
(1977) 09 CAL CK 0027
In the Calcutta High Court
Case No : Criminal Misc. Case No. 879 of 1976

Hastings Mill Limited

APPELLANT

Vs

Hira Singh

RESPONDENT

Date of Decision : 27-09-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 10, 151, 21
Constitution of India, 1950 — Article 133, 136
Contempt of Courts Act, 1971 — Section 15(1), 2

Citation : (1978) 1 CALLT 216 : (1977) 1 CALLT 262 : (1978) 2 ILR (Cal) 478

Hon'ble Judges : Anil K. Sen, J;A.P. Bhattacharya, J

Bench : Division Bench

Advocate : Sankardas Banerjee, B.K. Bachawat and Ramaprosad Mitra, for the Appellant; Surathi Mohan Sanyal, for State, R.C. Deb, Somenath Chatterjee, N.N. Adhikary, S.P. Manna for Respondents Nos. 1 to 4 and Balai Chandra Ray and Amiya Narayan Mukherjee for Respondents Nos. 5 to 7, for the Respondent

Judgement

Anil K. Sen, J.—In this application on which the above Rule had been issued the Petitioner has prayed for committal of the Respondents for contempt. The contempt alleged is claimed to be criminal contempt and as such, this application had been moved on a prior consent being had of the learned Advocate-General u/s 15(1)(b) of the Contempt of Courts Act, 1971 hereinafter referred to as the said Act).

2. The Petitioner is a company incorporated under the Companies Act, 1956 and claims to be carrying on business under the name and style of Sree Ram Silk Manufacturing Company as its sole proprietor. The Respondents Nos. 1 to 7 are said to be closely related to each other. Sm. Budhvanti, Respondent No. 5, is the wife of the Respondent No. 1 Hira Singh whose sons are Harbhajan, Joginder and Monmohan, Respondents Nos. 2, 3 and 4 respectively. Sm. Nand Kaur, Respondent No. 6, is the wife of Harbhajan and Sm. Jasbir Kaur, Respondent No. 7, is the wife of Joginder. The Respondents No. 8, 9, 10 and 11 are the partnership firms carried on by some or other of the Respondents Nos. 1 to 7

carrying on business under the name and styles of Anand Silk Stores, Anand Agencies, Anand and Company and Sher-E-Punjab Silk Stores respectively.

3. Facts leading to the present application for contempt shortly are : The Petitioner appointed the Respondent No. 8 Anand Silk Stores as its del credere agent for the States of Punjab, Haryana, Himanchal Pradesh, Jammu and Kashmir and Delhi for the sale of its silk and synthetic products. As such an agent the Respondent No. 8 from time to time introduced various customers including the Respondents Nos. 9, 10 and 11 to whom the Petitioner from time to time sold and delivered large quantities of its products. The Petitioner, however, not being paid the price of the goods so sold and delivered had to institute several suits for recovery of the unpaid price of the goods so sold and delivered, In each of these suit the Respondent No. 8 Anand Silk Stores was made a party Defendant since the said Respondent as the del credere agent is liable to pay the unpaid price the unpaid price of the goods sold and delivered through their agency. All these suits were instituted in the Court of the learned. Subordinate Judged, Chinsurah and these suits included : (i) Money Suit No. 10 of 1974 where the Defendants are Sher-E-Punjab silk Stores, Respondent No. 11 and Anand Silk Stores, Respondent No. 8; (ii) Money Suit No. 11 of 1974 where the Defendants are Messrs Anand Agencies, Respondent No. 9 and Anand Silk Stores, Respondent No. 8; and (iii) Money Suit No. 18 of 1974 where the Defendants are Messrs Anand and Company, Respondent No. 10 and Anand Silk Store Respondent No. 8. Most of these suits were filed between July and December 1974 and the above three suits were filed respectively on July 16, 1974 and October 1, 1974.

4. According to the Petitioner, the writ of summons being duly served on the Defendants, Respondents Nos. 8, 9, 10 and 11, entered appearance but took to dilatory proceedings and Obtained time to file written statement. The Petitioner, however having come to know the fact that die Respondents are secreting and disposing of their assets and properties to defeat the Plaintiff's claim which may ultimately succeed in these suits, on. February 7, 1975, filed two applications for attachment in Money Suit Nos. 10 and 11 of 1974 respectively. 5. The Respondents having come to know of such applications being made by the Petitioner, caused a suit being Civil Suit No. 146 of 1975 to be filed in the Original Side of the Delhi High Court through the Respondent No. 8, Anand Silk" Stores, as the Plaintiff and the Petitioner along with others as the Defendants. The Respondent No. 8, as the Plaintiff in that suit, claimed that it effected huge sales to various parties of, the products of the Petitioner company as its sole selling agent in terms of a contract between the parties and in regard to such sales huge amounts towards its commission, brokerage, special promotion commission, sales initiative and bonus became due to it from the Petitioner which the Petitioner failed to pay and on the other hand; the Petitioner instituted several frivolous suits in the Court of the Subordinate Judge, Chinsurah. The Respondent No. 8, therefore, claimed for accounts. In this suit, the said Respondent No. 8, Anand Silk Stores, filed an application under Sections 10, 22

and 151 read with Order 39, Rules 1 and 2 of the CPC praying for injunction restraining the Petitioner who was the Defendant No. 1 in that suit from proceeding with its suits bearing Money Suit Nos. 10, 11, 13, 18, 19 and 22 of 1974 then pending in the Court of the Subordinate judge at Chinsurah or, in the alter-native, for an order directing trial of those suits being stayed till the disposal of their Suit No. 146 of 1975 filed in the Delhi High Court. Such an application was founded on the ground that the Petitioner in filing the suits at Chinsurah had chosen the forum With a mala fide intention to harass the Plaintiff and to defeat it from getting its legitimate dues because it would have to face a lot of difficulty in reaching the Court at Chinsurah and secondly, on the ground that on the balance of convenience, as most of the evidence would be available at Delhi, the Court at Delhi should be preferred. The application was contested by, the present Petitioner and was dismissed by Prithviraj J. by judgment and order dated April 21, 1975, since reported in Anand Silk Store Vs. Shree Ram Silk Manufacturing Co. and Others, . The learned Judge overruled all the grounds pleaded in support of that, application. Relying on the decisions of the Supreme Court in the case of Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, it was held that the suits instituted by the petitioned not being vexatious nor in violation of any terms of contract they cannot be stayed and that the convenience pleaded was not such as to make it absolutely necessary for the ends of justice that the suits should be stayed.

6. The Petitioner's further case is that after Delhi High Court dismissed the above application for stay, the Respondent No. 8, Anand Silk stores, obtained an adjournment from the Chinsurah Court of the hearing of the application for attachment which came up for such hearing on May 3, 1975, until May 10, 1975. Having obtained such an adjournment on May 7, 1975, the said Respondent moved eight applications under Sections 22 and 23 of the CPC in this Court, inter alia, praying that eight Money Suits brought by the Petitioner against die said Respondent and others as Defendants in the Court of die Subordinate judge at Chinsura be transferred to the High Court at Delhi for trial. Such prayer was founded on the ground that such transfer is necessary in the interest of justice and for balance of convenience. In this application however, the Respondent suppressed the fact the an analogous prayer made before the Delhi High Court was overruled. In obtaining the Rules the Respondent obtained an interim order of stay which, however, was varied on the next day, that is, on May 8, 1975, on the intervention of the Petitioner and the Rule were discharged by this Court on June 20, 1975. this Court found that the said Respondent had neither pleaded nor established the fact that the suits brought by the Petitioner were so brought with any ulterior motive or in the abuse of the process of Court or that the suits are harassing or vexatious. this Court did not also accept the Respondent's claim that considering the balance of convenience the Court should transfer the suits for trial at Delhi in the interest of justice. this Court then went on to observe:

There are other reasons why no order for transfer be made as prayed for by the Petitioner. The Petitioner at the time of making, of these applications for transfer

had suppressed that it had previously made an application under Sections 10, 22 and Section 151 read with Order 39 Rules Hand 2 of the CPC before die learned Single Judge in the High Court at Delhi praying that an ad interim injunction be issued restraining the Defendant No. 1 in the said suit. (Messrs Hastings Mills Limited) from protesting with its Money Suits against it and others in the 2nd Court of Subordinate Judge at Chinsurah. It had also prayed that the trial of these suits brought by the present opposite party No. 1 be stayed till the disposal of the suit brought by the Petitioner in the High Court at Delhi for rendition of accounts.

On April 29, 1975, Prithviraj J. dismissed the said application of the Petitioner, inter alia, observing:

The mere fact that the Chinsurah Court is at a long distance from Delhi or that most of the witnesses are from Delhi, Punjab, Haryana, Jammu and Kashmir and Himanchal Pradesh would not by itself be sufficient ground to hold that the previous suit filed by the Defendants are vexatious when the previous suits were instituted in a competent Court.

If we were aware of this order passed by Prithviraj J. on May 8, 1975 we might not have entertained these applications for transfer at all. Thus, the Petitioner is guilty of suppression of the above material facts.

7. The Respondent No. 8 applied under Article 133 of the Constitution for a certificate proposing to prefer further appeal to the Supreme Court, but those were dismissed in S.C.A. 81 to 88 of 1975 by this" Court. An application for special leave under Article 136 of the Constitution before the Supreme Court also failed.

8. The aforesaid C.R. Nos. 1385 to 1392 of 1975 having been discharged and the applications for attachment being fixed for hearing by the Chinsurah Court, the Respondent No. 8 obtained from the said Court an adjournment of hearing of those applications until August 16, 1975. In the meantime, on August 11, 1975, August 12, 1975 and August 14, 1975, three suits being Suit Nos. 495 of 1975, 516 of 1975 and 526 of 1975 were instituted respectively by Anand and Company, Respondent No. 10, Anand Agencies, Respondent No. 9 and Sher-E-Punjab Silk Stores, Respondent No. 11, in the Original Side of the Delhi High Court These were suits for accounts of the similar nature as Suit No. 146 of 1975 instituted in the same High Court by the Respondent No. 8, Anand Silk Stores. These suits were instituted against the Petitioner and in these suits applications under Order 39, Rules 1 and 2 read with Section 151 of the CPC were moved by the respective Plaintiffs (Respondents above-named) praying for injunction restraining the present Petitioner from proceeding with Money Suit nos. 10, 11 and 18 in the Court of the Subordinate Judge at Chinsurah. Grounds pleaded to support such a prayer were the same as those in support of a similar application in Suit No. 146 of 1975. All these applications failed and were dismissed by Jagneswar Dayal J. In doing so, it was found by the learned Judge that the

controversy sought to be raised was identical to the one involved in the earlier Suit No. 146 of 1975 and as such, the applications are liable to fail for reasons given in the earlier suit while dismissing similar application.

9. Those applications, by the Respondents Nos. 9, 10 and 11 before the Delhi High Court having failed, the Respondent No. 9, Anand Agencies, moved an application under Sections 22, 23 and 24 of the CPC in this Court on November 12, 1975 and obtained C.R. No. 4134 of 1975. On a similar application being moved by Sher-E-Punjab Silk Stores, Respondent No. 11, a Rule was similarly issued which was registered as C.R. No. 4548 of 1975. These applications were directed respectively against Money Suit Nos. 10 and 11 of 1974 pending in the Court of the subordinate Judge at Chinsurah. The prayer as originally made in these applications was for the transfer of the money suits from the Court of the Subordinate judge to a Court within the Jurisdiction of the Delhi High Court or to any other Court within the jurisdiction of this High Court. The first part of the prayer was, however, deleted these applications however, were ultimately dismissed not only on merits but also on the ground that they were not bona fide. this Court observed:

It is interesting to note that the present Petitioner and the opposite party No. 2 (Anand Silk Stores) were two partnership firms consisting of the same set of person. It is obvious, there-fore, that the opposite patty no 2 having been unsuccessful so far, the present proceeding has been starred once more in the name of the Petitioner although the partners of the two firm are identical persons. From the materials placed before us we have no doubt that this application is not bona fide.

10. In the background of the proceedings so takes by the Respondents and pending the disposal of the C.R. Nos. 4134 and 4548 of 1975 the Petitioner obtained the present Rule for committal for contempt on April 8, 1975. According to the Petitioner, the Respondents Nos. 1 to 7 are makers of the same family and they aw managing and controlling the Respondents Nos. 8, 9, 10 and 11 which are partnership firms consisting of some or other of the Respondents Nos. 1 to 7 as partners. They are acting in concert and initiating proceedings alter proceedings in different Courts without any colour of right and even in respect of matters already decided by the Court with the sole motive of abusing the processes of Court and delay and defeat the Petitioner"s cause pending adjudication in the money suits before the Subordinate Judge at Chinsurah. Such proceedings are in no way bona fide and have repeatedly been held to be so they are frivolous, vexatious and oppressive resulting in prejudicing the cause of the Petitioner and interference with the course of judicial proceedings pending before the Chinsurah Court. The Respondents are, therefore, guilty of a conduct which amounts to criminal contempt within the meaning of Section 2(c)(ii)(iii) of the said Act.

11. This, Rule is being contested by the Respondents. Two affidavits have been filed on behalf of two sets of Respondents. One affidavit has been filed by

Monmohan Singh, Respondent No. 4, on his own behalf and on behalf of Respondents Nos. 1, 5, 6, 7, 9 and 10. The other affidavit has been filed by Harbhajan Singh, Respondent No. 2, on behalf of himself and Respondent Nos. 1, 3, 8 and 11. Averments in these two affidavits are more or less the same. The Respondents do not and perhaps cannot dispute the fact that one or other of them had initiated the different proceedings referred to by the Petitioner in his application for contempt. Their defence, however, is that none of these proceedings were taken except in a bona fide manner, honestly and upon legal advice for obtaining relief under the law. They have further pleaded that they bona fide and honestly feed that in the facts and circumstances of the case and in view of the issues involved, documents required and evidence be tendered that disputes between the Petitioner and the Respondents should be dealt with by an appropriate Court other than the Chinsurah Court and with that bona fide object and for protecting their valuable and legitimate rights they had taken the different proceedings not only to Appropriate relief but also for furtherance of cause of justice. It is claimed that taking recourse to judicial proceedings for obtaining relief does not amount to committing contempt and even if there was any error of judgment in the matter of conducting such proceedings that is a bona fide error which does not render the act contumacious. They have further pleaded that in case the Court holds otherwise they tender unqualified apologies for what they have done. 12. Mr. Bachawat appearing in support of this Rule has strongly contended that in view of the facts set out in the petition which could, not be disputed by the Respondents, the Respondents must be held guilty of criminal contempt. According to Bachawat such facts well establish the position that the Respondent were deliberately initiating and prosecuting frivolous, vexatious and oppressive proceedings with the sole object of delaying and frustrating the Petitioner's suits pending in the Chinsurah Court. That they are not prosecuting the different proceedings bona fide would appear clear on the records which go to show that from time to time they were initiating some of these proceedings by suppression of material facts but for which the Court would not have entertained these applications. Lack of bona fides is further made clear, according to him, when it is seen that successive actions were being initiated cowering substantially the same grounds" which had already been decided as against them. Such a conduct, according to him, amount to abusing the process of Court which has uniformly been held to be contumacious and which clearly answers the description of criminal contempt within the meaning of Section 2(c) of the said Act and as such punishable.

13. Mr. Roy and Mr. Deb appearing on behalf of the two sets of Respondents have contended on the other hand that the Respondents had committed no act of abusing any process of Court. Mr. Roy, in particular, has strongly contended that whatever proceeding that was initiated by one or other of the Respondents was so initiated in a bona fide manner to secure relief in accordance with law. According to Mr. Roy, the Respondents believed and they do so even now that the Petitioner initiated the different money suit in the Court of the Subordinate judge

at Chinsurah with the mala fide intention of harassing the Respondents who reside and carry on their business far too away from the said district town. Such belief led them to seek the relief from courts of law and induced them to initiate the different proceedings, more so, when they further believed that at least for the balance of convenience those suits should not be allowed to proceed in the Court (sic) they were initiated. Mr. Roy, has disputed the suggestion that any of the proceedings was initiated on any deliberate suppression of material fact. He has also contended that there may be error in judgment on the part of the Respondents in initiating one or other of the proceedings complained of but such error could not render their act contumacious.

14. Mr. Deb again has contended that even if this Court finds that in moving one or other of the applications there happened to be concealment of some facts by the Respondents this Court should not hold such concealment to be evidence of contumacious act, inasmuch as failure to disclose such facts may as well be unintentional or due to any bona fide error and lastly, it has been contended by Mr. Deb that even if it be held that there had been some abuse of the processes of court that alone should not be a ground for punishing them, for contempt.

15. The charge in the present case levelled against the Respondents is one of misconduct amounting to criminal contempt. It has been held by the Supreme Court in the case of Section S. Abdul Karim and Others Vs. M.K. Prakash and Others, that such a charge requires strict proof. Standard of proof required to establish a charge of criminal contempt is the same as in other criminal proceedings. Though mens rea is not an essential ingredient yet the Court cannot punish unless the act is wilful. We would, therefore, proceed to consider the charges levelled against the Respondents from such a standard to find out whether such charges are established beyond all doubt.

16. Section 2(c) of the said Act has defined criminal contempt to mean doing of any act which either prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any, other manner. In the case of Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, the Supreme Court, pointed out that the terminology used in the definition is borrowed from the English Law of Contempt and embodies concepts which are familiar to that law which, by and large, was applied in India and they have to be understood in the sense in which they have been so far understood by such Courts with the aid of English Law where necessary. Under the English Law any act which is likely to interfere with the course of Justice will amount to contempt. Acts, which are likely to interfere the course of justice may be classified into four categories namely. (i) acts which interfere with persons having duties to discharge in a Court of justice, (ii) acts which amount to a breach of duty committed by persons officially connected with the Court or its process (iii) acts which interfere with persons over whom the Court exercises special jurisdiction and (iv) acts which amount to an abuse of the Court's

processes. (See The Law of Contempt, Borrie and Lowe, 1973 ed., chap. VIII) Abusing the Court's process may mean many types of acts but generally the term connotes some misuse of the Court's process, the most serious example of which is an act which is intended to deceive the Court, for example; by the deliberate suppression of facts or by the presentation of falsehood, but the same term also includes bringing of frivolous and vexatious proceedings. Therefore, an act of misleading the Court by deliberate suppression of facts or by the presentation of falsehood is as much abuse of the Court's process as the act of bringing frivolous and vexatious and oppressive proceedings. In *Wright v. Bennett* (1948) 1 All E.R. 227 and *Stevenson v. Garnett* (1898) 1 Q.B. 677 it has been held, taking of successive action covering the same ground and litigating over again the same question is clearly an act of abuse of the process of Court. Such acts are necessarily frivolous and vexatious apart from being oppressive to the Defendant.

17. Such being the position in law, let us now consider the allegations made against the Respondents to find out how far such allegations have been proved and how far such allegations establish the charge of criminal contempt. We have already seen that the Respondents Nos. 1 to 7 are closely related to each other and amongst them they carry on businesses of four partnership firms, namely, the Respondents Nos. 8 to 11. It is not in dispute that the present Petitioner instituted ten money suits out of which eight were pending at the relevant time in the Court of the Subordinate Judge at Chinsurah. In all these suits. Anand Silk Stores, Respondent No. 8, Was a common Defendant. Claim in each of these suits made by the Petitioner is for recovery of price of goods sold and delivered to Defendants other than Anand Silk Stores who acted as del credere agent. Most of these suits including Money Suit Nos. 10, 11 and 1974 of 1974 had been instituted between July and December 1974. Now Anand, Silk Stores, Respondent No. 8, which is a partnership firm of the Respondent No. 1, Hira Singh and his two sons, the Respondents Nos. 2 and 3 instituted a counter suit in the Original Side of the Delhi High Court being Suit No. 146 of 1975. In this suit, apart from the present Petitioner being made the principal Defendant, the other Defendants were the present Respondents Nos. 9, 10 and 11. This suit again was not filed until the Petitioner had filed applications for attachment in Money Suit Nos. 10 and 11 of 1974 in the Court of the Subordinate Judge, Chinsurah, on February 7, 1975. In this, suit, the Respondent No. 8 as the Plaintiff filed an application under Sections 10, 22 and 151 read with, Order 39, Rules 1 and 2 of the CPC praying for an injunction restraining the present Petitioner from proceeding with its money suits filed in the Chinsurah Court., Alternatively, it was prayed that the trial of the said suits should be stayed till the disposal of the Delhi High Court suit. As we have indicated hereinbefore grounds pleaded were two fold, namely, (i) the Petitioner in filing its suits in the Chinsurah Court had chosen the forum maliciously only to harass and prejudice the Defendants of those suits including the Respondent No. 8, the Plaintiff in the Delhi High Court Suit and (ii) since most of the witnesses, documents and other evidence are

available near about Delhi balance of convenience demanded that the suit instituted in the Original Side of the Delhi High Court should have precedence. Both the grounds were overruled by the learned Judge in the Delhi High Court when he dismissed the said application on April 21, 1975. This decision of the Delhi High Court was, therefore, a clear adjudication in respect of the grounds on which it was claimed that the suit at Delhi should have precedence and that the suits at Chinsurah should not be allowed to proceed. Such was a clear adjudication between Respondent No. 8 and the present Petitioner in a proceeding where the other Respondent Nos. 9 to 11 were parties.

18. On the facts set out hereinbefore once such adjudication was made by the Delhi High Court the Chinsurah Court took up the application for attachment in Money Suit Nos. 10 and 11 for hearing on May 3, 1975, when at the instance of the Respondents hearing of those applications were deferred till May 16, 1975. But on May 7, 1975, the selfsame Respondent No. 8, Anand Silk Stores, moved eight revisional applications in this Court under Sections 21, 23 and 24 of the CPC praying for transfer of the, money suits brought by the Petitioner in the Court of the Subordinate Judge, Chinsurah, to the Original Side of the Delhi High Court. Grounds for such transfer as pleaded in these revisional applications "were substantially covered by the grounds pleaded in the interlocutory application earlier filed in Suit No. 146 of 1975 in the Original Side of the Delhi High Court which had been posed of against the said Respondent No. 8 (the, Petitioner in these Rules). In moving these applications the Respondent No. 8 did not disclose the fact that on similar grounds he had earlier moved an interlocutory application before the Delhi High Court and the Delhi High Court had overruled those grounds in rejecting the application. Though it is claimed" by Mr. Roy and Mr. Deb that omission to disclose such facts was not deliberate but it was so done as the said facts were considered to be not relevant, we are not in a position to accept such a defence. The interlocutory application had been dismissed by the Delhi High Court only a few days earlier and when the applications for attachment were taken up by the learned Subordinate Judge at Chinsurah, the Respondent No. 8 obtained an adjournment only to move the aforesaid revisional applications in this Court wherein they prayed for an interim stay of the money suits. It is obvious that the Respondent No. 8 suppressed the order of the Delhi High Court deliberately lest its applications are not entertained or the interim orders are not granted. As a matter of fact, the learned Judges in disposing of the said Rules clearly observed that the said Respondent was guilty of oppression of the Material fact, but for which those applications might not have been entertained at all. Obtaining these Rules, in our view, was clearly an act of abuse of the process of court for two-fold reasons, namely, (i) they were Obtained on deliberate suppression of a material fact which misled the Court to issue the Rule and grant interim order to the prejudice of the present Petitioner and (ii) thereby the said Respondent No. 8 was taking, successive action covering substantially the same grounds and litigating On a question which had already been decided against it. In our opinion, it is of no consequence that in

the interlocutory application, filed in the Delhi High Court the prayer made was one of injunction or stay and the prayer made in the revisional applications in this Court was one of transfer. The substantial relief was not to allow the Chinsurah suits to proceed at Chinsurah on grounds which were same in Both the applications. The Delhi High Court had clearly found that the present Petitioner had a right to choose the forum for its suits and such choice was bona fide made when such suits were filed in a regularly constituted court of law and that the inconveniences pleaded would not by itself be sufficient to hold that such suits are vexatious or that further proceedings therein should be stayed. These grounds therefore, having been decided against the Respondent No. 8 the said Respondent cannot be said to have acted bona fide in moving fresh applications in revision before this Court pleading such grounds, of inconvenience. Things, however, do not rest here. At the intervention of the present Petitioner the interim orders obtained in the said Rules were varied and the Rules were discharged on June 20, 1975.

19. After the discharge of the above Rules the applications for attachment having been taken up for hearing were again adjourned on August 8, 1975, until August 16, 1975 and on the cover of the aforesaid adjournment three other suits were filed in the Original Side of the Delhi High Court on August 11, 1975, on August 12, 1975 and on August 14, 1975. This time, the suits were filed by the Respondents Nos. 9, 10 and 11 who were parties to the earlier Original Side suit of the Delhi High Court being Suit No. 146 of 1975. In these suits, the respective Plaintiff moved as many interlocutory applications of the similar nature as earlier moved in Suit No. 146 of 1975 and based on same grounds. In these interlocutory applications the Plaintiffs prayed for an injunction restraining the present Petitioner from proceeding with Money Suit Nos. 10, 11 and 18 court of the Subordinate Judge Chinsurah. The application also failed and were dismissed by a learned Judge of the Delhi High Court, who, as we have indicated hereinbefore, clearly found that the controversy raised in those suits is identical to the one involved in the earlier suit being suit No. 146 of 1975 to which those Plaintiffs were parties. The learned Judge dismissed those application as the grounds urged were covered by the previous decision dated April 21, 1975, rendered in the previous Suit No. 146 of 1975. It should be noted that in Suit No. 526 of 1975 of the aforesaid three suit, the Plaintiff sher-E-Punjab Silk Stores (Respondent No. 11) is a partnership-firm consisting of the same partners as constitute Respondent No. 8, Anand Silk Stores, the Plaintiff in Suit No. 146 of 1975. These applications were dismissed in August and October 1975 and shortly thereafter on November 12, 1975, the Respondent No. 9, Anand Agencies, moved a revisional application in this Court under Sections 22, 23, 24 and 151 of the CPC praying for stay and transfer of money Suit No. 10 of 1974 of the Court of the Subordinate Judge, Chinsurah. The Rule issued on this application was registered as C.R. No. 4134 of 1975 and a similar Rule on a similar application was also obtained by the Respondent No. 11 Sher-E-Punjab Silk stores, on November 24, 1975. Here, the stay and the transfer prayed for was in respect of

Money Suit No. 11 of 1974 of the Court of the Subordinate Judge, Chinsurah and this Rule was registered as C.R. No. 4185 of 1975. In moving these revisional applications again, the respective Petitioners suppressed all the relevant previous litigations. They failed to disclose that the grounds pleaded in support of their prayer were negated by the Delhi High Court in disposing of the interlocutory application filed in Suit No. 146 of 1976 to which suit they were parties. They further suppressed the fact that they were also parties to the previous Rules in this Court being C.R. No. 1385 to 1392 of 1975 wherein also the same grounds were negated by this Court. Above all, they failed to disclose that they themselves in their suits before the Delhi High Court being Suit Nos. 495 of 1975 and 526 of 1975 had failed to obtain relief prayed for in their respective interlocutory applications on the self same grounds as were pleaded in support of these revisional applications. It, may be true that the Rules issued in C.R. No. 1385 to 1392 of 1975 were not issued on them but in our opinion that makes no difference inasmuch as they are partners who were themselves litigating in the name of the other partnership and all the partnership firms were parties on the record. In any event, their failure to disclose the fact of their being unsuccessful in their interlocutory applications filed in their suits, namely, Suit No. 495 of 1975 and Suit No. 526 of 1975, in these revisional applications was a deliberate act intended to mislead the Court in entertaining the application and issuing an order for stay. Moreover, these revisional applications were clearly fictitious and vexatious in character. The real prayer made in these applications was for transfer of the two Money Suits 10 and 11 from the Court of the Subordinate Judge, Chinsurah, to the Delhi High Court but at the time when the application was, being moved obviously when it was detected that a similar application had earlier been refused that part of the prayer was deleted but, as a result thereof, the prayer that was left was absolutely vague and uncertain. The only prayer that was left was to transfer it from the Court of the Subordinate judge at Chinsurah not specifying to which court the transfer was asked for. The frame of the application leaves no manner of doubt that it was not a bona fide one and the learned judges in dismissing these applications found as such when they observed that it was really the Respondent No. 8 who had initiated these applications in the name of the respective Petitioners after its failure in earlier proceedings. These applications, therefore, clearly establish abuse of the process of Court in the like manner as we have found hereinbefore in regard to obtaining the eight Rules being C.R. Nos. 1385 to 1392 of 1975. On these facts, we feel no hesitation in holding that these Respondents were indulging in repeated and successive proceedings which are frivolous, vexatious and highly prejudicial and oppressive as against the present Petitioner. They were initiating such proceedings on material suppression of facts with the sole object of misleading the Court and inducing the Court to stay further proceedings in the money suits pending in the Court of the Subordinate Judge at Chinsurah and their object was in no way bona fide. That apart, it is well established beyond all doubt that by initiating successive proceedings they were litigating over again the same question which had already been decided and such acts are clearly contumacious.

20. Mr. Deb strongly relied on the decision in the case of *R. v. Wiss* (1951) 2 All E.R. 406 to put forward an extreme argument that even if we hold that the Respondents had abused the process of court such abuse cannot be treated as contempt. In our view, however, the decision relied on by Mr. Deb does not go to such an extent. What was really intended to be decided in that case was that contempt does not lie in bringing an action which was forbidden by the Gaming Act. Such is not the position in the present case. Even in the decision relied on by, Mr. Deb it was observed:

There may be exceptions and to give one instance, if a person who brought an action which was struck out as an abuse again brought exactly the same action the Court might deal with, him for contempt.

The Supreme Court in the case of *Sammmbhu Nath Jha Vs. Kedar Prasad Sinha and Others*, had clearly indicated that an act of abusing the process of court amounts to committing contempt. On our findings made herein before by the acts complained of the Respondents have delayed the Petitioner's suits filed in the Court of the Subordinate Judge, Chinsurah and defeated some of its reliefs prayed for on interlocutory applications and in doing so they never acted bona fide. Such acts, as these, are acts of interference with due course of judicial proceedings and to the extent of their consequence such acts resulted in interference with the administration of justice. Therefore it is difficult to accept the extreme argument put forward by Mr. Deb that such acts do not amount to contempt.

21. According to Mr. Roy, the proceedings that were taken by the Respondents may as well be explained as those bona fide taken by the Respondents in lawful exercise of their rights or on a mis-conception as regards such rights based on an error of judgment on their part. There being the possibility of such a contingency the benefit of doubt must ensure in favour of the Respondents because an action in contempt can be taken only in a clear case in our view, though there can be no dispute as to the principles enunciated by Mr. Roy the same can have no application in the present case. Facts found go to show that the Respondents were initiating successive proceedings covering same grounds and on suppression of material facts which are far from being bona fide. There is also no scope for thinking that what they did, they did on any misconception as to their rights based on any error of judgment when we find that they deliberately abused the different processes positively and solely with the object of frustrating the suits brought by the Petitioner in the Court of the Subordinate judge, Chinsura. Facts and attending circumstances leave no scope for acceptance of any defence of the nature pleaded for by Mr. on their behalf. Though we are quite conscious that any action in contempt must be taken with utmost circumspection, yet at the same time we feel it our duty to protect the judicial process and safeguard the litigant's faith therein by preventing and punishing all abuses thereof as and when we find it so necessary. Such a necessity has been made out in the present case, more so when we find that still further

proceedings of the nature referred to hereinbefore were being initiated by the Respondents even now as the later affidavits; go to show and when they are not agreeable even now to undertake to this Court that they would not take to such abuses hereafter.

22. Next we proceed to consider which of the Respondents should be held specifically liable for the contempt thus committed. In so doing, we propose to take a lenient view and acquit the three ladies, namely, the Respondent Nos. 5, 6 and 7 as, in our opinion, there are reasonable grounds to doubt whether they had taken any active part in initiating or carrying on the various proceedings complained of. Such proceedings have primarily been carried on by the Respondent No. 8; Anand Silk Stores, of which the Respondents Nos. 1, 2 and 3 are the partners and also by the other two partnership firms, namely, Anand Agency and Sher-E-Punjab Silk Stores. The Respondent No. 4 is one of the partners of Anand Agency while the Respondents Nos. 1, 2 and 3 are the partners of Sher-E-Punjab Silk Stores. We, therefore, hold these Respondents Nos. 1 to 4 responsible for the contumacious acts and convict them on the charge of contempt. So far as the sentence is concerned, we had expressed our desire to accept the apology tendered by them in their respective affidavits provided they could give us an undertaking not to start any more proceedings of the nature complained of on a prayer for stay of further proceedings of the money suits pending against them in the Court of the Subordinate judge at Chinsurah to show that in tendering apology they are doing so in good grace and out of genuine penitence, unfortunately, however, they have clearly, expressed their reluctance to give any such undertaking and we have reason to believe that the apology tendered is not bona fide at all. Their whole object is to get relieved of this proceeding to start the same game again. Such being the position, we have decided to impose a fine of Rs. 1,000 on each of the Respondents Nos. 1, 2, 3 and 4 and in default to suffer simple imprisonment for one month. The fine is to be realised by the Sheriff.

23. Before we conclude we have to dispose of a subsidiary prayer made by the Petitioner in this application. Such prayer is the prayer for an injunction restraining the Respondents and each of them, their servants and agents from initiating any suit or proceeding of whatever nature in any Court against the Petitioner without first obtaining the leave from this Court. According to the Petitioner a mere order of committal would not be sufficient in the facts and circumstances of the case as there are reasonable grounds for apprehending that notwithstanding such an order the Respondents are likely to indulge in similar acts hereinafter which are highly prejudicial and oppressive so far as the Petitioner is concerned. In our view, such an apprehension is well justified in the facts and circumstances and if this Court possesses the necessary jurisdiction to issue such an injunction we feel no hesitation in holding that it is a fit case for grant of such an injunction. We have heard the learned Advocates on the question as to whether we can issue such an injunction as prayed for. In the Contempt of Courts Act there is no specific provision authorising this Court to

grant such an injunction. Mr. Bachawat has, however, contended that such a jurisdiction is inherent in this Court and the same has been preserved by Section 22 of the said Act. We find much substance in this contention of Mr. Bachawat. In our view, the Court cannot be a mere spectator of its process being abused only to punish the person so abusing after the abuse but incompetent to prevent its repetition. The right to prevent such acts is inherent in Court and it was so observed by Halsbury (3rd ed., vol. 30, Section 767). It was observed there:

The High Court has an inherent jurisdiction to strike out pleadings or to stay or dismiss proceedings which are an abuse of its process. This inherent jurisdiction unlike the jurisdiction under the Rules of the Supreme Court is not confined to cases where the abuse is manifest from the pleadings but may be exercised where facts are proved by affidavit which show an abuse of the process of the Court. The inherent jurisdiction to stay or dismiss should be springy exercised and only in very exceptional cases. A person may be prohibited from taking proceedings without leave.

Reference may also be made to Kerr on Injunction (6th ed., p. 594). Such a procedure was adopted in the cases of Grepe v. Loam and Bulteel v. Grepe (1887) 37 Ch. 168 and Lord Kinnard v. Field (1905) 2 Ch. 306. Such being the position and as in our view an exceptional case has been made out for grant of injunction as prayed for, we grant the injunction prayed for and we direct that all the eleven Respondents to this application or any one of them, their servants and agents are restrained from initiating any suit or proceeding in any Court on a prayer for stay of further proceedings in Money Suit Nos. 10, 18, 11, 13, 19 and 28 of 1974 and 2 and 11 of 1975 pending in the Court of the Subordinate Judge, Chinsurah, without the leave of this Court first had and obtained.

24. The Rule is accordingly made absolute on terms set out hereinbefore with costs. The hearing fee being assessed at 20 Gms.

25. Let the operation of the order be stayed until a week after the Puja holidays as prayed for by the Respondents.

A.P. Bhattacharya, J.

26. I agree.