
(1997) 03 BOM CK 0037

In the Bombay High Court

Case No : Contempt Petition No. 170 of 1996

Jamnaben Shah and others

APPELLANT

Vs

Smt. Manjulaben and others

RESPONDENT

Date of Decision : 14-03-1997

Acts Referred:

Contempt of Courts Act, 1971 — Section 2

Citation : (1998) 2 ALLMR 121 : (1997) 4 BomCR 65 : (1998) CriLJ 173

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : G.K. Vora, for the Appellant; Mahendra Rathore, for the Respondent

Judgement

1. By this contempt petition the present petitioners pray that the respondents who have committed wilful and intentional breach and disobedience of the undertaking given by them before this Court on 11-4-94 be held guilty for civil contempt and committed to civil prison for a period of six months or for such period as this Court may deem fit and proper.

2. Shri Harakchand P. Shah, filed a suit for possession/eviction against Shri Harkisandas Vrindawan in the City Civil Court in the year 1976. After protracted trial for more than sixteen years on 26-10-1993, the said suit was decreed by the trial Court and decree for eviction was passed in favour of Shri Harakchand P. Shah. Harkisandas Vrindavan preferred appeal before this Court. During pendency of appeal Shri Harkisandas as well as Shri Harakchand died. The present petitioners were substituted as legal representatives of Shri Harakchand as respondents in the appeal and the present respondents-contemnors and one Shri Hemal were impleaded as legal representatives of Shri Harkisandas-appellant. The legal representatives of Shri Harkisandas are his wife, sons and daughters respectively. In the appeal aforesaid parties arrived at the compromise and according thereto the contemnors and Hemal were granted almost two years' time up to 7-1-96 for vacation of the premises and putting the decree-holders in possession and, therefore, parties submitted minutes of the consent

order on 11th January, 1994 which read thus :

1. Be the aforesaid appeal stand dismissed with no order as to costs subject to the concessions that :

(a) the respondents shall not execute the decree for possession till and up to 7th January, 1998 provided;

(i) the appellants give an undertaking to this Honourable Court within two weeks from 7th January, 1994 as per usual terms and give further undertaking to hand over vacant possession of the suit premises to the respondents/plaintiffs on or before 7th January, 1996.

(ii) the appellants to pay all the arrears of the rent/compensation after taking credit for the amount deposited in trial Court in the above suit by the appellants/defendants up to the end of October, 1993 at the rate of Rs. 20/- per month for payment to the plaintiffs/respondents and further to pay the compensation at the rate of Rs. 75/- per month from 1st November, 1993 till 31st January, 1994, and thereafter and further undertake to pay every month the sum of Rs. 75/- per month on or before 15th day of each month commencing from 15th February, 1994 without committing any two defaults; till delivery of possession of the suit premises.

2. In default of any of the conditions mentioned in clause one above, the decree to be executed forthwith without notice.

3. Undertaking given and to be given to stand accepted and as when filed. "February 1994."

3. Pursuant to the minutes of the consent order the present contemnors-respondents as well as another son of Contemnor No. 1 Hemal Harkisandas filed an undertaking before this Court which reads thus :

We, (1) Manjulaben Harkisondas, (2) Mayur Harkisondas, (3) Hemal Harkisondas, (4) Dipika Harkisondas, (5) Bakula Harkisondas, (6) Pragnya Harkisondas" residing at Room No. 7, Kantilal Chawl, Nahatum Gandhi Road, Borivli (East), Bombay-400086, and (7) Jyoti Vijay Mandavis, residing at 03-A, Borivali Shopping Centre, Chandavarkar Lane, Borivli (West), Bombay-400092, each of us do hereby jointly and severally, solemnly affirm and declare as follows :

1. We say and declare that we are in exclusive possession and occupation of the premises room No. 7 at Kantilal Chawl, M.G. Road, Borivli (East), Bombay-400086, subject-matter of the suit premises in B.C.C.C. Suit No. 6491 of 1976 (hereinafter for brevity's sake referred to as the "said premises" or "suit premises").

2. We further declare that save except us no one else is in occupation and/or possession of the said suit premises and we have further not created in any manner, any third party interest of any nature including either as sub-tenant and/

or as a licensee in the said premises or any part thereof.

3. Being aware of the concession granted by the respondents in the aforesaid appeal, which stands dismissed with "No order as to costs" as mentioned in the minutes of the Consent Order passed in the above Appeal, the time has been granted subject to the conditions as set out therein, up to 7th January, 1996 to vacate the said premises and each of us give an undertaking to the Hon"ble Court that during the period we have been permitted to occupy the said premises by virtue of the said Consent Order, we shall not induct any third party and/or create any interest of any nature whatsoever and/or part with the possession of the said premises or any part thereof to any one else.

4. We further undertake during the period of our occupation under the said Consent Order, we pay the arrears of rent (sic) compensation after taking credit for the amount deposited in trial Court in the above suit by us up to the end of October, 1993 at the rate of Rs. 20/- per month for payment to the plaintiffs/respondents and further pay the compensation at the rate of Rs. 75/- per month from 1st November, 1993 till 31st January, 1994 on or before 31st January, 1994 and thereafter further undertake to pay every month the sum of Rs. 75/- per month on or before 15th day of each month commencing from 15th February, 1994 without committing any two defaults, till delivery of possession of the suit premises.

5. We further undertake to hand over vacant and peaceful possession of the said premises to the respondents/plaintiffs on or before 7th January, 1996 removing all the bags and baggage"s and putting them in exclusive vacant possession of the said premises.

6. We give this undertaking in accordance with the said Consent Order passed in the said Appeal and the same be accepted by the Hon"ble Court."

4. Thus the contemnors-respondents and Hemal (son of contemnor No. 1 and brother of other contemnors) undertook before this Court to hand over vacant and peaceful possession of the said premises to the present petitioners on or before 7th January, 1996 removing all the bags and baggages and putting them in exclusive vacant possession of the said premises.

5. On the basis of the undertaking the respondents-contemnors continued to occupy and remain in possession of the disputed premises. Just two days before they were required to hand over vacant possession and put the petitioners in possession of the disputed premises on the basis of the undertaking given by them on 11-1-94 and the consent decree, on 5-1-96 one Haridas Katkoria (brother of contemnor No. 1 and maternal uncle of other contemnors) acting as guardian ad litem of Hemal Harkisandas filed a suit before this Court registered as Suit No. 17 of 1996 praying therein that the decree and consent terms dated 11-1-94 be set aside and the said minor be released of the undertaking dated 11-1-94. Pending the hearing and final disposal of the suit on behalf of the minor Hemal it was prayed that the original decree-holders (petitioners herein) be

restrained from taking any steps under the said consent terms and the undertaking dated 11-4-94. In the Notice of Motion taken out by the minor Hemal on 5-1-96 an ad interim limited order was passed in terms of prayer clause (a). Accordingly the decree-holders were restrained from taking any steps under the said consent terms or the undertaking dt. 11-1-94 against the minor Hemal. The notice of motion was disposed of by the learned single Judge (D. R. Dhanuka, J. as he then was) on 12-1-96. It was observed in the said order that the consent decree was binding on the estate of the deceased and the undertaking given by other judgment-debtors i.e. present contemnors-respondents would be enforceable if the undertaking was not carried out. As regards the minor Hemal a limited ad interim relief was granted precluding decree-holders from taking action against him in contempt. It appears that the guardian ad litem of minor Hemal challenged the order dt. 12-1-96 in appeal before Division Bench and the Division Bench on 1-2-96 granted ad interim relief prayed by minor in terms of prayer (a) and according to that the decree-holders were restrained from taking any steps under the consent terms and the undertaking against the minor and Notice of Motion was ordered to be heard afresh by the single Judge. The Division Bench made it clear that the ad interim relief was only in respect of minor and none else. After remand the Notice of Motion came up again before the learned single Judge (D. R. Dhanuka, J.) and he on 12-3-96 ordered that the order passed by Division Bench on 1-2-96 in appeal shall remain operative till disposal of suit. While passing order on 12-3-96 Dhanuka, J. observed that the conduct of the judgment-debtors (contemnors herein) lacked bona fides and perhaps the minor has been put up by the major judgment-debtors (contemnors herein). The suit now has been dismissed on 30th August, 96 by Smt. Baam, J. The learned single Judge while dismissing the suit observed that before the City Civil Court minor was properly represented by his mother (contemnor No. 1 herein) who was his natural guardian and the contention of the minor that guardian ad litem ought to have been appointed was without any basis. As regards the question whether the minor Hemal moved the Court bona fide or whether he has been set-up as an instrument merely to enable the other judgment-debtors contemnors herein) to back out of the undertaking, Baam, J. observed that the decree and undertaking which the minor seeks to set aside are of 11-1-94 but the suit has been filed almost after two years through guardian ad litem just two days before the contemnors herein were required to hand over possession. It was also observed while dismissing minor's suit that in appeal which was disposed of by this Court on 11-1-94 on the basis of the consent terms, the minor was represented by his mother - the natural guardian (contemnor No. 1 herein) and there was no allegation that the mother or the Advocate representing her acted prejudicial to his interest. In para 14 of the judgment Baam, J. observed thus :

14. Further, so far as this application is concerned, by the consent terms/ compromise the parties were required to hand over possession of the premises on January 7, 1996. Curiously enough till January 5, 1996 it did not do upon the

minor or his guardian that his rights were not protected and, therefore, it is apparent that the minor has been merely set up as rouser and this application is sought to be made on behalf of the minor merely with a view to avoid the eviction of the defendants from the suit premises in pursuance to the order dated January 11, 1994. So far as this application is concerned, I am constrained to observe that this is not a bona fide application made on behalf of the minor to protect his interest but an application to avoid the implementation of an order dated January 11, 1994 and, therefore, neither the machinery of the Court nor the provisions of law can be allowed to be implemented to protect such a party."

6. The dismissal of suit has been challenged by minor Hemal through guardian ad litem in appeal before the Division Bench and the said-appeal is pending. During pendency of appeal the Division Bench on 14-10-96 has granted stay in favour of minor-appellant. I am, therefore, not concerned with the effect of undertaking given by minor Hemal since his appeal is pending before the Division Bench and as against him the petitioners have been restrained from giving effect to the undertaking and the execution thereof. This contempt petition relates to the conduct or lack of it of the contemnors-respondents for disobedience and disregard of the solemn promise in the form of undertaking given before this Court, and, the question is : whether the contemnors-respondents are guilty of civil contempt for breach and non-observance of undertaking given by them on 11-1-94 before this Court or the stay order passed in favour of minor Hemal justified their defence that non-compliance of the undertaking by them was not deliberate and intentional ?

7. By the undertaking dated 11-1-94 the present respondents-contemnors in categorical and clear terms undertook to hand over vacant and peaceful possession of the premises in question, particularly Room No. 7 at Kantilal Chawl, M.G. Road, Borivli (East) to the present petitioners on or before 7th January, 1996 removing all the bags and baggage's and putting the present petitioners in exclusive possession of the said premises. Thus the solemn promise made by the respondents-contemnors before this Court was not only to hand over vacant and peaceful possession of the aforesaid premises to the present petitioners on or before 7-1-96 but also putting the present petitioners in exclusive vacant possession of the said premises. On the basis of the undertaking which was given on 11-1-94 and accepted, the contemnors accordingly were granted time of almost two years for vacation of the disputed premises. The contemnors pursuant to the undertaking aforesaid have admittedly not handed over possession of the said premises to the present petitioners on or before 7th January, 1996 nor put the petitioners in exclusive vacant possession by 7-1-96. Two days prior to the expiry of time for delivery of possession to the petitioners, on 5-1-96 a suit was filed by one Haridas Katkoria, brother of respondent No. 1 and maternal uncle of other respondents on behalf of Hemal as his guardian ad litem praying therein that petitioners herein decree-holders be restrained from taking any steps under the consent terms and the undertaking dated 11-1-94. Apparently, this step of filing of the suit on behalf of

minor Hemal through Haridas Katkoria cannot be said to be innocent and without the knowledge of the present respondents. The minor Hemal seems to have been put up by the present respondents who are mother, brothers and sisters of Hemal only with a design to resile from the undertaking given by them so that the present petitioners are not granted the possession. Even in the judgment passed by Baam, J. on 30th August, 96 in the suit filed by the minor Hemal through his guardian ad litem Haridas Katkoria, while dismissing the suit, it has been observed that the minor has been set-up as an instrument by the present contemnors to enable them to back out of their undertaking and the consent decree dated 11-1-94 by which the contemnors undertook to hand over the vacant possession by January 7, 1996. It has also been observed by Baam, J. in the judgment dt. 30th August, 1996 dismissing minor's suit that curiously enough the order and the undertaking the minor seeks to set aside are dt. January 11, 1994 in respect of which the suit has been filed by the minor through his guardian ad litem (brother of respondent No. 1 and maternal uncle of other respondents) two days before the contemnors were required to hand over the possession. In my view also if the suit filed by Hemal through his maternal uncle (brother of respondent No. 1 and maternal uncle of others) was bona fide and uninfluenced by the present respondents they would have immediately moved this Court for their release from the undertaking. The fact is that no application has been made by the present contemnors on or before 7-1-96 or immediately thereafter. Mr. Mayur H. Bhagtani, respondent No. 2 has filed affidavit in reply to this contempt petition on behalf of all contemnors, and, the defence set-out in the affidavit in reply is that Hemal filed a suit on original side of this Court challenging the consent terms and undertaking dated 11-1-94 on the ground that he was minor on that day and provisions of CPC were not complied with and this Court has on 5-1-96 granted stay to take any steps under the said consent terms. Thus, the respondents submit that they were unable to put the petitioners in vacant and peaceful possession of the suit premises, and decree in terms of consent terms could not be complied with and, therefore, they have not committed any act which may amount to contempt of this Court nor there was any deliberate or wilful attempt on their part. Mere statement that the respondents were always willing to comply with the undertaking has no meaning unless it seems to be so by their conduct and action. The suit filed by the Hemal and the orders passed thereon are only put forward as pretext for non-observance and non-compliance of the undertaking given by them when the contemnors appear to be real actors in getting the suit filed by Hemal through his maternal uncle when contemnor No. 1 is his real mother and natural guardian. In any case the interim orders passed during the pendency of suit filed by Hemal only he has been protected and even after dismissal of suit and during pendency of appeal, the relief operates only in favour of Hemal. Moreover, the contemnors were well aware that Hemal was minor on the date the undertaking was given by them along with Hemal and that such undertaking may not be binding on Hemal and if so, they may not be able to comply with the undertaking by handing over possession on or before time granted to them for vacation. This

fact was never brought to the notice of this Court by the contemnors. The contemnors had full knowledge that their first appeal had no merit and accordingly sought concession from the petitioners by way of two years time for vacation of the premises and putting the petitioners in possession. That is all the consent order. The contemnors, thus, misled the Court and made this Court to believe that they would hand over peaceful vacant possession of the premises in question on or before 7-1-96 and on that basis took time of almost two years for vacation of the premises in question in appeal having no merit. It seems the contemnors had full knowledge right at the time of giving the undertaking that they would not comply with the same and put up Henial as tool for non-observance and non-compliance of the undertaking and this clearly demonstrates the deliberate misconduct of the contemnors sufficient for their committal to contempt.

8. An undertaking is a solemn promise made by a party to the Court and once such promise has been made to the Court and on the faith of such solemn promise the Court sanctions a particular course or action or inaction, such party is bound to observe and comply with such undertaking. When a person volunteers to give an undertaking knowing all the facts and consequences and there under derives the entire advantage he cannot wriggle out of the undertaking. The person giving an undertaking is bound to discharge the undertaking and so long as the undertaking subsists and the person giving undertaking has not been released from the undertaking he is duty bound for its observance.

9. In Lajuklata Vs. Nrishingha Prosad, the Division Bench of the Calcutta High Court observed, "The Court, it is true, ought not to be vindictive in matters of this kind. At the same time, the Court cannot allow itself to be trifled with. Litigants before the Court ought to understand that they will not be permitted to give undertakings to this Court and then break them with impunity; far less will they be permitted to have recourse to such dubious means as arming themselves with the orders of a subordinate Court in prosecution of a scheme to flout the orders of this Court".

10. The aforesaid ratio of the Calcutta High Court squarely applies to the facts of the present case where the contemnors respondents have not only misled the petitioners but also took this Court for a ride and employed dubious means by putting Hemal in front. They also misled this Court, submitted an undertaking and solemnly promised that they would handover peaceful vacant possession to the petitioners on or before 7th January, 96 and thereby got advantage to remain in possession for about two years, and two days before the said time was expiring a suit was got filed on behalf of minor Hemal through brother of respondent No. 1 and maternal uncle of other respondents with the hope that they would be able to break the law with impunity and filing of the suit on behalf of minor would protect them and provide the shield for non-compliance and non-observance of the undertaking. The purity of administration of justice cannot be

permitted to be polluted by such litigants. The majesty of law cannot be lowered by such scrupulous litigants. They must not forget that arms of law are too long to reach and catch such persons who intentionally, wilfully, deliberately and knowingly try to break it for their petty gains. There cannot be more serious and grave situation when a litigant thinks he is above law and the undertaking furnished by him or her has no sanctity and the arm of law shall not be able to penetrate the shield put up by him forgetting that such shield is thin screen with no strength.

11. In Chhaganbhai Norsinbhai Vs. Soni Chandubhai Gordhanbhai and Others, the Apex Court relied upon the judgment of Dashwood of Dashwood referred to in Halsbury's Laws of England, IVth Edition (Vol. IV p. 72) which states "An undertaking given to the Court by a person or Corporation in pending proceedings on the faith of which the Court sanctions a particular course of action or inaction as the same force as an injunction made by the Court and breach of the undertaking is misconduct amounting to contempt."

12. In Dr. (Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills Ltd. and others, the Appex Court observed that the party giving undertaking to the Court based on the implications or assumptions which are false to its knowledge is guilty of misconduct amounting to contempt. In the case before the Apex Court in Dr. (Mrs.) Roshan Sam Joyce (supra) a tenant, a company had filed a writ petition against the eviction decree passed against it and on the petition being dismissed prayed for grant of time to vacate the premises and the time was granted subject to its filing an undertaking that it would not part with possession of the suit premises or creating third party interest in the suit premises. The tenant company although knowing fully well that the Chairman of the company was already a lawful tenant of the suit premises, gave the requisite undertaking which clearly implied that the company was in possession of the suit premises and in a position to handover possession of the suit premises after the time granted to vacate the premises expired and thus misled the Court. The Apex Court held the tenant guilty of misconduct amounting to contempt. The Supreme Court reversed the judgment of this Court and accordingly convicted the contemnors. In the present case the contemnors were well aware that Hemal was minor and he may not be bound by the undertaking given by him, but still misled this Court by undertaking that they would handover the peaceful vacant possession of the premises in question to the petitioners and would put the petitioners in possession on or before 7-1-1996. Thus the contemnors are clearly guilty of misconduct amounting to contempt. The contemnors as a matter of fact have also perpetrated fraud while submitting the undertaking when they know that Hemal was minor and still alongwith him the undertaking was filed by the contemnors respondents.

12A. The facts aforestated would clearly show that the contemnors had no intention to hand over possession on or before 7-1-1996 and, therefore, wilfully and deliberately did not comply with the undertaking given by them before this

Court. The respondents contemnors have not been released from undertaking given on 11-1-94. I, therefore, have no hesitation in holding that the present contemnors are guilty of civil contempt for wilfully and deliberately not complying the undertaking given by them before this Court on 11-1-1994. Since some of the contemnors are ladies and after hearing the learned counsel for the parties I found that the conduct of the contemnors was serious and, therefore, before starting the dictation of the order, I gave Mr. Rathore the learned counsel appearing for contemnors sufficient time to enable his clients to reconsider the attitude taken by them in this proceeding. Mr. Rathore did consult the contemnors present in the Court and after due consultation with the clients he submitted that stand taken by his clients does not require review by them. I found that the contemnors have not realised the seriousness of the situation and exhibited the attitude which clearly demonstrated that the contemnors never intended to comply with the undertaking. The Court is, therefore, left with no choice but to pass appropriate orders to ensure that the majesty of law is not lowered and a party having given undertaking before this Court is not permitted to break it with impunity. The contempt proceedings always have dual objectives that faith of the public is not lost in the administration of justice and that the contemner is compelled to do what the law requires him to do. In *The Aligarh Municipal Board and Others Vs. Ekka Tonga Mazdoor Union and Others*, the Apex Court held thus :

"Contempt proceedings against a person who has failed to comply with the Court's order serves a dual purpose :

- (1) Vindication of the public interest by punishment of contemptuous conduct and
- (2) Coercion to compel the contemner to do what the law requires of him. The sentence imposed should effectuate both these purposes.

It must also be clearly understood in this connection that to employ a subterfuge to avoid compliance of a Court's order about which there can be no reasonable doubt may in certain circumstances aggravate the contempt."

13. Taking the entire facts and circumstances of the case and after hearing the learned counsel for the contemnors on question of sentence. I find that the sentence of simple imprisonment of three months to each one of them and fine of Rs. 2000/- each shall meet the ends of justice.

14. Accordingly, I hold the contemnere respondents guilty of civil contempt u/s 2(b) of the Contempt of Courts Act, 1971, and, award each one of them simple imprisonment for a term of three months and fine of Rs. 2,000/- each.

15. Mr. Rathore, the learned counsel for the contemnors orally prays for staying the operation of this order. Subject to deposit of fine before this Court within one week from today, the order of sentence shall remain stayed for a period of three weeks from today.

16. Order accordingly.