced with a difficult situation. The buses eluded its grasp. The solemn undertaking given to a court was proving an empty formality, devoid of all content. Ultimately I decided to hear arguments on the show cause notice.

(28) From the affidavits and the statements of the directors it is clear beyond doubt that it is Kuldeep Singh who has been in charge and control of the business of the company and that he had the possession of buses. On his own showing he had actual possession of three buses at one time and constructive possession of the remaining two which he said were with Jassa Singh on behalf of the company. Later on he came out with the story that the three buses were being repaired when Jassa Singh took them away from the premises of the company. He does not deny that these three buses were with him. If three buses were with Kuldeep Singh, as he admits them to be at one time, he is responsible to the court for their production. The court is not concerned with Jassa Singh. The undertaking was given at the instance of Kuldeep Singh by his counsel. The undertaking means that the buses will not be alienated. The bank had moved this court for attachment before judgment. The application was not pressed for immediate hearing in view of the undertaking given. On 4/05/1973 counsel insisted that that undertaking was not enough and that his application for attachment should be decided. Mr. Gupta then said that he would file the reply. Reply was actually filed

on 9/05/1973. But the undertaking dated 9/10/1972 remains binding. The court has accepted it. Kuldeep Singh is bound to produce the buses in terms of his undertaking.

(29) Counsel for Kuldeep Singh has taken several points in defense. I will deal with them one by one.

The first and foremost is the question of limitation. Counsel for Kuldeep Singh argued that the show cause notice issued by Yogeshwar Dayal J. on 19/11/1972 was barred by time as under s. 20 of the Contempt of Courts Act, 1971 (the Act) proceedings for contempt had to be initiated within one year "from the date on which the contempt is alleged to have been committed." Counsel argued that in this case limitation began from the following dates :-(i) Either from 9/05/1973 when the reply was filed by Kuldeep Singh to the application for attachment before judgment under O. 38 r. 5, CPC ; or (ii) 30/08/1973, from the order of V. D. Misra J. when the learned judge was considering the report of the receiver Mr. H. S. Mao; or (iii) 17/10/1973 when Kuldeep Singh made his statement denying the possession of the buses ; or (iv) from 24/09/1973 when Kuldeep Singh made his affidavit denying that he had the possession of the buses. It is true that all these four dates take the show cause notice beyond the period of one year. But the question is : When did limitation start ? What is the date on which contempt is alleged to have been committed ?

(30) The question of limitation can be viewed from three angles. Kuldeep Singh is in contempt of court's order dated 9/10/1973. In the first place, it is a contempt under the Act. Under s. 2(b) Civil contempt means

"willful breach of an undertaking given to a court".

Section 20 will apply to it. Secondly, the breach of the undertaking can be said to be under the provisions of O. 39, rule 2(3) of the Code of Civil Procedure. Instead of making an order for attachment the court granted an interim injunction on 17/07/1972. It was in terms of order that the undertaking was given. This is a case of disobedience and breach of the terms of the undertaking. Thirdly, under Article 215 of the Constitution this court being a court of record has "the power to punish for its contempt". Neither under O. 39 of the Code nor under Article 215 of the Constitution has any limitation been prescribed. The powers to punish under the Code and the Constitution are in addition to and not in derogation of the provisions of the Act (section 20).

(31) Even under s. 20 of the Act I am of the view that contempt proceedings are within time. Contempt was committed when V. D. Misra J. appointed P. R. Sachdeva as the co-receiver with Kuldeep Singh on 17/10/1973. This was done when Kuldeep Singh showed his willingness to act as a scout in the search of buses. He was willing to lend a helping hand to the court. The court accepted the preferred aid. But Kuldeep Singh did not keep his word. On 22/11/1973 Sachdeva made the report expressing his inability to find out the buses. I think limitation begins from the date of this report i.e. 22/11/1973- I hold Therefore that the

show cause notice is withintime : See Sudesh Kumar v. Jai Narain 1974 PLR23.

(32) Even today Kuldeep Singh is in contempt as he continues to be in breach of the undertaking. willfully and contumaciously he has refused to hand over the vehicles. He refuses to abide by the undertaking. This is a case of breach of the undertaking.

(33) In the second place, counsel for Kuldeep Singh argued that there is no breach of the undertaking at all. He submitted that his client's undertaking "not to alienate the buses" means that Kuldeep Singh was not to transfer the proprietary rights of the buses and that the buses will remain in the name of defendants 1 and 2. Counsel said that is so even now as there is no change in the registration of the buses with the Transport Authority. I cannot accept this submission. The power to alienate means the power of disposition. Disposing power means actual possession. How else will a man have control, management or administration of a thing. Possession is the kernel. The rest is husk. The power to alienate cannot be conceived apart from possession, at least in movables like motor vehicles. Proprietary rights in the buses are of little help to us in this case. The court is concerned with their actual possession since the claim in suit is on the basis of hypothecation of the buses with the bank. Seen in this light possession is all important. Possession is nine-tenths of law.

(34) Next it was argued that the show cause notice dated 19/11/1974, is illegal as it does not set out precisely the specific acts complained of. Precise breaches of the order and specific acts must be stated before a party can be held in contempt, counsel argued. Here I referred me to Ramesh Chandra v. Lt. Governor Delhi 1977 Cr. L.J.4, Roshanlal Thakur v. Kishanlal Kapoor 1977 Cr. L.J. 9, Jayantilal Hiralal & Co. v. Waman Narayan Velinkar, Air 1932 Born.638 and Kilachand Devchand and Co. Vs. Ajodhyaprasad Sukhanand, in support of his submission. In my opinion, the notice sets out clearly the contempt Kuldeep Singh is alleged to have committed. There is one act of contempt. It is the breach of the undertaking which he gave to the court on 9/10/1972. This order is specifically referred to in the show cause notice. This order has to be read in the light of what preceded 17/07/1972 and what happened subsequently on 4/05/1973. Those two other orders are also mentioned in the show cause notice. Nothing more is required to be stated in order to inform a contemner of the case he is to meet.

(35) Next it was argued that the undertaking dated 9/10/1972 was never accepted by the bank. My attention in this connection was invited to the orders dated 4/05/1973 and 17/05/1973. As I read those two orders, it does not mean that the undertaking was washed out or completely effaced from the record of the court. On 4/05/1973, opportunity to file a reply to the application for attachment before judgment was given. On 17/05/1973, I appointed the receiver to take possession of the vehicle. The solid fact remains that the court accepted the undertaking. This is why no order of attachment before judgment was made immediately on the application.

(36) Lastly, it was submitted that Kuldip Singh cannot be said to be in contempt as he is defendant No. 7 to the suit while the application under Order 38 rule 5 was made against defendants 1 and 2. do not agree. On behalf of, defendants 1 and 2 the undertaking was given by Kuldip Singh. Defendant No. 1 is the company incorporated under the Companies Act (Current Transport and Finance Private Limited). Defendant No. 2 (Current Transport Service) is owned by the company, defendant No. 1. Therefore, on behalf of the company it was Kuldip Singh who was appearing. In his statement on 17/10/1973 he had said :

".....I was the only person acting on behalf of the company."

He instructed his counsel to give the undertaking on behalf of defendants 1 and 2. In his statement Kuldip Singh admitted that: as he had substantial stake in the company he was defending the legal proceedings in this court as well as in the company court. If the undertaking was given at his instance by the counsel he cannot escape his liability. In Halsbury's Laws of England it is said :

"THE breach of an undertaking given to the court by a person or corporation, in pending proceedings, on the faith of which the court sanctions a particular course of action or inaction has the same force as an injunction made by the court and a breach of the undertaking is misconduct amounting to contempt."

[4th (Hailsham) ed. Vol. 9 para 75].

(37) Disobedience of an undertaking is contempt. The power of Courts of Record to punish contempt *brevi manu* and of inferior courts to punish cases of contempt *in facia curiae* are parts of the same thing. The power in either case is necessary, so that justice may not be obstructed and the majesty of Law is not jeopardised by the disrespect and contumacy of people.

(38) This court cannot allow itself to be trifled with. Litigants before this court ought to know that they will not be permitted to give an undertaking to this court and then break it with impunity. Both V. D. Misra J. and I formed the impression that the order of the court was being intentionally and deliberately flouted. Both he and I gave ample time to Kuldip Singh to fulfill his undertaking. But he has not cared to produce even those three buses which admittedly were in his "actual possession". The dichotomy of "actual" and "constructive" possession invented by him in the pleadings is a snare and a delusion. It is a subterfuge employed in an attempt to get away with the serious consequences of his own Act the court cannot allow the buses to be spirited away in this fashion. Buses are not ether. They are huge substantial things. If a contemner thinks that he can spirit the buses out of the reach of the court the contemner will be sternly dealt with.

(39) I am of opinion that not only Kuldip Singh has taken the matter lightly but has also exhibited a complete defiance and willful disobedience to the orders of the court. He believes that the arm of the law is not long enough to reach him. But is law powerless to defend itself against onslaughts on its majesty ?

I would Therefore hold that Kuldeep Singh is guilty of civil contempt and there is a contumacious and willful breach on his part of the undertaking given by him to this court on 9/10/1972.

(40) Now remains the question of punishment. S. 12 of the Act of 1971 prescribes punishment for contempt. I am for awarding the severest punishment in a case like this. If it were the case of an individual associated with a company I would have awarded the maximum six months imprisonment and fine of rupees two thousand. But as defendant No. 1 is a company I would order that Kuldeep Singh (defendant No. 7) be detained in a civil prison for a period of six months. The bank will pay the subsistence allowance. Kuldeep Singh will be taken into detention forthwith.

If the company or Kuldeep Singh have property the bank can apply for its sequestration and attachment under O. 39 rule 2(3), of the Code.

(41) Contempt covers a multitude of sins. A breach of an undertaking is also a breach of the injunction order. The reason is that an undertaking amounts in substance to an injunction order. Malsbury says this. Indian decisions also take this view. In A.B. Gurumurthi Chetty Vs. Sella Perumal Pillai, Varadacharia J. said :

"WHETHER what has happened in any particular case amounts to an injunction or not must be decided with reference to the substance of the Court's order and not as a mere matter of form. In the view that I am bound to uphold the authority of the Court so far as is reasonable and within the limits permitted by law, I would hold that when a Court accepts an undertaking given by a party its order amounts in substance to an injunction restraining him from acting in breach thereof. The form only implies that the court is prepared to deal with him honourably in the expectation that he will treat his undertaking as equivalent to an order of Court. If it does not seem to me to come with any grace from the mouth of a person who has given such an undertaking to say that because the Court was good enough to accept that undertaking and did not pass an order of its own he is not in the position of a person bound by an order of the Court."

(42) A breach of the undertaking is also punishable under sub-rule (3) of O. 39 rule 2, Code of Civil Procedure. The power to punish under the Contempt of Courts Act is in addition to the Code. The Code permits attachment of the property of a contemner if he is in continued disobedience. I think this is a case of continued disobedience. Attachment of property can also be ordered. This is my conclusion.

(43) On an application moved by Kuldeep Singh I have by a separate order suspended the punishment as he intends to prefer an appeal against my order.