

**(2004) 07 BOM CK 0018**

**In the Bombay High Court**

**Case No :** Notice of Motion No. 598 of 2004 in T. and I.J. Suit No. 4 of 2004 along with Notice of Motion No. 2678 of 2003 in Contempt Petition No. 66 of 2003 in Notice of Motion No. 1491 of 2003 in Miscellaneous Petition No. 29 of 2003 in T. and I.J. Petition No. 8

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|---------------------------------------------------------------------------------|------------|
| Indresh Shamsunder Advani and Another                                           | APPELLANT  |
| Vs                                                                              |            |
| Gopi Tarachand Advani (Smt.) and Others and Karishma Suresh Mahtani and Another | RESPONDENT |

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**Date of Decision :** 13-07-2004

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3, Order 39 Rule 2A, Order 40 Rule 1, Order 6 Rule 13  
Contempt of Courts Act, 1971 — Section 12  
Criminal Procedure Code, 1973 (CrPC) — Section 195(1)

**Citation :** (2005) 1 BomCR 918

**Hon'ble Judges :** Khanwilkar A.M., J

**Bench :** Single Bench

**Advocate :** Haresh Jagtiani and Anil P. D'souza, instructed by Haresh Jagtiani and Associates in Notice of Motion No. 598/2004 in T and I.J. Suit No. 4/2004 and N.H. Seervai, Chetan Kapadia and Ishwar Nankani, instructed by Nankani and Associates in Notice of Motion No. 2678/2003 in Contempt Petition No. 66/2003 in Notice of Motion No. 1491/2003 in Misc. Petition No. 29/2003 in T and I.J. Petition No. 819/2002 alongwith Contempt Petition No. 66/2003, for the Appellant; N.H. Seervai, Chetan Kapadia and Ishwar Nankani, instructed by Nankani and Associates in Notice of Motion No. 598/2004 in T and I.J. Suit No. 4/2004 and Haresh Jagtiani and Anil P. D'souza, instructed by Haresh Jagtiani and Associates in Notice of Motion No. 2678/2003 in Contempt Petition No. 66/2003 in Notice of Motion No. 1491/2003 in Misc. Petition No. 29/2003 in T and I.J. Petition No. 819/2002 alongwith Contempt Petition No. 66/2003, for the Respondent

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**Judgement**

Khanwilkar A.M., J.—This common judgment will dispose of Contempt Petition No. 66 of 2003 as well as Notice of Motion No. 2678 of 2003 taken out in the said Contempt Petition and Notice of Motion No. 1598 of 2004 in Testamentary Suit No. 4 of 2004.

2. At the outset, it would be appropriate to advert to the family tree of the parties. The same reads thus :

FAMILY TREE Tarachand Rochiram Advani (Died on 5-8-1958) Gopi Tarachand" Advani (wife) (defendant) | ----- | | | Manik Advani Shamsunder Advani Tulsi Miskil Son Son Daughter (deceased) (died on 2-6-2001) | Kalavati (wife of deceased) (respondent No.2) | ----- | | Indresh Advani Karishma Mahtani (Son of deceased) (daughter of deceased) (Married) (Married) (Plaintiff) (respondent No. 1)

3. The plaintiff Indresh Shamsunder Advani filed Petition No. 819 of 2002 before this Court praying for issuance of Letters of Administration with the Will annexed of the property and credits of the deceased Shamsunder Advani, his father, in his favour, having effect throughout the State of Maharashtra. The said petition was disposed of by order dated 10th April, 2003. However defendant Gopi Tarachand Advani (mother of the deceased), later on filed Miscellaneous Petition No. 29 of 2003, praying for recall of, revocation and cancellation of the order granting letters of Administration with Will in favour of the plaintiff dated 12th May, 2001, The said petition came to be allowed by judgment and Order dated December 16, 2003 (Justice S.K. Shah). In the said judgment, it has been found that the citation was not properly served on the defendant and the grant of Letters of Administration in favour of the plaintiff, was inappropriate. Besides filing the Misc. Petition No. 29 of 2003, the defendant had also taken out Notice of Motion No. 1491 of 2003, By order dated 7th May, 2003, this Court granted ad interim relief in terms of prayer Clause (d) of the said Motion which reads thus: -

"(d) that pending the hearing and final disposal of this petition, the respondents and/or any person or persons, claiming under or through them, their family members be restrained by an order and injunction of this Hon"ble Court from claiming any right under, by virtue of, in connection with and/or relating in any manner whatsoever to the said order dated 10th April, 2003 granting Letter of Administration with Will dated 12th May, 2001 annexed and/or as Owner of and/or claim any right, title and interest in the subject property or any part or portion thereof in any manner whatsoever,"

4. The defendant communicated the abovesaid order to the Mumbai Municipal Corporation on 7th May, 2003. As the plaintiff and respondents apprehended that the construction activity which was already going on at the site, would be stalled, they filed affidavit dated 8th May, 2003 seeking permission from this Court to continue the construction. The affidavit clearly asserts that the construction work was commenced on 12th July, 2002 pursuant to permission granted by the Mumbai Municipal Corporation. It further asserts that the said permission was valid up to August 2003. The said affidavit further states that the Corporation would issue stop work order, which will cause irreparable loss, harm and injury to the 2nd respondent and the plaintiff. The affidavit also clearly states that the Municipal Corporation will not accept the application for permission to be

obtained from various agencies if the injunction passed by this Court dated 7th May, 2003 was allowed to stand. The affidavit further asserts that the said injunction was obtained fraudulently by the defendant. By this affidavit, the plaintiff prayed that the injunction order dated 7th May, 2003 passed by this Court be vacated. The plaintiff and respondents moved application before this Court on 9th May, 2003 for permission to continue construction work on the basis of the said affidavit dated May 8, 2003. The order passed by this Court on May 9, 2003 reads thus :

"This application is being moved by respondent Nos. 1 and 3 stating that the order passed by me on May 7, 2003 was without notice to them. This does not appear to be correct since an Advocate had in fact appeared for the respondent on that day. The affidavit of service which was filed on May 7, 2003, indicates that the papers were served on one worker the site where the suit premises were being repaired. It is now the contention of respondent Nos. 1 and 3 that, therefore, this could not be considered good service. However, since an Advocate had in fact appeared on that day representing respondent Nos. 1 and 3, there is no need for me to go into this aspect.

2. Respondent Nos. 1 to 3 today state that they are carrying out repairs to the fifty years old structure which was in a dilapidated condition. These repairs are being carried out on the basis of sanctioned plans from the Bombay Municipal Corporation. Respondent Nos. 1 and 3 states that the structure is now open to the sky and because of the impending monsoon it would be difficult to complete the repairs in time and, therefore, pray that the repairs be permitted to be carried out in accordance with the sanctioned plans.

3. Respondent Nos. 1 and 3 shall file an affidavit stating the exact nature of the repairs that are being carried out to the premises and indicate as to when the repairs would be completed. The affidavit shall be served on the petitioner by Monday, 12th May, 2003.

4. Matter to come up on Board on Tuesday the 13th May, 2003.

5. The petitioner will not take any steps in furtherance of the order that has been passed on 7th May, 2003 by informing the Bombay Municipal Corporation that no repairs can be conducted on the structure. In the event the petitioner has already informed the Bombay Municipal Corporation of this, then the petitioner will not take further action."

5. After the aforesaid order, once again, the respondents filed further affidavit dated 12th May, 2003 stating that if they are permitted to continue with the work, they will carry on the construction activity strictly in conformity with the permission already granted by the Mumbai Municipal Corporation. The aforesaid matter was listed before Justice D.G. Karnik on 13th May, 2003 however, the same was adjourned to 1st week of June, 2003. It is contended on behalf of the defendant that although this Court did not modify the injunction granted on 7th May, 2003, the plaintiff and respondent continued with the construction activity

on the site unabated, for which reason, the defendant's Advocate sent letter to the respondents on May 21, 2003 to comply with, the order of injunction. In spite of that letter, it is stated that the construction activity continued and which was noticed by the Constituted Attorney of the defendant when she happened to visit the site on 28th May, 2003 and again on 2nd June, 2003 as well as 24th June, 2003. On the other hand the respondents moved application before the Bench of Justice D.G. Karnik for fixing the Notice of Motion for hearing. However, no relief was granted on the principle circulated by the respondents on 24th June, 2003. Thereafter, the respondents took out another principle on 2nd July, 2003 before Justice D.G. Deshpande, once again for fixing the Motion for hearing, as the ad interim order already granted, was operating against the respondents. Grievance was made in the principle that this ad interim order was obtained behind their back, by misrepresenting the honorable Court. On the other hand, as the plaintiff and respondents continued with the construction activity, the defendant filled contempt petition in this Court being Contempt Petition No. 66 of 2003 on 14th July, 2003, The said contempt petition was moved on 5th July, 2003 before Justice Smt. Nishita Mhatre, on which date, ad interim relief in terms of prayer Clause (b) of the Contempt Petition was granted. Prayer Clause (b) reads thus:

"(b) that pending the hearing and final disposal of the Contempt Petition, this Honourable Court be pleased to appoint a Commissioner / Officer from the office of the Court Receiver, High Court, Bombay, to visit the Garden View Bungalow to take photographs and video footage at the cost and expense of the said petitioner and make a report to this Honourable Court of the construction/repair activities at site."

6. Pursuant to the said order, the Court Commissioner visited the site on 17th July, 2003. The Court Commissioner prepared report on 28th July, 2003 in respect of his visit made at the site on 19th July, 2003. The report indicates that the construction activity was in progress on the site unabated. The miscellaneous petition filed by the defendant for cancellation and revocation of the Letters of Administration with will, came to be accepted by Justice G. Deshpande on 7th August, 2003. The contempt petition was placed before Justice D.K. Deshmukh on 28th August, 2003, when the Court, after considering the rival submissions and perusing the record, by a reasoned order, noted that prima facie case of contempt was made out, as the defence taken on behalf of the respondent's was untenable. In the circumstances, show cause notices came to be issued to the respondents in the contempt petition. The said notices have been duly served, pursuant to which, the respondents have filed response to the contempt petition. Be that as it may, the Notice of Motion No. 1491 of 2003, in which ad interim order was passed, was moved before Justice F.I. Rebello on 4th September, 2003. Justice Rebello, however, declined to pass any order, although grievance was made before His Lordship that the respondents had not authorised the Advocate to appear on 7th May, 2003, on which date, the ad interim order came to be passed. Their Lordships observed that, that aspect can be considered at the hearing of the Motion. It is the case of the defendant that in spite of the earlier

proceedings, the construction activity continued unabated on the site, and which fact was noted by the constituted attorney of the defendant Ms. Maya Sadhwani, when she visited the site on 28th May, 2003. In that backdrop, the defendant took out another Notice of Motion No. 2678 of 2003 in Contempt Petition No. 66 of 2003 for the following reliefs:

"a) that pending the hearing and final disposal of the above contempt petition, this Hon''ble Court be pleased to appoint Court Receiver, High Court, Bombay, with all powers under the Code of Civil Procedure, 1908 of Immovable property described in Schedule-I hereto (hereinafter referred to as the said property");

(b) that pending the hearing and Final disposal of the Notice of Motion, this Hon''ble Court be pleased to appoint Court Receiver, High Court, Bombay (with all powers under the Code of Civil Procedure, 1908 of immovable property described in Schedule-1 hereto;]

(c) that pending the hearing and final disposal of the Notice of Motion, [the Court Receiver, High Court, Bombay and/or an officer from the office of the Court Receiver, High Court. Bombay and/or any other] officer of this Hon''ble Court be directed by this Hon''ble Court to visit the immovable property described in the Schedule-I hereto to take photographs and video footage at the costs and expenses of the petitioner and make a report to this Hon''ble Court with respect to the, construction activities being carried on at site;

(d) for ad interim reliefs in terms of Prayers (b) and (c) above;

(e) for costs of this Notice of Motion;

(f) for such further and other reliefs as this Hon''ble Court may deem fit and proper in the facts and circumstances of the present case."

7. The Notice of Motion was moved before Justice D.K. Deshmukh on 15th September, 2003 when His Lordship was pleased to make the Motion returnable after two weeks, but in the meantime, granted ad interim relief in terms of prayer Clause (c) of the Motion, excluding the bracketed portion. Pursuant to the said order, the Court Commissioner visited the site on 16th September, 2003. The Court Commissioner has submitted report regarding the visit made on 16th September, 2003 dated 22nd September, 2003. Even this report indicates that the construction activity was continuing on the site. The said Notice of Motion No. 2678 of 2003 came up for further directions before Justice D.K. Deshmukh on 18th September, 2003, when the Court was pleased to grant ad interim relief in terms of prayer Clause (b), excluding the bracketed portion. The Court was pleased to appoint Court Receiver to take symbolic possession of the disputed premises, without disturbing the possession of the occupants of the premises and gave further direction that the Court Receiver shall not permit any construction work or otherwise, on the premises. Pursuant to the said order, formal possession of the disputed property was taken over by the Court Receiver on 19th September, 2003 and on and from that date, no further construction activity

has been continued on the site. While the contempt petition and the aforesaid Notices of Motion taken out in the said contempt petition were pending, the above referred Miscellaneous Petition No. 28 of 2003 taken out by the defendant for cancellation and revocation of the Letters of Administration came to be allowed by Justice S.K. Shah on December 16, 2003. It is not necessary to advert to various other proceedings taken out by the respondents in appeal before this Court. Suffice it to observe that the appeals have been disposed of without expressing any opinion on merits of the proceedings pending before the Single Judge.

8. The defendant, later on, filed another Notice of Motion No. 598 of 2004, more or less, for the same reliefs claimed in the earlier Notice of Motion filed in the contempt petition. This Notice of Motion is, however, taken out in the Testamentary Suit No. 4 of 2004 for the following reliefs:

(a) that pending the hearing and final disposal of the suit, the Court Receiver, High Court, Bombay be appointed Receiver with all powers under Order 40 of the C.P.C. 1908, including power of sale of all the assets, properties and estate left by the deceased, including what is more particularly described in Exhibit "W" to the affidavit in support of the present Notice of Motion;

(b) that pending the hearing and final disposal of the suit, the plaintiff and the respondents or any person or persons claiming through or under them, be restrained by an order and injunction of this Hon'ble Court from in any manner dealing with, disposing off, transferring, alienating, encumbering and/or creating any third party right, title or interest and/or making any additions, modifications, alterations and/or repairs to or in respect of the assets, properties, and estate of the deceased, including what is more particularly set out in Exhibit W to the affidavit in support of the present Notice of Motion;

(c) that pending the hearing and final disposal of the suit the plaintiff and the respondents be ordered and directed to :

(i) disclose on oath all the assets, properties and estate of the deceased;

(ii) forthwith deposit the grant dated 10th April, 2003 with all copies thereof whether notarized and/or otherwise with the Prothonotary & Senior Master of this Hon'ble Court;

(iii) disclose on oath as to for what use, acts and/or deeds has the grant dated 10th April, 2003 been put to and/or how the assets, properties and estate of the deceased have been dealt with, and to render accounts of the same;

d) that pending the hearing and final disposal of the present Notice of Motion, the Court Receiver, High Court, Bombay be appointed Receiver with all powers under the Code of Civil Procedure, 1908 including power of sale of all the assets, properties and estate of by the deceased, including what is more particularly described in Exhibit V to the affidavit in support of the present Notice of Motion;

e) that pending the hearing and final disposal of the present Notice of Motion, the plaintiff and the respondents or any person or persons claiming through or under them, be restrained by an order and injunction of this Hon''ble Court from in any manner dealing with, disposing off, transferring, alienating, creating any third party right, title or interest and/or making any additions, alterations modifications and/or repair . to or in respect of the assets, properties, and estate of the deceased, including what is more particularly set out in Exhibit "V" to the affidavit in support of the present Notice of Motion;

f) that pending the hearing and final disposal of the present Notice of Motion, the plaintiff and the respondents be ordered and directed to

(i) disclose on oath all the assets, properties and estate of the deceased;

ii) forthwith deposit the grant dated 10th April, 2003 with all copies thereof whether notarized and/or otherwise with the Prothonotary & Senior Master of this Hon''ble Court;

iii) disclose on oath as to for what use acts and/or deeds has the grant dated 10th April, 2003 been put to and/or how the assets, properties and estate of the deceased have been dealt with, and to render accounts of the same;

g) for ad interim reliefs in terms of prayers (d), (e) and (f) above;

h) for costs of this Notice of Motion; and

i) for such further and other reliefs as this Hon''ble Court may deem fit and proper in the facts and circumstances of the present case."

9. During the course of hearing, Counsel for the defendant has however confined this Motion only with regard to reliefs (a) and (b) referred to above, as prayer Clause (a) was already worked out by consent.

10. It will be relevant to note that present Notice of Motion No. 598 of 2004 has been filed after the Notice of Motion No. 1491 of 2003 came to be disposed of on account of observations made in the decision of the Division Bench dated 12th January, 2004 in Appeal No. 27 of 2004 (see Para 9 thereof). Accordingly, I am now called upon to decide the Contempt Petition No. 66 of 2003, Motion filed in the said petition being Notice of Motion 2678 of 2003 as well as Notice of Motion No. 598 of 2004 in Suit No. 4 of 2004.

11. After hearing Counsel appearing for the parties, following points would arise for my consideration :

(i) Whether Notice of Motion and contempt petition deserve to be dismissed on account of improper affidavit filed by the defendant in support of the said proceedings ?

(ii) Does the order dated May 7, 2003 prohibit further construction activity on the site ?

(iii) Whether respondents have carried out construction activity on the site inspite of order dated 7th May, 2003 ?

(iv) Whether the breach committed by the respondents was deliberate, wilful and contemptuous ?

(v) Whether action against the plaintiff/respondents should be taken for having made false statement on oath on affidavit in the present proceedings to state -

(a) that permission granted by the Mumbai Municipal Corporation dated 29th August, 2002 was valid till the date of filing of the affidavit of 26th August, 2003,

(b) that there was no prohibition against the respondents to carry on construction, in the order dated 7th May, 2003.

(c) that order dated 7th May, 2003 has been modified to permit further construction to the respondents.

(d) False address stated in the affidavit of plaintiff Indresh Advani dated 25th March, 2004 that he was residing at 95/1, Garden View, Domar Park, Bhulabhai Desai Road, Mumbai- 400 026, when in fact, he is permanent resident of B/2, Shangrila Apartments, St. Mary's Colony, Miramar, Panjim, Goa-403 001, as can be discerned from his Pass- port No. A1740845,

(vi) Whether it is just and convenient to appoint Court Receiver in respect of the disputed property ?

(vii) Whether injunction as prayed for by the defendant should be granted in the fact situation of the present case ?

12. In so far as the first point is concerned, the argument advanced on behalf of the respondents/plaintiff is that the affidavit in support of the contempt petition as well as Notice of Motion, in the first place, is filed by the power of attorney of the defendant. Secondly, the affidavit does not conform to the requirement of Order XIX, Rule 3 of the Code of Civil Procedure, 1908; and therefore, the said affidavits will have to be discarded, for which reason, the contempt petition as well as the Notices of Motion should be dismissed.

13. To buttress this submission, reliance is placed on the decisions reported in ILR 1909 Cal 259 , Padmabati Dasi v. Rasik Lal Dharm, The State of Bombay Vs. Purushottam Jog Naik, , The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, ; Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, . On the other hand, it is argued on behalf of the defendant that there is no infirmity in the affidavit in support filed along with the contempt petition or for that matter of the Notices of Motion. Indeed, the Counsel for the respondents/plaintiff has rightly pressed into service decisions referred to above to contend that if the affidavit does not conform to the provisions of the Order XIX, Rule 3 of the Code of Civil Procedure, the same cannot be looked into. However, what has been overlooked by the learned Counsel for the respondents/plaintiff is the exposition of the Supreme Court in

Para 38 in Shivajirao Nilangekar Patil's case (supra). Even in that case, similar infirmity in the affidavit was noticed by the Supreme Court. But the Supreme Court then went on to observe that the affidavits though were defective, the Court having taken cognizance of the matter and certain inferences followed from the inherent nature of facts apparent from the facts brought before the Court, no fault can be found with the decision of the High Court. In other words, if this Court was satisfied that from the inherent nature of facts apparent from the record of the case, the case as made out by the defendant was probable and is supported by the record, then merely because the affidavit is not in the form as is required by Order XIX, Rule 3, cannot be the basis to dismiss the contempt petition or the Notice of Motion as has been contended. It is also well established that infirmity of this nature is a curable defect and the party can be given opportunity to comply with the requirement of Rule 3 of Order XIX. In any case, having regard to the materials on record, I have no hesitation in proceeding to decide the matter on the basis of inherent nature of facts, which can be deduced from the records available before me so as to decide the matter in issue in the present proceedings. More so, because the action of contempt is essentially between the Court and the contemnor and the same cannot be thrown out on such technicalities even when there was overwhelming material on record to continue the action. Rather in such a case, it is the duty of the Court to continue the action to ensure that Rule of Law is observed. In the present case, from the record, it can be discerned that the grievance regarding construction activity was going on unabated, is supported by the report submitted by the Officer of this Court. In that sense, the contempt action as against the respondents/plaintiff can proceed on the basis of that report, which has been produced on record and was in fact, invited by this Court. The fact that the construction activity was going on, is not disputed even by the respondents before this Court. But it is their defence that the order passed by this Court on 7th May, 2003 did not prohibit the respondents to undertake that activity. That is a matter which will be considered while examining the merits of the contempt action a little later. For the present, suffice it to observe that infirmity in the affidavit which is brought to my notice, by itself, is not sufficient to dismiss the contempt petition as well as the Notices of Motion taken out by the defendant.

14. The next question that needs to be considered is whether the order dated 7th May, 2003 prohibited the respondents/plaintiff from carrying on construction activity on the disputed property. This Court, on 7th May, 2003 granted ad interim relief in terms of prayer Clause (d) of Notice of Motion No. 1491 of 2003. The relevant prayer clause has already been reproduced above. The argument canvassed on behalf of the respondents /plaintiff is that there is no specific prohibition regarding further construction activity on the site. Indeed, there is no specific prayer of stay of further construction on the disputed property. From the relief as couched, to my mind, it is very wide and can be understood to mean preventing the respondents/plaintiff from making any claim in respect of the disputed property, be it as owners, or otherwise. Reliance has been placed by the

Counsel for the defendant on the expression "any manner whatsoever" occurring in the said prayer clause to contend that the same envelopes the situation of the stay of further construction activity on the site. It is possible to accept the said contention. Assuming that the relief in terms of prayer Clause (d) did not specifically ask for prohibition of further construction from the site, even so, from the conduct of the respondents/ plaintiff, it is more than clear that even they believed that the order could be and was being interpreted in that manner, for which reason, they made at least more than one attempt to move this Court for vacating the ad interim relief, which was already granted. That can be seen from the affidavit of the respondents dated 8th May, 2003 as well as subsequent application made for permission to continue construction work on 9th May, 2003 and the affidavit dated 12th May, 2003. Even thereafter, the respondents/plaintiff kept on moving the Court for early disposal of the Notice of Motion, as the ad interim order was affecting their right to carry on construction activity on the site.

15. To get over this position, learned Counsel for the respondents/plaintiff contends that the order as passed on 7th May, 2003 was ambiguous one, and for which reason, the respondents/plaintiff cannot be proceeded for contempt action. It is contended that as there was ambiguity in the order passed on 7th May, 2003, this Court cannot proceed with the contempt action against the respondents. In support of this submission. Reliance was placed on the decisions of the Apex Court reported in *Mrityunjoy Das and Another Vs. Sayed Hasibur Rahaman and Others*, , and *Jhareswar Prasad Paul and Another Vs. Tarak Nath Ganguly and Others*, . To my mind, none of these decisions will be of any avail to the respondents/plaintiff because the order, as mentioned earlier, even if it is assumed, was ambiguous, the fact remains that respondents/plaintiff believed that the order could be and was being interpreted in that way, for which reason, they made attempts to get the order vacated, set aside or modified by moving the Court on different occasions; but they failed to get the said order vacated. Since they were not successful in vacating the order, it was not prudent nor permissible for them to proceed with the construction activity on the site on the assumption that the order did not prohibit them from carrying on further construction activity. So long as the order dated 7th May, 2003 was not clarified, modified or vacated as prayed, the respondents / plaintiff were obliged to observe restrain and show deference to the order, but that is not what has happened in the present case. On the one hand, the respondents/ plaintiff believed that the order dated 7th May, 2003 could be and was being interpreted against them, for which reason, they filed affidavit before this Court and also made unsuccessful attempt to set the order vacated and/or modified. On the other hand, they continued with the construction activity unabated inspite of the interim orders passed even in the contempt petition, till the Court Receiver took over symbolic possession of the site on 19th September, 2003. All this has happened inspite of repeated grievance made on behalf of the defendant and legal notice sent through Advocate calling upon the respondents/plaintiff to forbear from carrying on further construction activity.

16. In so far as the fact as to whether the respondents carried on construction activity inspite of order dated 7th May, 2003 is concerned, the same is established from the reports submitted by the Court Commissioner appointed by this Court dated July 28, 2003 and again on September 22, 2003. The reports clearly Indicate that the construction activity was in progress unabated. Even the respondents accept that such work was in progress.

17. The next question is whether the breach committed by the respondents/ plaintiff was deliberate, wilful and contemptuous. Even this issue will have to be answered against the respondents/plaintiff. As mentioned earlier, the order of 7th May, 2003 as passed by this Court is not in issue. The plaintiff/ respondents also concede that they had knowledge of such order having been passed against them. The fact that the said order could be and was being construed as stay of further construction activity, is also virtually conceded by the respondents, as they were required to approach this Court for vacation and/or modification of that order (dated 7th May, 2003) and also filed affidavits stating the said fact. In other words, respondents/plaintiff were fully aware and had knowledge that the order dated 7th May, 2003 could be and was being interpreted as prohibiting them from carrying on further construction activity on the site. The argument advanced that the said order was ambiguous, does not commend to me. The fact remains that even the respondents also entertained that doubt, for which, they immediately rushed to this Court on the next day; and if it is so, it was expected of the respondents to observe restrain - instead of precipitating the matter by continuing construction activity, awaiting clarification from this Court. Inspite of the knowledge as referred to above, the respondents/plaintiff continued with the construction activity unabated; though the defendant had objected about it from time to time by making representation before the Corporation, sending legal notice to the respondents/plaintiff and eventually by filing contempt petition in this Court on July 14, 2003. Even after the institution of the contempt petition and the order passed by Justice Smt. Nishita Mhatre on July 15, 2003, the plaintiff / respondents continued with the construction activity undetermined till the Court Receiver took over possession of the property on September 19, 2003. I find force in the submission of the defendant that the plaintiff/respondents believed that the order prevented them or at least believed that it could be and was being interpreted to mean that it prevented them to deal with the property including carrying on further construction; which is noted in the affidavits filed before this Court as well as the principe for prayer to vacate the ad interim order and also the grounds of appeal in the memo of appeal filed by them. It is, however, now, the plaintiff/respondents have taken all possible defences including that the said order was granted behind their back and the Advocate who had appeared on their behalf before the Court had no authority. Argument was also advanced on behalf of the respondents/plaintiff relying on the observations made in the order dated May 9, 2003 that the earlier order dated 7th May, 2003. stood modified by the said order. Even this submission does not commend to me. Merely because the Court observed that the petitioner

(defendant) will not take further action, does not mean that the respondents/ plaintiff were permitted to carry on further construction on the site. No such express order was passed in favour of the respondents/ plaintiff. At least the plain language of order dated May 9, 2003 does not permit me to take the view that the respondents/plaintiff were expressly permitted to carry on further construction. Reliance was also placed on observations made in Para 3 of the same order dated 9th May, 2003 as the respondents 1 and 3 plaintiff were called upon to file an affidavit stating the exact nature of repairs that are being carried out to the premises and indicate as to when the repairs would be completed. To my mind, this observation does not mean that the respondents /plaintiff were expressly permitted to carry on further construction activity, whereas, in the earlier paragraph of the same order, in Para 2, the Court has recorded that the respondents/ plaintiff pray that the repairs be permitted to be carried out in accordance with the sanctioned plan. As mentioned earlier, the order dated 9th May, 2003 does not expressly permit the respondents to carry on further construction activity. If the respondents were convinced that the order dated 9th May, 2003 permitted them to carry on further construction activity, there was no reason for the respondents to once again file affidavit before this Court on 12th May, 2003 and then also move the Court for vacating the ad interim order by expressly mentioning in the principle that the ad interim order be vacated as it was causing irreparable harm and was obtained behind their back and by misrepresentation of the Court. Those principle were moved on 24th June, 2003 and again on 2nd July, 2003. In the circumstances, I have no hesitation in taking the view that the respondents/plaintiff are in breach of order dated 7th May, 2003, as they have carried on construction activity deliberately, wilfully and contemptuously.

18. Taking overall view of the matter, I am more than convinced that the defences taken on behalf of the respondents/plaintiff are only smoke screen created to take refuge thereunder, so as to justify their illegitimate actions taken with purpose, to subserve their ulterior design. To me, the respondents/ plaintiff have committed deliberate, and wilful disobedience of this courts order amounting to gross Contempt of Court, which substantially interferes or tends substantially to interfere with the due course or justice,

19. That takes me to the issue as to whether appropriate action should be initiated against the respondents/plaintiff for having made false statements on oath on affidavit filed in the proceedings before this Court, which statements are false and they knew and believed the same to be false. It is clearly stated in the affidavit that the permission granted by the Mumbai Municipal Corporation dated August 29, 2002 was valid till the date of filing of the affidavit in August 2003. This statement is false. The falsity is established from the copy of the order dated December 3, 2002 passed by the Competent Authority of the Mumbai Municipal Corporation as well as communication dated 18-12-2002, 17-1-2003 and 23-4-2003 placed before me during the course of hearing. It is also stated that stop work notice was issued in respect of the disputed property by the

Competent Authority of the Corporation and that, communication dated 17th January, 2003 was sent to the Architect of the respondents/plaintiffs to give revised plan restricting the scope of work to the repairs only. In other words, when the affidavit was filed on 26th August, 2003 before this Court, the respondents/plaintiffs were fully aware of the fact that the permission granted by the Mumbai Municipal Corporation on 29th August, 2002 was not in vogue at all, but was interdicted by stop work notice. The above facts, in the first place, have been suppressed by the respondents/ plaintiff and besides, false statement is made which they knew and believed to be false that the permission granted in August, 2002 by Mumbai Municipal Corporation was still valid and subsisting till August, 2003. Besides, the aforesaid statement, it is further stated in the affidavit that there was no prohibition in the order dated 7th May, 2003. For the reasons already recorded earlier, even this statement made on affidavit cannot be said to be bona fide". On the other hand, from the attending circumstances, it is more than clear that the respondents/plaintiff were fully aware that the nature of order dated 7th May, 2003 would prohibit them from carrying on further construction and for which reason, they had filed affidavits before this Court and also made attempt to move this Court for recall and/or modification of the order dated 7th May, 2003,

20. It is also stated in the affidavit filed on behalf of the respondents /plaintiff that order dated May 7,2003 has been modified to permit further construction. Even this statement is false and the respondents/plaintiff knew and believed the same to be false, for the reasons already indicated above.

21. It is then rightly contended on behalf of the defendant that the affidavit filed before this Court on behalf of the plaintiff dated 25th March, 2004 mentions that the plaintiff was resident of 95/1, Garden View", Domar Park, Bhulabhai Desai Road, Bombay - 400 026. However, this statement is false and its falsity is evinced by the permanent address of the plaintiff mentioned in his passport No. A 1 740845 as B/2, Shangrila Apartment, St. Mary's Colony, Miramar, Panjim, Goa. The contents of the passport being public document, will have to be given credence in preference to the statement made on affidavit. From the details mentioned in the passport of the plaintiff, it is clear that the statement made on affidavit before this Court that the plaintiff was resident of 95/1, Garden View, Domar Park, Bhulabhai Desai Road, Mumbai is false and the plaintiff knew and believed the same to be false. The appropriate course, in such a situation, in my view, is to direct the Registry of this Court to file a complaint in writing before the appropriate forum as is required by Section 195(I)(b) of the Criminal Procedure Code, 1973 for the plaintiffs have made aforesaid false statements on oath in the proceedings before this Court, which is punishable under Chapter XI of the Indian Penal Code. The Registry of this Court shall draw a complaint in this behalf regarding the aforesaid four false statements made on affidavit in the proceedings before this Court and file the same before the appropriate Court, competent to try and decide the criminal action against the respondents/plaintiff.

22. That takes me to Point Nos. (6) and (7) referred to above. Before I proceed to examine the same, for the sake of repetition, I will broadly recapitulate the relevant facts. The plaintiff has filed Petition No. 819 of 2002 that deceased Shamsunder Tarachand Advani was the absolute owner of the subject property and just before his death (i.e.: June 2, 2001), he had executed last Will and Testament in favour of the plaintiff at Mumbai on or about 12th day of May, 2001. On that assertion, he had approached this Court for a relief that Letters of Administration with the Will annexed of the property and credits of the said deceased may be granted in his favour having effect throughout the State of Maharashtra. Initially, that prayer was granted, but the order granting Letters of Administration has been subsequently revoked at the instance of the defendant who is contesting the claim of the plaintiff on the reasoning that the grant was obtained deceitfully with ulterior purpose (see Paras 14 and 20 of that decision). Be that as it may, the defendant has taken out aforesaid two Notices of Motion for the relief already reproduced hereinbefore. The case of the defendant, on the other hand is that after the death of her husband Tarachand Rochiram Advani, she had purchased out of her self-acquired monies, an immovable property being land admeasuring 862 square yards, together with Bungalow "Garden View" plus outhouse and structure standing thereon situated at Domar Park, Bhulabhai Desai Road, Mumbai - 400 026. It is her case that at the time when the said property was purchased, her son deceased Shamsunder Tarachand Advani and daughter Tulsi executed a sworn declaration dated 9th August, 1960 affirming therein that the purchase consideration of the said Bungalow are monies absolutely belonging to Gopi Tarachand Advani (defendant) and that no other person or persons including Shamsunder (deceased) and Tulsi have any right, title, interest, claim or demand over the said monies. It is the case of the defendant that after purchasing the said property, the defendant along with her three children Shamsunder (deceased), Tulsi (Tulsi Miskita) and the minor son Manik, moved in the said Bungalow, which then became her permanent residence. It is further stated that the deceased Shamsunder, after shifting in the said newly acquired property, was married to respondent No. 2 who thereafter continued to live in the same Bungalow. It is then averred that after the marriage of deceased Shamsunder to respondent No. 2, disputes developed between deceased Shamsunder and respondent No. 2 (Shamsunder on the one hand and the defendant) as to sole occupation of the said property. It is stated that the dispute escalated to such level that eventually the suit came to be filed by the defendant being Suit No. 447 of 1965 against the deceased to hand over vacant and quiet possession of the said property. The deceased Shamsunder on the other hand, filed counter claim. After a prolonged litigation, it is averred that in 1977, the defendant being mother of deceased Shamsunder was forced to reluctantly settle the matter and coerced into agreeing to settlement on the terms dictated by the deceased Shamsunder and respondent No. 2 so as to get rid of severe harassment and blackmail inflicted upon her. It is stated on affidavit that these facts have been recorded by the defendant in the affidavit sworn before the Notary Public as back as on February 24, 1977. It is the case of the

defendant that because of the prevailing circumstances, the defendant decided to shift to U.S.A. It is further averred that the deceased Shamsunder along with his wife respondent No. 2 continued to occupy the suit property after the defendant left for U.S.A. It is then stated that due to the continuing domestic quarrels and fights, leading to violence and police complaints between deceased Shamsunder and his wife respondent No. 2, eventually both of them separated and the respondents went to live separately at Panajim, Goa, while the deceased Shamsunder continued to live in the said Bungalow. The plaintiff, son of deceased Shamsunder then married a local born girl and has been residing and carrying on business in Goa since then. It is stated that due to the continued disputes between deceased Shamsunder and his wife respondent No. 2, the deceased Shamsunder filed petition for divorce in the Family Court at Bandra, Mumbai being Petition No. 140 of 1989, making serious allegations against the plaintiff and the respondents. In the said proceedings, in terms of the interim order passed, the respondent No. 2 was allowed to occupy one portion of 500 square feet in the said Bungalow occupied by deceased Shamsunder. It is the case of the defendant that deceased Shamsunder was in constant communication with the defendant and he in turn, expressed remorse and repentance over his past violent behaviour towards the defendant and his younger brother Manik. It is the case of the defendant that deceased Shamsunder had assumed the defendant that he would not enforce the consent. Terms entered into between the defendant and deceased in Suit No. 447 of 1965 and he had not got the decree corrected, stamped and/or registered and was not going to have the property transferred in his name. Suffice it to observe that in substance, the case made out by the defendant is that deceased Shamsunder was not the absolute owner of the suit property; whereas, the property continued to be owned by the defendant, as the consent decree was not executed and had already become time barred. The case of the defendant is that the theory propounded by the plaintiff of Will executed in his favour by the deceased Shamsunder was unacceptable for the reason that the relationship between the deceased Shamsunder and his wife respondent No. 2 as also the plaintiff were strained, In other words, the case of the defendant is that the Will could not have been executed by the deceased Shamsunder bequeathing the entire property to the plaintiff just before his death and even the factum of execution of said alleged Will in favour of the plaintiff was put in issue. It is on that basis the defendant has prayed for interim protection by way of two Notices of Motion referred to above during the pendency of the proceedings in this Court because the plaintiff has no right to proceed to change the character of the suit property taking advantage of alleged Will, which was illegal. The Notice of Motion is supported by" the affidavit of Manik Advani who is the Constituted Attorney of the defendant. The Notices of Motion are resisted by the respondents and plaintiff. According to them, however, the theory put forth by the defendant is palpably false and unacceptable. The plaintiff, however, asserts that the deceased Shamsunder was the owner of the suit property and was competent to bequeath the same in favour of the plaintiff as has been done by the alleged Will executed

by the deceased on 12th May, 2001. The affidavit-in-reply to the Notice of Motion has been filed by respondent No. 2 for herself and the plaintiff. In the reply affidavit, it is stated that the respondent No. 2 was the wife of deceased Shamsunder. The affidavit supports the cause made out by the plaintiff. It is stated that the defendant has no claim in respect of the suit property, inasmuch as even if the suit presented by the plaintiff was to be dismissed, and the Will is not accepted, even then, having regard to the provisions of the Hindu Law, the plaintiff and the respondent would succeed to the property namely; the respondent No. 2 being wife as well as the daughter and son of the deceased equally and the defendant would be entitled only to 1/4 th share therein. It is stated that the property was in ruinous and dilapidated condition and to restore the same, it was essential to carry out necessary repairs and take reasonable step to protect the said property. It is stated that the defendant has no claim in the suit property in view of the consent decree passed in the suit instituted by the defendant. It is also stated that the defendant has been instigated to contest the proceedings at the instance of her son Manik who has sworn the affidavit in support as Constituted Attorney with ulterior motive. It is the case of the respondents and plaintiff that the defendant, in any case, is not entitled to succeed to the suit property and all contentions raised at the instance of the defendant are only to create smoke screen so as to deprive the plaintiff and respondents from enjoying the property. The respondents and plaintiff have also questioned the appropriateness of the affidavit filed on behalf of the defendant. It is also contended that the respondent No. 2 being the lawfully wedded wife of deceased Shamsunder and the suit property being her matrimonial home, under the Shastrik Law, she was entitled to maintenance and right of residence and that limited right has matured into absolute ownership rights by virtue of Section 14 of the Hindu Succession Act. To buttress this submission, reliance is placed on decisions reported in AIR 1977 S.C. 1944 , Vaddeboyina Tulasamma and Ors. v. Vaddeboyina Sesha Reddi (dead) by LRs.; Mangat Mal (Dead) and Another Vs. Smt. Punni Devi (Dead) and Others, ; Nazar Singh and others Vs. Jagjit Kaur and others, , Ram Kali (Smt) Vs. Choudhri Ajit Shankar and Others, , C. Masilamani Mudaliar and Others Vs. The Idol of Sri Swaminathaswami Swaminathaswami Thirukoli and Others, , Raghubar Singh and Others Vs. Gulab Singh and Others, , 2001 (1) S.C.C. 393 - Yadala Venkata Subbamma v. Yadala Chinna Subbaiah (Dead) By LRs. and Ors., Dr. Mahesh Chand Sharma Vs. Smt. Raj Kumar Sharma and others, .

23. Having considered the pleadings of the parties and the rival submissions advanced across the bar, it is seen that the suit property was purchased in the name of defendant in the year 1960 after the death of her husband Tarachand Rochiram Advani. As the property was purchased and stood in the name of defendant at the relevant time, it can be legitimately inferred at this interlocutory stage that the property belonged to the defendant, Indeed, because of certain disputes, the defendant was compelled to file suit against her own son deceased Shamsunder for handing over vacant possession of the portion of the premises

occupied by him along with his family. That suit has ended in compromise and has been decreed in terms thereof. However, the fact remains that the consent decree has not been put in execution so far and has become time barred. The fact that the defendant was forced to enter into compromise has been recorded in the affidavit sworn before the Notary Public by the defendant as back as on February 24, 1977. So long as the decree has not been executed, it is possible to accept the stand of the defendant at this interlocutory stage that deceased Shamsunder was not the absolute owner of the disputed property and if it is so, he had no authority or title to bequeath the same by way of Will to the plaintiff, assuming that the Will is properly executed. Even assuming that deceased Shamsunder had become owner of the suit property and was competent to bequeath the same to any person of his choice, even so, the case made out by the defendant does indicate, prima facie, that the relationship between the deceased Shamsunder and his wife or son were not cordial. It is seen that long back, the plaintiff had separated and started living at and settled down in Goa, whereas, the relationship of deceased Shamsunder with his wife respondent No. 2 had reached such a pass that deceased Shamsunder had to file petition for divorce and that petition was seriously contested by both parties, which fact can be inferred from the pleadings filed by the parties in the matrimonial proceedings. In that sense, the defendant has prima facie, made out a case about the genuineness of the Will allegedly executed in favour of the plaintiff. Indeed, the plaintiff has emphasised on several circumstances to contend that the case made out by the defendant is unstatable. According to him, the relationship between plaintiff and the deceased Shamsunder were cordial at the relevant time and in fact, it is the plaintiff who was looking after deceased Shamsunder during his serious illness and hospitalisation. Even so, having regard to the facts of the present case, so long as the Letters of Administration is not granted in favour of the plaintiff, he cannot assume that he has become absolute owner of the property so as to carry on alteration or changing the character of the property. It will be useful to refer to the decision reported in Mrs. Hem Nolini Judah (since deceased) and after her Legal Representative Mr. Marlean Wilkinson Vs. Isolyne Sarojbhashini Bose and Others, , relied upon by the defendant in this behalf. The Counsel for the plaintiff has, however, relied upon the decision of the Division Bench of our High Court in Ramniklal Amritlal Shah Vs. Bhupendra Impex Pvt. Ltd. and Others, , to contend that Section 213 of the Indian Succession Act, 1925 is no bar in preventing the apparent heir from claiming interim relief. This submission overlooks that in the present case, the plaintiff is not wanting the status of the property to be maintained as it is but, liberty to alter its status. The Court can come to the aid of legatee or executor by passing interim relief so as to preserve the property but cannot allow the same to be altered in any manner so long as probate is obtained.

24. The case of the respondent No. 2 on the other hand is that she was lawfully wedded wife of the deceased on the date of his death, as divorce proceedings were still pending between the parties and order of divorce was not passed

therein till the death of her husband Shamsunder. It is her case that the property was her matrimonial home and she was entitled to maintenance and right of residence and that right has matured into absolute right qua the property by virtue of Section 14 of the Hindu Succession Act. As has been held earlier, it is not possible to accept the claim of the plaintiff and respondent No. 2 that the deceased Shamsunder had become absolute owner of the disputed property. If it is so, the question of respondent No. 2 being wife of deceased Shamsunder, having become owner of that property does not arise. I may observe that Counsel for the defendant argued that the claim of respondent No. 2 is untenable. However, it is not necessary for us to dwell upon the wider issues raised at the instance of the respondent No. 2, inasmuch as the present suit has been filed on the assertion that the plaintiff has acquired absolute right to the property on account of the Will executed in his favour by deceased Shamsunder. We are really concerned with the issue as to whether plaintiff has acquired right and is entitled to develop the suit property in his own rights as has been claimed by him. Prima facie, it is not possible to take that view on the basis of materials on record at this stage. Viewed in this perspective, all the decisions pressed into service on behalf of the respondent No. 2 and the arguments canvassed will be of no avail.

25. So long as the issue regarding the right of the deceased Shamsunder to bequeath the entire suit property in favour of the plaintiff is not finally decided, it will be inappropriate to permit the plaintiff to develop the property in question. Besides, even the respondent No. 2 cannot proceed on the assumption that she has absolute right in the suit property. If it is so, the defendant is entitled for the relief claimed in the Notices of Motion, for injunctioning the plaintiff and the respondents or any person or persons claiming through or under them from dealing with the property in any manner or creating any third party rights, title or interest therein and/or making any additions, modifications, alteration or repairs in respect of assets properties or estate of the deceased. This is more so because even the plaintiff and respondent No. 2 in the affidavit in-reply filed accept the position that the defendant will have at least 1/4 th share in the suit property, if the Will was to be ignored, which right has accrued after the death of deceased Shamsunder. Ordinarily, the injunction as granted, was sufficient to secure the interest of the parties. However, in the present case, it has been observed that the plaintiff and respondents have conducted themselves in disregard of the orders passed by this Court with the sole intention to make the matter fait accompli. The conduct of the plaintiff and respondents in carrying on construction activity inspite of the order passed by this Court has been recorded even by the Commissioner appointed by this Court. Taking overall view of the matter, it would be in the interest of justice and more so, just and convenient to appoint the Court Receiver in respect of the disputed property, on the same terms on which, he has been appointed by this Court by ad interim order dated 18th September, 2003. I am inclined to take this view because it has come on record that it is only after the appointment of the Court Receiver that the further

construction activity on the site was arrested and the status of the suit property has been protected.

26. That takes me to the last aspect as to the quantum of sentence to be imposed on the respondents in the contempt petition for having deliberately and wilfully conducted themselves in utter disregard of the order of this Court resulting in gross Contempt of Court and the contempt substantially interferes, or tends substantially to interfere with the due course of justice.

27. While I had dictated the relevant portion of the judgment in open Court on 12th July, 2004, holding the respondents guilty of having committed contempt of Court, the Counsel for the respondents was called upon to ensure that the respondents would remain present on the next day i.e. 13th July, 2004, so that, they can be heard on the point of sentence. Accordingly, the respondents in the contempt petition have appeared in Court on 13th July, 2004 and were heard on the point of sentence through their Counsel. They have tendered oral unconditional apology through their Counsel. According to learned Counsel for the respondents, even if this Court has already held the respondents guilty of civil contempt, this Court would avoid sentencing the respondents, as the respondents have expressed unconditional apology before this Court and more so, because the explanation offered by the respondents that they were under bona fide impression that the order passed by this Court did not prevent them from carrying on further construction, was a possible view. In support of this proposition, learned Counsel has relied on the decision of the Apex Court reported in *Smt. Pushpaben and Another Vs. Narandas V. Badiani and Another*, . In the said decision, it was argued before the Apex Court that normally the sentence that should be given to an offender who is found to be guilty of civil contempt, is fine, and not imprisonment. Sentence of imprisonment should be given only when the Court is satisfied that the ends of justice require the imposition of such a sentence. This contention has been accepted by the Apex Court. Relying on this decision, learned Counsel for the respondents would contend that at best, this Court may impose fine and not direct imprisonment of the respondents, which is an extreme punishment to be imposed in extraordinary circumstances. On the other hand, Counsel for the defendant contends that in the first place, no written apology has been tendered on behalf of the respondents. Besides, the conduct of the respondents does not even remotely show that they have any remorse, repentance or contrition for what has happened, but althroughout, they have justified their action of carrying on further construction. Mr. Seervai for the defendant submits that in such a case not awarding sentence of imprisonment would be inappropriate inasmuch as the oral apology tendered through Counsel has come only when the respondents were more than convinced that the things have gone out of their control and they were pushed to the wall after the finding reached by this Court on the issue of whether their conduct was wilful, deliberate and contemptuous. He seeks to rely on the exposition of the Apex Court in the case of *Balram Singh Vs. Bhikam Chand Jain and Others*, . It is observed in Para 8 of this decision that it would be

a travesty of justice if the Court would allow gross Contempt of Court to go unpunished, without an adequate sentence and when no mitigating circumstances were present for not passing sentence of imprisonment. Reliance is also placed on the decision of the Delhi High Court reported in Saleemuddin and Others Vs. Sharafuddin and Others, . Relying on the observations in the said decision, learned Counsel contends that maximum punishment ought to be given having regard to the fact situation of the present case and mere order of fine will serve no deterrence to the respondents, who have acted in utter defiance of the Court order. Reliance is also placed on the decision reported in Sarladevi Bharatkumar Rungta Vs. Bharatkumar Shivprasad Rungta and another, . In Para 11 of this decision, this Court has observed that punishment under the Contempt of Courts Act for Civil Court contempt is awarded so as to compel the party to comply with the orders of the Court. It is observed that order merely directing payment of fine will serve no deterrence and especially when the contemnor is sufficiently rich, he can pay any amount of fine and it will not have any desired effect. Even in the present case, contends learned Counsel, the respondents have no regard for the Court's order and are rich enough to bear the payment of maximum fine provided by law, to be imposed by this Court.

28. Having examined the rival submissions on the point of sentence, and considering the decisions pressed into service on behalf of the respective parties, I am inclined to take the view that having regard to the fact situation of the present case, the oral apology tendered by the respondents through their Counsel across the bar is only a lip service without any expression of remorse, penitence or contrition. I am of the view that the oral apology tendered on behalf of the respondents is not bonafide. Indeed, the defendant is right in contending that no written apology has been placed on record and the Court should not show any indulgence to such respondents. Moreover, to my mind, no extenuating circumstance is brought on record by the respondents, except to offer oral apology. As there is no mitigating circumstances on record and considering the totality of circumstances of the present case, I am inclined to follow the principle stated by the Apex Court in the case of Balram Singh (supra) that it would be a travesty of justice if the Court were to allow such gross contempt of Court to go unpunished, without an adequate sentence, especially when no mitigating circumstances are found on record not to pass a sentence of imprisonment. In my opinion, merely directing payment of fine will not be sufficient and have no desired effect on the respondents, whose conduct in the past has been noted to be recalcitrant and having acted in utter disregard of the orders of the Court. In the circumstances, the appropriate sentence, to my mind, is to direct the respondents to suffer imprisonment for a period of one month, in addition, they should pay fine of Rs. 2,000/- (Rupees Two Thousand) each, in default, to suffer further imprisonment of one month.

29. Accordingly I proceed to pass the following order :

(1) Respondents in Contempt Petition No. 66 of 2003 are held guilty of having

committed contempt of this Court, for which reason, they deserve to be sentenced to civil imprisonment for a period of one month. In addition, they shall be liable to pay fine of Rs. 2,000/- (Rupees Two Thousand} each, in default, to suffer imprisonment of one month.

(2) Show Cause Notice issued against the respondents is made absolute and Contempt Petition No. 66 of 2003 is disposed of on the above terms.

(3) Notice of Motion No. 598 of 2004 is allowed in terms of ad interim order passed by this Court on 18th September, 2003 and also in terms of prayer Clause (b) of Notice of Motion No. 598 of 2004.

(4) In view of the order passed on Notice of Motion No. 598 of 2004, no further orders are necessary on Notice of Motion No. 2678 of 2003 in Contempt Petition No. 66 of 2003.

(5) Registrar of this Court is directed to file written complaint in respect of action of perjury against the respondents in contempt petition before the Competent Court within eight weeks from today.

At this stage, Counsel for the respondents in contempt petition prays that operation of the above order in terms of Clause (1) and Clause (5) be stayed, as the respondents in contempt petition may consider of filing appeal against the present decision. The request seems to be reasonably. The same is granted. Operation of Clauses (1) and (5) of the above order not to be given effect to, for a period of eight weeks from today, on condition that the respondents deposit amount of fine quantified at Rs. 2,000/- (Rupees Two Thousand) each, within two weeks from today.

Issuance of certified copy is expedited.