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**(1994) 06 SHI CK 0003**  
**In the High Court Of Himachal Pradesh**  
**Case No : Cont. P. (C) No. 8 of 1994**

I.T.C. Ltd.

APPELLANT

Vs

J.P. Negi and Others

RESPONDENT

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**Date of Decision :** 03-06-1994

**Acts Referred:**

**Citation :** (1994) 2 ShimLC 320

**Hon'ble Judges :** V. Ratnam, C.J

**Bench :** Single Bench

**Advocate :** R.L Sood, for the Appellant; K.D. Sood, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V. Ratnam, C.J.—In this petition, the Petitioner has prayed that the Respondents should be punished for having committed contempt of the orders of this Court by disobeying the orders dated 17-9-1993 and 5-10-1993 (Annexures P-A and P-B respectively), and for a direction that the Respondents should be restrained from aggravating the contempt and to permit the Petitioner to life the apple juice concentrate, as per directions of the Court, by employing its own labour, transport etc. and Ors. incidental reliefs. Though in the contempt application, two orders of this Court dated 17-9-1993 and 5-10-1993 have been referred to, it is not now in dispute that the order passed on 17-9-1993 was subjected to an appeal in Letters Patent Appeal No. 3 of 1993 and on 5-10-1993, a Division Bench of this Court passed the following order:

Having heard the learned Counsel for the Appellant-applicant for some time and gone through the impugned order, we consider it to be a fit case to allow the Petitioner to lift the balance quantity of apple juice concentrate to the extent of 188.417 Metric Tonnes lying in the 14 designated tanks within the premises of Fruit Processing Plant at Parwanoo on furnishing Bank guarantee to the tune of Rs. 32,97,350 in the Registry of this Court and on filing an undertaking on affidavit to the effect that the applicant-Appellant on the direction of this Court,

after the Respondents are heard in the matter will either deposit the remaining amount, as per the impugned order in cash or furnish Bank guarantee to that extent, The Bank guarantee and undertaking be furnished on or before 8th October, 1993 before the Registrar of this Court. It is made clear that Bank guarantee to be furnished by the Appellant-applicant will be without prejudice to its rights and contentions.

Learned Counsel for the Appellant-applicant states that at least two days time will be required for making suitable arrangement for commencing the process of removal of the apple juice concentrate at the rate of approximately 10 M.T. per day and thus atleast 20 days will be required for the removal of the apple juice concentrate. In case Bank guarantee and requisite undertakings are furnished on or before 8th October, 1993, all endeavours will be made by the Appellant-applicant to lift the balance quantity of apple juice concentrate, namely, 188.417 M.T. on or before 31st of October, 1993.

We are not satisfied with the submissions made by the learned Counsel for the Respondent No. 1 that Appellant-applicant be asked to furnish Bank guarantee for an additional amount of Rs. 32,93,350 over and above the Bank guarantee which we have permitted the Appellant-applicant to furnish by virtue of our order, in view of the specific stand taken by Respondent No. 1 with respect to the ownership of the apple juice concentrate in question as has been noticed by the learned Single Judge at page 24 of the impugned order.

In view of the modification of the order passed by the learned Judge, by Division Bench in the manner indicated earlier, it would suffice to examine whether the Respondents have, in any manner, violated or disobeyed this order.

2. According to the order extracted above, the Petitioner was directed to furnish Bank guarantee to the tune of Rs. 32,97,350 before the Registrar of this Court and also to file an affidavit of undertaking to the effect that the Petitioner, on the direction of this Court, after the Respondents were heard in the matter, will deposit the remaining amount, as per the impugned order, in cash or furnish Bank guarantee thereto. In addition, it was also very clearly stated by the Court that the Bank guarantee and the undertaking should be furnished on or before 8-10-1993 before the Registrar of this Court. Again, the Division Bench has stated that in case the Bank guarantee and the undertaking is furnished on or before 8-10-1993, all endeavours will be made by the Appellant-applicant to lift the balance quantity of apple juice concentrate, namely, 188.417 M.T. on or before 31-10-1993. Purporting to comply with similar direction in the order dated 17-9-1993, it appears the Petitioner had filed a Bank guarantee on 4-10-1993, and, after the passing of the order by the Division Bench on 5-10-1993, referred to earlier, an application was filed in C.M.P. No. 89 of 1993 in L.P.A. No. 3 of 1993 (substituted Annexure R-3 in C.M.P. No. 13 of 1994), to the effect that the Bank guarantee, earlier given on 4-10-1993, which had not been accepted, may be ordered to be returned and the Petitioner may be permitted to substitute the same with the Bank guarantee dated 7-10-1993 in compliance of the direction of

the Division Bench. That application wound up by saying that the Bank guarantee issued by the Bank on 7-10-1993, may be substituted and also accepted. It is not now in dispute that the Bank guarantee, purporting to be in compliance of the order of the Division Bench, referred to earlier, was accepted by this Court only on 19-11-1993.

3. The main grievance of the Petitioner in this application is that, though the Petitioner had complied with the orders of the Division Bench in the matter of furnishing the guarantee and also the undertaking, it has been prevented from lifting the apple juice concentrate as per the order of the Court and that the furnishing of the guarantee for the purpose of lifting the apple juice concentrate is not in the nature of a condition precedent. On a careful consideration of the submissions so made, it is not possible to accept this contention. A careful reading of the order passed by the Division Bench, extracted earlier, as a whole, would indicate that before the Petitioner could be permitted to lift the balance quantity of apple juice concentrate to the extent of 188.417 M.T., it was necessary for the Petitioner to furnish the Bank guarantee and also give the undertaking. A time limit had also been set for the purpose of furnishing the guarantee and also the undertaking and, again, it had been very clearly and categorically stated that all endeavours for removal of the balance quantity of apple juice concentrate will be made in case the guarantee and requisite undertaking was furnished by the Petitioner on or before 8-10-1993. A conjoint reading of the several parts of the order would clearly indicate that the Court contemplated the Petitioner to furnish the Bank guarantee on or before 8-10-1993 and also the undertaking before it can be permitted to lift the apple juice concentrate of the quantity, referred to earlier. It is not now in dispute before this Court that the Bank guarantee furnished by the Petitioner was accepted only on 19-11-1993. It would follow that the Petitioner cannot complain of any disobedience of the order passed, by the Respondents, by their not allowing to remove the apple juice concentrate prior to 19-11-1993. On the Ors. hand, what is found in the record is that even on 15-10-1993, the Respondents had conveyed to the Petitioner the following: (Annexure PG)

The Bank Guarantee furnished by you has not been accepted by the Hon'ble High Court so far and the Court order dated 8-10-1993 has not been complied with by you till now. However, to avoid any disobedience of court order, we are permitting you to lift apple juice concentrate for the next five days only and in the meanwhile please get the Bank guarantee accepted from the High Court immediately.

From the tenor of this communication (Annexure PG), it seems obvious that the disobedience of any order passed by the Division Bench was farthest from the contemplation of the Respondents. In addition, it is seen from the reply filed by the Respondents that the Petitioner had removed the apple juice concentrate even beyond the five days from 15-10-1993, namely, 20-10-1993 to 10-11-1993. It was also not disputed before this Court that the Petitioner has

removed the entire quantity of apple juice concentrate by 10-11-1993. It is thus seen that even before the acceptance of the Bank guarantee by this Court on 19-11-1993, the Petitioner had been allowed to remove the whole quantity of apple juice concentrate, without the Respondents insisting upon the acceptance of the Bank guarantee by the Registrar of this Court. This attitude on the part of the Respondents cannot be stated to be something in the nature of either violation or disobedience with reference to the order passed by the Division Bench of this Court. It is thus seen that the Respondents have very readily agreed to give effect to the direction as well as the order passed by the Division Bench, though the Petitioner may not be stated to have fully complied with the terms and conditions imposed on it, by the order dated 5-10-1993.

4. Learned Counsel next contended that it is not open to the Respondents to stipulated certain Ors. conditions as have not been laid down in the order of the Division Bench. Elaborating this, learned Counsel pointed out that the Respondents had made a claim against the Petitioner for recovery of rent due in respect, of cold storage and it was also made to appear that unless those dues were cleared, the Respondents would not permit the clearance of the apple juice concentrate as directed by the order of the Division Bench. It may be that the Respondents had some claim against the Petitioner in respect of the cold storage. Even on the assumption that the Respondents had made a demand on the Petitioner that those amounts should be paid to them, that, by itself cannot be construed to be any act of violation or disobedience on their part with reference to the order of the Division Bench dated 5-10-1993. The question that arises for consideration is whether the Respondents have, in any manner, violated the order of the Division Bench dated 5-10-1993, and once, as has been seen earlier that even without furnishing the Bank guarantee, as ordered by the Court, on or before 8-10-1993, and its acceptance, the Petitioner had been permitted to lift the entire quantity of the apple juice concentrate, the Respondents cannot be said to have violated any order passed by this Court, meriting their being proceeded under the provisions of the Contempt of Courts Act. No Ors. point was urged. The contempt petition is dismissed with costs Rs. 3,000.