

**(2022) 05 KAR CK 0003**

**In the Karnataka High Court**

**Case No : Writ Petition No. 7692 Of 2022 (GM-CPC)**

K. Somanath Nayak

APPELLANT

Vs

D. Veerendra Heggade ?

RESPONDENT

**Date of Decision : 05-05-2022**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 151  
Code Of Criminal Procedure, 1973 — Order 21 Rule 32, Order 21 Rule 32(1), Order 21 Rule 32(2), Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, Order 39 Rule 2A(1), Order 39 Rule 2(iii), Order 39 Rule 3  
Evidence Act, 1872 — Section 17  
Karnataka Land Reforms Act, 1961 — Section 66  
Contempt Of Courts Act, 1971 — Section 10  
Code Of Civil Procedure, 1908 — Section 9A, 115, 151  
Constitution Of India, 1950 — Article 14, 19, 21, 136, 227, 300

**Citation : (2022) 05 KAR CK 0003**

**Hon'ble Judges : E.S. Indires, J**

**Bench : Single Bench**

**Advocate : Pramod N Kathavi, K. Chandranath Ariga**

**Final Decision : Dismissed**

## Judgement

E.S. Indires, J

1. This Writ Petition is filed assailing the order dated 22nd March, 2022 passed in MA No.8 of 2021 by Principal Senior Civil Judge and JMFC at Belthangady dismissing the appeal and confirming the order dated 08th June 2021 passed in Civil Miscellaneous Petition No.3 of 2015 on the file of the Additional Civil Judge and JMFC, Belthangady (hereinafter referred to as "the trial Court") allowing application IA.I filed under Order XXXIX Rule 2A read with Section 151 of the Code of Civil Procedure in Original Suit No.226 of 2013 before the trial Court.

### FACTS OF THE CASE

2. The relevant facts for adjudication of this Writ Petition are that, the

respondent herein is the plaintiff in Original Suit No.226 of 2013 on the file of the Civil Judge and JMFC, Belthangady, against the defendant No.6/petitioner herein, seeking relief of permanent prohibitory injunction restraining defendants and their agents claiming through them, from making or publishing any imputations / statement /allegations /opinions/News, either in oral, written, electronic or print form/media or any other form of communication/publication, which would directly or indirectly or in any other way, undermine/lower/damage/harm or tend to undermine /lower /damage/harm the reputation of the plaintiff, his family or Sri Khestra Dharmasthala, popularly known as Dharmasthala, its temple, Institution and their Management Committee. In the aforesaid suit, plaintiff filed application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, seeking temporary injunction restraining the defendants and their agents claiming through them from making or publishing any imputations/ statement/allegations/opinions/news, either oral, written, electronic or print form/ media or any other form of communication/publication, which would directly, indirectly or in any other way, undermine/lower/damage/harm or tend to undermine/lower/damage/harm the reputation of the plaintiff, his family or Sri Khestra Dharmasthala, its temple, Institution and their Management Committee. The trial Court, by order dated 05th November, 2013 granted ad-interim temporary injunction as sought for in IA.I filed by the plaintiff. Thereafter, the case was listed before the trial Court on several dates. In the meanwhile, the plaintiff has filed application under Order XXXIX Rule 2A read with Section 151 of Code of Civil Procedure, contending that defendant No.6/petitioner herein is guilty of committing disobedience of the injunction order dated 05th November, 2013 and accordingly, sought for attachment of properties of the defendant No.6 and to detain the defendant No.6 in Civil Prison for disobedience of interim injunction order dated 05th November, 2013 (Annexure-C). The said application was contested by the defendant No.6/petitioner herein by filing objection as per Annexure-D. Parties to the suit tendered evidence. The trial Court, after considering material on record, by impugned order dated 08th June, 2021 allowed Civil Miscellaneous Petition No.3 of 2015 with costs. The said order passed by the trial Court was challenged by the defendant No.6/petitioner herein in MA No.8 of 2021 before the First Appellate Court, and the said appeal was contested by the plaintiff/respondent herein. The First Appellate Court, after considering the material on record, by its order dated 22nd March, 2022, dismissed the appeal and as such, confirmed the order dated 08th June, 2021 in Civil Miscellaneous Petition No.3 of 2015. Feeling aggrieved by the same, defendant No.6 has presented this Writ Petition.

3. Respondent/plaintiff has filed detailed statement of objections, contending that the petitioner is continuously trying to malign the name of the respondent, his family members and Sri Kshetra Dharmasthala, by spreading false rumors, making publication of false allegation in newspapers, electronic media, Television and other modes of publications. The statement of objections also refers to defamatory publications made by the petitioner against the respondent. It is also

averred that both the courts below have concurrently held against the petitioner and therefore, the jurisdiction under Article 227 of the Constitution of India being limited, sought for dismissal of the Writ Petition.

4. I have heard Sri. Pramod N. Kathavi, learned Senior counsel appearing on behalf of Smt.S Aishwarya, Counsel for the petitioner and Sri. K. Chandranath Ariga, learned counsel appearing for the respondent.

#### SUBMISSIONS OF THE PETITIONER

5. Sri. Pramod N. Kathavi, learned Senior counsel appearing for the petitioner invited the attention of the Court to the operative portion of the order dated 08th June, 2021 in Civil Miscellaneous Petition No.3 of 2015 and contended that, though the respondent/plaintiff has not sought for compensation in the proceedings, the trial Court erred in awarding compensation of Rs.4,50,000/- and the said finding recorded by the trial Court requires to be interfered with in this Writ Petition. Emphasizing on this aspect, he submitted that though the trial Court has no jurisdiction/power to award compensation for violation of interim injunction order, it is not forthcoming in the impugned order as to on what basis the trial Court quantified the compensation, and as such, he sought for interference in this Writ Petition.

6. Sri. Pramod N. Kathavi, learned Senior counsel, further contended that the trial Court, on an earlier occasion allowed the Civil Miscellaneous Petition No.3 of 2015 on 28th August, 2017, and that apart, the respondent herein has filed Civil Miscellaneous Petition No.8 of 2015 against the petitioner herein, on continuous violation of ad-interim injunction and these petitions were allowed together on 28th August, 2017 and feeling aggrieved by the same, the petitioner herein has filed MA No.10 of 2017 and MA No.11 of 2017 on the file of the First Appellate Court, and the said appeals were allowed by a common order dated 07th February, 2018 remanding Civil Miscellaneous petitions to the trial Court for fresh disposal. Thereafter, the trial Court, by its order dated 23rd March, 2018, allowed the petition and feeling aggrieved by the same, the petitioner herein filed MA No.8 of 2018 before the First Appellate Court, and same came to be allowed by order dated 08th November, 2019, remanding the matter to the trial Court for fresh disposal and thereafter, the trial Court on fresh consideration of material, by impugned order dated 08th June, 2021 allowed the petition and same was challenged in MA No.8 of 2021 and the First Appellate Court, confirmed the order of the trial Court. Feeling aggrieved by the same, the present writ petition is filed. Referring to these chronological events, learned Senior Counsel submitted that the finding recorded by both the courts below are incorrect insofar as award of compensation is concerned, as there is no power for the trial Court to award compensation. He further submitted that Exhibits P1 to P19 marked before the trial Court are not properly appreciated by both the courts below as these documents cannot constitute "disobedience" under Order XXXIX Rule 2A of Code of Civil Procedure.

7. Next, Sri Pramod N. Kathavi, learned Senior counsel argued that the perusal of Exhibits P1 to P19 would suggest that, the petitioner, being the President of Nagarika Seva Trust, has spoken about the illegalities committed by the respondent and his family members, acquiring land in the surrounding and in the vicinity of the temple in question and these statements are made through the Trust only with a view to expose the truth in good faith for the public good/in the interest of society and therefore, same cannot be construed as "disobedience". Emphasising on these aspects, Sri. Pramod Katavi, argued that the respondent never appeared before the Court nor bothered to adduce evidence before the trial Court. He further submitted that the PW1-Power of attorney holder of the respondent, has no locus standi to represent or act on behalf of or represent the Temple, Institution and their Management Committee, which are legal entities and the said aspect of the matter was not considered by the courts below. Referring to the remarks in Exhibits P2 to P17, the learned Senior Counsel argued that the publications in these documents are true and correct and are derived from the public documents, which are already in public domain and therefore, actions complained of by the petitioner herein against the respondent, his family members and the management of the Temple, do not constitute any disobedience under the provisions of the Code of Civil Procedure. The words spoken or statement published in the print media are made in good faith and same neither constitute disobedience nor are of deliberate in nature and same would not undermine the dignity or majesty of the Court of justice and both the courts below have not appreciated the evidence on record in the right perspective and therefore, he contended that the impugned orders passed by both the courts below require to be set aside in this Writ Petition.

8. Referring to the finding recorded by the trial Court with regard to "admission" on the part of the petitioner herein regarding disobedience, the learned Senior Counsel contended that, Exhibits P2 to P17 were confronted to the petitioner herein and the petitioner deposed that these statements are made known to the public as an office bearer of the Nagarika Seva Trust and same cannot be construed as "admission" under Section 17 of the Indian Evidence Act. In the absence of such counter truth, the respondent could not maintain an application for disobedience of order of temporary injunction.

9. Yet another ground raised by the learned Senior counsel for the petitioner is that, the respondent herein has been targeting the petitioner alone and not impleading the Trust or all the officer bearers of the Nagarika Seva Trust as party respondents to the proceedings. Continuing his arguments on the very same aspect, he contended that both the courts below failed to appreciate that alleged remarks made by the petitioner is not done in his personal capacity, but as a President of Nagarika Seva Trust and statements recorded in Exhibits P2 to P17 are made pursuant to the discussion that had taken place in the Nagarika Seva Trust deliberations and therefore, sentencing the petitioner alone is violation of Articles 14, 19 and 21 of Constitution of India.

10. Sri Pramod Kathavi, learned Senior Counsel, further argued that the petitioner has tendered an unconditional apology before the trial Court in evidence and, further, petitioner is having utmost respect to the Court and if the exposure of the truth by the petitioner in good faith and for the public good, the same cannot be considered as disobedience of the court order and therefore, he contended that both the courts below have committed an error and have caused miscarriage of justice to the petitioner. The petitioner always had high regards for the Court proceedings and is conscious that court majesty to be protected. Referring to the deposition of RW1, particularly, with regard to paragraphs 4 and 8, Sri Pamod N Kathavi argued that the finding recorded by the trial Court punishing the petitioner for violation of the interim order is incorrect. He submitted that RW1 is not a party to the proceedings and said aspect has not been considered by both the courts below.

11. Sri Pamod Kathavi, further contended that the respondent and his family members have given false declaration of assets/immovable properties before the Land Tribunal, Belthangady and before the State Government and have not declared the assets of land and property even with respect to the temple in question and therefore, he contended that petitioner herein tried to expose the cause of justice, however, suffered personal injury on account of the false allegations made by the respondent and his family members in the Civil Miscellaneous Petition. He further contended that the finding recorded by the trial Court that the admission made by RW1 that the petitioner herein has accused the respondent as a corrupt man persisting in making such speeches affecting his character, integrity and honesty, are incorrect. Elaborating on these aspects, learned Senior Counsel argued that the petitioner herein does not have any motive to cause personal injury to the respondent and being an office bearer of Nagarika Seva Trust, has revealed the factual aspects to the public domain. He further contended that the respondent has not made any effort to examine other office bearers of Nagarika Seva Trust and therefore, the learned Senior Counsel submitted that both the courts below have not considered the plea of justification rendered by the petitioner herein in the pleadings or in the evidence. The trial Court ought to have granted opportunity to the petitioner herein before award of punishment sentencing for imprisonment in civil prison. To buttress his arguments on the aforesaid aspects, Sri. Pramod Kathavi, learned senior counsel, relied upon the following judgments:

a) SMT. PUSHPABEN AND ANOTHER v. NARANDAS V. BADIANI AND ANOTHER reported in AIR 1979 SC 1536;

b) PRAKASH v. STATE OF KARNATAKA reported in (2014)12 SCC 133;

c) SUSHIL MITTAL AND ANOTHER v. R D BHARDWAJ AND ANOTHER reported in AIR 2003 HIMACHAL PRADESH 170.

12. Referring to the aforementioned judgments, Sri. Pramod Kathavi, learned Senior counsel, argued that the Courts below ought to have evaluated the

evidence of the witnesses as a whole and taking only the stray sentences in the deposition, has wrongly convicted the petitioner, which requires to be set aside in this petition.

13. Lastly, learned senior counsel contended that the trial Court, has decreed the suit in Original Suit No.226 of 2013 on 07th July, 2020 and feeling aggrieved by the same, the petitioner herein has filed RA No.23 of 2020 before the First Appellate Court which came to be dismissed on 08th October, 2021 and feeling aggrieved by the same, the petitioner herein has filed RSA No.187 of 2022 and same is pending consideration before this Court, and as such, Sri Pramod Kathavi submitted that the finding recorded by the both courts below require to be set aside in this writ petition.

#### SUBMISSIONS OF THE RESPONDENT

14. Per contra, Sri Chandranath Ariga, learned counsel appearing for the respondent, argued that, Order XXXIX Rule 2A of Code of Civil Procedure connotes "disobedience" and not "willful disobedience" as contended by the learned Senior counsel. Referring to the averments made in the plaint and the order dated 05th November, 2013 passed by the trial Court on IA.I filed under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, he sought to justify the impugned orders in the writ petition. The principal argument advanced by Sri Chandranath Ariga is that, the petitioner, in his cross-examination, admitted with regard to making defamatory remarks against the respondent despite being fully aware about the interim order passed by the trial Court on IA.I in Original Suit No.226 of 2013. In this regard, he referred to the law declared by the High Court of Madhya Pradesh in the case of UMRAOSINGH v. RAMGOPAL AND ANOTHER reported in AIR 1961 MP 9 and submitted that the remarks made by petitioner against the respondent, during the operation of the injunctive relief, amounts to disobedience of interim order dated 05th November, 2013 under Order XXXIX Rule 2A of Code of Civil Procedure.

15. Sri Chandranath Ariga argued that the petitioner herein has challenged the order dated 19th February, 2016 passed by the trial Court before this Court in Writ Petition No.14690 of 2016, for striking off the evidence of PW1 tendered as a General Power of Attorney of respondent and this Court, rejected the writ petition and same has reached finality and therefore, the contentions raised by the learned Senior Counsel with regard to ignoring the deposition of the Power of Attorney of the respondent cannot be accepted. In respect of orders passed by the Appellate Court in MA No.10 of 2017 and MA No.11 of 2017 dated 07th February, 2018 and in MA No.8 of 2018 dated 08th November, 2018, he refers to the finding recorded by the First Appellate Court and argued that the Appellate Court remanded the matter to the trial Court for fresh consideration to afford opportunity to the petitioner and not on the merits of the case with regard to finding recorded against the petitioners and therefore, Sri Chandranath Ariga, refuted the contentions raised by the learned Senior Counsel appearing for the petitioner. In this regard, learned counsel for the respondent, further contended

that even after the remand order passed by the First Appellate Court, fullest opportunity was given to the petitioner to adduce further evidence in the matter, particularly RW2 was examined after remand by the First Appellate Court, which reflects that both the courts below have granted fair hearing and provided opportunity to the petitioner herein to take appropriate defence in the matter.

16. Sri Chandranath Ariga, argued that the jurisdiction under Article 227 of the Constitution of India is limited with regard to interference made by the Courts below and in this regard, he referred to the judgments of the Hon'ble Supreme Court in the case of MOHD. YUNUS v. MOHD. MUSTQAIM AND OTHERS reported in (1983)4 SCC 566 and in the case of ESTRALLA RUBBER v. DASS ESTATE (P) LTD reported in (2001)8 SCC 97. He also referred to the judgment of this Court in the case of K.S. SIDDAPPA v. LAKSHMAMMA AND ANOTHER reported in AIR 1964 MYS 313. Referring to these judgments, he submitted that the impugned orders passed by the Courts below require to be affirmed in this petition.

17. Insofar as Sri Dharamasthala Manjunathaswamy Institution is concerned, Sri Ariga invited the attention of the judgment of the Hon'ble Supreme Court in the case of COMMISSIONER FOR HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS, MYSORE v. SRI RATNAVARMMA HEGGADE (DECEASED) BY HIS LRs reported in (1977)1 SCC 525, and argued that the said Institution is a private endowment including the Institutions like Nelleyadi Beedu, Chandranatha Basthi, Manjunatha temple, Ammanavaru Temple and Heggadeship, and he further contended that the Hon'ble Supreme Court has recognised the aforementioned composite Institutions of Dharamasthala as a private entity and therefore, Sri Manjuantha Temple is a part and parcel of the composite institution known as Dharamasthala and therefore, he contended that the allegation made by the petitioner herein is to defame the entire Institution including the Temple in question.

18. Insofar as the allegation made by the petitioner in the news and print media relating to illegal acquisition of the land is concerned, Sri Chandranath Ariga invited the attention of the Court to the memo of documents filed before the Land Tribunal, Belthangady and argued that prior to 01st March, 1974, the total extent of the land belonging to ancestors of the respondent was 4,671.06 acres out of which, after amendment to the Karnataka Land Reforms Act, dated 01st March, 1974, the extent of land was reduced to 3,620.35 acres. That apart, the remaining land is in an extent of 431.235 acres for plantation and converted land is in an extent 208.075 acres and non-agriculture land is to an extent of 334.93 acres and the unutilised land under Section 66 of the Land Reforms Act is in an extent of 974.24 acres and the 'D' class conversion land is in an extent of 137.64 acres and therefore, he contended that, most of the lands have been given to occupants on account of amendment to Land Reforms as well as Temple in question, including various benevolent measures taken up for the upliftment of the downtrodden. In this regard, Sri Chandranath Ariga argued that RW1, at the instance of the petitioner herein, has lodged private complaint in PC No.11 of

2015 against the respondent herein and the said criminal case was quashed by this Court by order dated 22nd July, 2019 in Writ Petition No.21974 of 2016.

19. Further, Sri Chandranath Ariga referred to paragraph 8 in the application IA.I (Annexure-C), and submitted that the damage caused to the reputation of the plaintiff and the Institution is unbearable and immense. He further argued that, even during 2001 and 2002, the petitioner made reckless allegations against the respondent herein and the Institution, through print media and Whatsapp messages. Emphasising on these aspects, Sri Chandranath Ariga submitted that the trial Court, after considering the entire material on record, in the right perspective, so also, having taken into account the fact that the address of defendant No.6 in the plaint refers to as "President, Nagarika Seva Trust, Guruvayanakere, Belthangady Taluk", however, the address before the First Appellate Court was shown different, had arrived at a right conclusion, which cannot be disturbed and requires to be affirmed in this petition. Elaborating on the evidence of PW1-General Power of Attorney of the petitioner, Sri Chandranath Ariga argued that the Power of Attorney holder is a contemporary and known personally to the respondent and Institution and also spoken about the mental agony caused to the respondent during the said period. He also referred to the evidence of RW1 and argued that the petitioner deliberately undermined the reputation of the respondent herein. Accordingly, learned counsel appearing for the respondent sought to justify the impugned orders passed by the courts below. In order to refute the contention of the learned Senior Counsel with regard to the fact that the trial Court has no jurisdiction to award compensation is concerned, Sri Chandranath Ariga places reliance on the judgment of the Hon'ble Supreme Court in the case of RAMRAMESHWARAI DEVI AND OTHRES v. NIRMALA DEVI AND OTHERS reported in (2011)8 SCC 249.

20. Nextly, insofar as arguments advanced by the learned Senior counsel appearing for the petitioner that the petitioner herein tendered apology as per paragraph 8 of the affidavit of RW1, Sri Chandranath Ariga placed reliance on the judgment of the Hon'ble Supreme Court in the case of PATEL RAJNIKANT DHULABHAI AND ANOTHER v. PATEL CHANDRAKANT DHULABHAI AND OTHERS reported in (2018)14 SCC 561 and argued that the apology tendered by the petitioner was unqualified and was adamant in nature and same cannot be accepted and accordingly, learned counsel appearing for the respondent, sought for dismissal of the Writ Petition.

#### CONSIDERATION

21. In the light of the arguments advanced by the learned counsel appearing for the parties, I have carefully considered the material available on record, as the learned counsel appearing for the parties have supplied the entire material on record filed before the courts below. I have meticulously looked into the finding recorded by both the courts below and evaluated the arguments advanced by the learned counsel appearing for the parties. In the backdrop of the narration of facts referred to above, the following points would arise for my determination in



this Writ Petition:

1. Whether the impugned orders passed by the Courts below requires interference under Article 227 of the Constitution of India?
2. Whether the conclusion arrived at by the Courts below that the petitioner/defendant No.6 disobeyed the order dated 05th November, 2013 in Original Suit No.226 of 2013 on the file of Civil Judge and JMFC, Belthangady is just and proper?
3. On conclusion, award of compensation by the trial Court is justified?
4. What order?

22. Before advertng to the factual aspects of the case, it is relevant to understand the scope and ambit of Order XXXIX Rule 2A of the Code of Civil Procedure.

23. In the case of MORGAN STANLEY MUTUAL FUND v. KARTICK DAS reported in (1994)4 SCC 225, Hon'ble Supreme Court has laid down the guidelines for grant of ex-parte injunction. At paragraphs 36 to 38, it is observed thus:

"36. As a principle, ex-parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex-parte injunction are-

- (a) whether irreparable or serious mischief will ensue to the plaintiff;
- (b) whether the refusal of ex-parte injunction would involve greater injustice than the grant of it would involve;
- (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- (d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;
- (e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.
- (f) even if granted, the ex parte injunction would be for a limited period of time.
- (g) General principles like prima facie case balance of convenience and irreparable loss would also be considered by the court.

37. In United Commercial Bank v. Bank of India, this Court observed: (SCC pp. 787-88, paras 52-53) "No injunction could be granted under Order 39, Rules 1 and 2 of the Code unless the plaintiffs establish that they had a prima facie case, meaning thereby that there was a bona fide contention between the parties or a serious question to be tried. The question that must necessarily arise is whether in the facts and circumstances of the case, there is a prima facie case and, if so,

as between whom? In view of the legal principles applicable, it is difficult for us to say on the material on record that the plaintiffs have a prima facie case. It cannot be disputed that if the suit were to be brought by the Bank of India, the High Court would not have granted any injunction as it was bound by the terms of the contract. What could not be done directly cannot be achieved indirectly in a suit brought by the plaintiffs.

Even if there was a serious question to be tried, the High Court had to consider the balance of convenience. We have no doubt that there is no reason to prevent the appellant from recalling the amount of Rs 85,84,456. The fact remains that the payment of Rs 36,52,960 against the first lot of 20 documents made by the appellant to the Bank of India was a payment under reserve while that of Rs.49,31,496 was also made under reserve as well as against the letter of guarantee or indemnity executed by it. A payment 'under reserve' is understood in banking transactions to mean that the recipient of money may not deem it as his own but must be prepared to return it on demand. The balance of convenience clearly lies in allowing the normal banking transactions to go forward. Furthermore, the plaintiffs have failed to establish that they would be put to an irreparable loss unless an interim injunction was granted.

38. This Court had occasion to emphasise the need to give reasons before passing ex parte orders of injunction. In *Shiv Kumar Chadha v. 5* (1981) 2 SCC 766 *Municipal Corpn. of Delhi*<sup>6</sup>, it is stated as under: (SCC pp. 176-77, paras 34-35) "... the court shall 'record the reasons' why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule '1, the procedure prescribed under the proviso has been followed. The party which invokes the Jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile

exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of *Taylor v. Taylor*, and *Nazir Ahmed V. Emperor*. This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of *Ramachandra Keshav Adke V. Govind Jote Chavare*. As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed."

24. It is also relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *STATE OF BIHAR v. RANI SONABATI KUMARI*, reported in AIR 1961 SC 221 wherein, Hon'ble Apex Court at paragraphs 17 to 36 of the judgment, held as follows:

"17. It was urged that the Subordinate Judge by his order directed the State "not to issue any notification for taking possession "-and as the notification under S.3(1) does not proprio vigore affect or interfere with the possession of the proprietor or tenure-holder, the issue of such a notification was not within the prohibition. The same argument was addressed to the High Court and was repelled by the learned Judges and in our opinion correctly. In the first place, the only "notification" contemplated by the provisions of the Act immediately relevant to the suit, was a notification under S.3(1). Such a notification has the statutory effect of divesting the owner of the notified estate of his or her title to the property and of transferring it to and vesting it in the State. The State is enabled to take possession of the estate and the properties comprised in it by acting under S.4, but the latter provision does not contemplate any notification, only executive acts by authorized officers of the State. Of course, if action had been taken under S.4, and the possession of the respondent had been interfered with, there would have been a further breach of the order which directed the State. not to interfere with or disturb in any manner, the plaintiff's possession. What we desire to point out is that the order of the Court really consisted of two parts- the earlier directed against the defendant publishing a notification which in the context of the relevant statutory provisions could only mean a notification under S.3(1) and that which followed, against interfering with the plaintiff's possession and the fact that-the second part of the order was not contravened is no ground for holding that there had been no breach of the first part. In the next place, the matter is put beyond the pale of controversy, if the order were read, as it has to be read, in conjunction with the plaint and the application for a temporary injunction. Mr. Sinha did not seriously contend that if the order of the Court were understood in the light of the allegations and prayers in these two documents, the reference to the "notification" in it was only to one under S.3(1)

of the Act, and that the injunction therefore was meant to cover and covered such a notification. We, therefore, hold that this objection must fail.

18. The second contention urged was that even if on a proper construction of the order, read in the light of the relevant pleadings, the State Government was directed to abstain from publishing a notification under S.3(1) of the Act, still, if the order was ambiguous and equivocal and reasonably capable of two interpretations, a party who acted on the basis of one of such interpretations could not be held to have wilfully disobeyed the.. order. Stated in these terms, the contention appears unexceptionable. For its being accepted in any particular case, however, two conditions have to be satisfied: (1) that the order was ambiguous and was reasonably capable of more than one interpretation, (2) that the party being proceeded against in fact did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order. We are clearly of the view that the case before us does not satisfy either condition. In dealing with the first contention urged by learned Counsel, we have pointed out the true construction of the order-and in our opinion that is the only construction which it could reasonably bear. But this apart, even if the order was equivocal as learned Counsel puts it, still, it is of no avail to the appellant, unless the State Government understood it in the sense, that the order was confined to acts by which the possession of the plaintiff was directly interfered with and the notification was issued on that understanding and belief. There are two pieces of conduct on the part of the State Government which are wholly inconsistent with the theory that the order was understood by them as learned Counsel suggested. The first is that before the notification under S.3(1) was issued they applied to the Court to vacate the order of injunction so that they might issue notification, and it was during the pendency of this application that the notification was issued-without waiting for the orders of the Court on their petition. The second is even more significant. When notice was issued to the defendant to show cause why it should not be committed for contempt, one would naturally expect, if the point urged has any validity, the defence to be based on a denial of disobedience, by reference to the sense in which the order was understood. We have already extracted the relevant paragraph of the counter-affidavit and in this there is no trace of the plea now put forward. Even in the memorandum of appeal to the High Court against the order of the learned Subordinate Judge under O. 39, r. 2(3) there is no indication of the contention now urged and though a faint suggestion of inadvertence on the part of some officer appears to have been put forward during the stage of argument before the High Court, the point in this form was not urged before the learned Judges of the High Court, as seen from the judgment. The question whether a party has understood an order in a particular manner and has conducted himself in accordance with such a construction is primarily one of-fact, and where the materials before the Court do not support such a state of affairs, the Court cannot attribute an innocent intention based on presumptions, for the only reason, that ingenuity of Counsel can discover equivocation in the order which is the subject of enforcement. The

argument being in effect that a party who had bona fide misconstrued the order and acted on that basis, could not be held to have wilfully and deliberately disobeyed the order, such a plea could obviously be urged only when it is proved that a party was in fact under a misapprehension as to the scope of the order, but this was never the plea of the Government right up to the stage of the hearing before the High Court. Besides, if the case of the State was, that acting bona fide it had committed an error in construing the order, one would expect an expression of regret for the unintentional wrong, but even a trace of contrition is singular lacking at any stage of the proceedings. We are clearly of the opinion that there is no factual basis for sustaining the second ground urged by learned Counsel.

19. Turning to the next point urged, learned Counsel amplified it in these terms. No doubt, having regard to Art.300 of the Constitution-which practically reproduces the earlier statutory provisions in that behalf going back to 1858, States are not immune from liability to be sued. Learned Counsel added that he would not dispute that Title Suit 40 of 1950 was properly laid and that the Court had jurisdiction to entertain it, as also jurisdiction to pass the order of temporary injunction against the defendant State pending the decision of the suit. But learned Counsel urged that it did not automatically follow that the State was amenable to proceedings, for disobedience of the injunction. Proceedings for contempt even for enforcing an order of a Civil Court, he submitted, were really a punishment for wrong doing and in essence, therefore, quasi- criminal. For this reason he contended that Art.300 which permitted suits to be filed against the Union and the States could not be held to authorise proceedings of such a quasi-criminal nature, and that as a result the Common Law rules, that the King could do no wrong and that the Crown could not be sued for a tort, were attracted. In this connection learned Counsel invited our attention to the decisions in *District Board of Bhagalpur v. Province of Bihar* and *Tarafatullah v. S.N. Maitra*. In the first of these cases, a large number of English and Indian decisions on the liability of the Crown in (1) A.I.R. 1954 Pat. 529. Tort were discussed. The question for consideration before the learned Judges was whether the suit before the Court against the Government could be legally maintainable and as to the scope and limits of the rule, "respondent superior" in such actions against the State-but both these matters are far removed from the pale of the controversy before us.

20. In regard to the other ruling of the learned Judges of the Calcutta High Court, learned Counsel relied not so much on the decision itself but on the following observations of Mukerji, J.:

" A State as such cannot be said to commit contempt. In the case of the State the allegation must be against a particular officer or officers of the State. Where as in this case an order was obtained against the State. in a civil proceeding restraining certain acts of the State, and it is alleged by the complainant or the petitioner that there has been a contempt by breach of that order, the petitioner

for contempt will have to take out the Rule for contempt against the particular officer or officers who has or have disobeyed that order. In such a petition for contempt the Rule must be asked against an individual and not against the State. Article 300 of the Constitution of India provides for proceedings by way of suit against the State or the Union of India and cannot be extended to apply to contempt proceedings ".

21. In order however to appreciate the observations it is necessary to consider briefly the facts of the case. The decision was concerned with an application to commit the respondents for contempt for disobedience to an order of ad interim injunction granted by a single Judge of the High Court on a petition for the issue of a writ of Certiorari under Art. 226 of the Constitution. No doubt, the order of temporary injunction was issued against the Government, but the disobedience complained of was not any act of the Government as such, but of certain officers. Notwithstanding this, the Secretary to Government who had been formally impleaded as representing the Government, was sought to be proceeded against personally (1) A.I.R. 1952 Cal. 919. 927 for contempt and the prayer being that he as representing the Government should be committed to prison. As Chakravarti, C. J., pertinently pointed out, a more ridiculous prayer could not be imagined. The learned Judges further found that as a fact no disobedience of the order had been proved. The question therefore whether the Government could be liable to be proceeded against for contempt for disobedience of an order which a Court has jurisdiction to pass and which bound the Government, the act constituting the contempt being unmistakably an act for which Government could not as such disclaim responsibility did not arise for consideration in that case.

22. Having regard to the findings of fact reached by the Court, the observations regarding the scope of the liability of Government were wholly obiter. In regard to the passage relied on we need only say that observations about the ambit of Art.300 of the Constitution are too widely expressed and do not take into account, the provisions of the Civil Procedure Code O. 21, r. 32 & O. 21, r. 39(2) (3) which directly bear on the matter and which we shall discuss presently. Further, they cannot also apply to those cases where the disobedience takes the form of a formal Government order as in this case. In this connection we prefer the approach to the question indicated by the learned C. J., who said:

"I do not say that in fit cases a writ for contempt may not be asked for against a corporation itself, or against a Government. In what form, in such a case, any penal order, if considered necessary, is to be passed and how it is to be enforced are different matters which do not call for decision in this case. In England, there is a specific rule providing for sequestration of the corporate property of the party concerned, where such party is a corporation. I am not aware of any similar rule obtaining in this country, but, I do not consider it impossible that in a fit case a fine may be imposed and it may be realised by methods analogous to sequestration which would be a distress warrant directed against the properties of the Government or the Corporation."

23. Learned Counsel laid considerable stress on the proceedings under O. 39, r. 2(3) being quasi-criminal, in an attempt to establish that the State could not be proceeded against for such a criminal wrong. Though undoubtedly proceedings under O. 39, r. 2(3), Civil Procedure Code, have a punitive aspect-as is evident from the condemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by the Civil Procedure Code for the execution of a decree for a permanent injunction. Order 21, r. 32 sets out the method by which such decrees could be executed-and cl. (1) enacts-"where the party against whom a decree..... for an injunction has been passed, has had an opportunity for obeying the decree and has wilfully failed to obey it, the decree may be enforced, in the case of a decree ..... for an injunction by his detention in the civil prison, or by the attachment of his property or by both Clauses 2 and 3 of this rule practically reproduce the terms of cls. 4 and 3 respectively of O. 39, r. 2, and the provisions leave no room for doubt that O. 39, r. 2(3) is in essence only the mode for the enforcement or effectuation of an order of injunction. While on the provisions of O. 21, r. 32, it may be pointed out that learned Counsel for the State does not contend that a State Government against whom a decree for a permanent injunction has been passed is not liable to be proceeded against under this provision of the Code in the event of the decree not being obeyed by them. No doubt the State Government not being a natural person could not be ordered to be detained in civil prison, On the analogy of Corporations; for which special provision is made in O. 39, r. 5, but beyond that,, both when a decree for a permanent injunction is executed and when an order of temporary injunction is enforced the liability of the State Government to be proceeded against appears to us clear. The third point urged lacks substance and is rejected.

24. Some point was sought to be made of the fact that as the State was a juristic entity merely, the wrong which constituted the disobedience, must have been the act of some servant or agent of the Government and that except on the principle of vicarious liability the State could not be liable. This argument which is partly based on the observations of Mukherji, J., in the passage already extracted would if accepted deny that there could be any action by the State at all, is really part of the last submission and could conveniently be dealt with along with it. Besides, it need only be mentioned that the fact that officers and servants of Government could be dealt with as individuals bound by the orders passed against the defendant Government, nor the fact that they would be liable in' contempt is no ground at all for holding that the State Government itself would not be liable for their own act.

25. The invocation of the rule of construction that the Crown was not bound by a statute unless by express words or by necessary implication the intention so to bind was manifested, was the next submission of learned Counsel, reliance being placed for the position, on the recent decision of this Court in Director of Rationing and Distribution V. Corporation of Calcutta.

26. We shall proceed to consider the soundness of the contention that on a proper construction of the Civil Procedure Code the State of Bihar is not within O. 39, r. 2(3). Article 300 of the Constitution permits suits, which before the Constitution could have been filed against the Central and Provincial Governments respectively, to be filed against the Union and the State. As already stated, there is no dispute that 'having regard to the cause of action alleged in the-plaint, Title Suit 40 of 1950 could be properly laid against the State and the plaintiff could, if she was able to make good her allegations of fact and law, be entitled to be granted the reliefs prayed for in her suit including the relief for a permanent injunction restraining the State from issuing a notification under a. 3(1) of the Act and from interfering with her possession of estate of Handwa. It is also admitted that the Subordinate Judge had jurisdiction to pass the order of temporary injunction against the State Government and that the order bound them. What is contended however is that the method of enforcing that order provided for in O. 39, r. 2(3) of the Code is not available against the State Government, because the State Government is not named in that sub-rule expressly or even by necessary implication. An examination however of the provisions of the Code and the Scheme underlying it in relation to proceedings against Government establishes that this submission is wholly untenable.

27. The Code of Civil Procedure does not determine whether any particular suit or class of suits could be filed against the Government or not, these being matters of substantive law. But when in law a suit could be properly filed against Government-be it the Union or the State, it makes a complete provision for the procedure applicable to such suits and the type of orders which Courts could pass in such suits and how these orders could be enforced. Part IV of the Code comprising Ss.79 to 82, sets out the details of the procedure to be followed in suits against Government. Section 79 prescribes what, the cause title of suits against Government should be, the expression 'Government' being used to designate both the Union as well as the State Governments. Section 80 provides-making a special provision not applicable to suits against private parties, for a two months' notice prior to suit. If Government were a party to a suit, it necessarily follows that where the plaintiff succeeds there might be a decree against the Government-the Union or the State-and S.82 lays down special rules for the execution of such decrees. In the 1st Schedule to the Code, there is a separate chapter-Chapter XXVII, dealing with suits against Government, in which provision is specially made for adequate time being granted to it for conducting the various stages of the proceedings before Courts.

28. The foregoing, in our opinion, makes it clear that the State is bound by the Code of Civil Procedure, the scheme of the Code being that subject to any special provision made in that regard, as respects Governments, it occupies the same position as any other party to a proceeding before the Court.

29. We are further satisfied that even apart from the Scheme of the Code, the State, as a party defendant is plainly within the terms of O. 39, r. 2(3) of the



Code.

30. There is here no controversy that the Subordinate Judge had jurisdiction to pass the interim order of injunction against the State on the terms of O. 39, r. 2(1) which reads:-

"In any suit for restraining the defendant from committing ..... injury of any kind, whether compensation is claimed in it or not, the plaintiff may at any time after the filing of the suit .....apply to the Court for a temporary injunction to restrain the defendant from committing the .....injury complained of....."

31. The reference to the "defendant" in the sub-rule precludes any argument against the State being exempt from or being outside the statute. The entire argument on this part of the case was based on the difference between the language employed in cl. (1) extracted above and cl. (3) of the rule making provision for the manner in which disobedience to orders passed under cl. (1) could be dealt with.

32. Clause (3) runs:

"In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release."

33. Learned Counsel urged that cl. (3) discarded the use of the expression "defendant" employed in cl.(1) which would have included the "State" in cases where the State was a party defendant, and had designated the party against whom the injunction order could be enforced as "the person guilty of the disobedience" and with a further provision empowering the Court to order the detention of such person "in Civil prison. The word "person" it was urged was at the best a neutral expression, which in the absence of compelling indication, was not apt to include "a State" and particularly so in the light of the rule of Construction approved by this Court in *The Director of Rationing V. Corporation of Calcutta* (1). It was further pressed upon us that the construction suggested would not render injunction orders passed on the State when it was a defendant *brutum fulmen*, because, the State as a juristic person could act only through human agency and there would always be some officer-a natural "person guilty of disobedience" in every case where orders passed against a State were disobeyed. We are clearly of the opinion that the entire argument should be rejected.

34. We feel wholly unable to accept the construction suggested of the expression "person guilty of disobedience" in the clause. The reason for the variation in the phraseology employed in cls. (1) and (3) of O. 39, r. 2 is not far to seek. Under the law when an order of injunction is passed, that order is binding on and

enforceable not merely against the persons eo nomine impleaded as a party to the suit and against whom the order is passed but against " the agents and servants, etc." of such a party. If such were not the law, orders of injunction would be rendered nugatory, by their being contravened by the agents and servants of parties. For that reason, the law provides that in order that a plaintiff might seek to enforce an order against a servant or an agent of the defendant, these latter need not be added as defendants to the suit and an order obtained specifically against the man order against the defendant sufficing for this purpose. If such agents or servants, etc., are proved to have formal notice of the order and they disobey the injunction, they are liable to be proceeded against for contempt, without any need for a further order against them under O. 39, r. 2(1). This legal position is brought out by the terms of an injunction order set out in Form 8 of Appendix F to the Code which (1) [1961] 1 S.C.R. 158.reads: "The Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents and workmen, from.....". It is not suggested that the form which the order of the Subordinate Judge took in this case, departed from this model.

35. If such is the scope of an order for injunction, it would be apparent that the expression " person " has in O. 39, r. 2(3) been employed merely compendiously to designate everyone in the group " Defendant, his agents, servants and workmen " and not for excluding any defendant against whom the order of injunction has primarily been passed. It would therefore follow that in cases where the State is the defendant against whom an order of injunction has been issued, it is " expressly " named in the clause and not even by necessary implication, and the rule of construction invoked does not in any manner avail the appellant.

36. The matter may also be approached from a broader angle. Where a Court is empowered by statute to issue an injunction against any defendant, even if the defendant be the State- the provision would be frustrated and the power rendered ineffective and unmeaning if the machinery for enforcement specially enacted did not extend to every one against whom the order of injunction is directed. Apart, therefore, from a critical examination of the phraseology of O. 39, r. 2(3), the obligation on the part of the State to obey the injunction and be proceeded against for disobedience if it should take place would appear to follow by necessary implication. As Maxwell (1) puts it "The Crown is sufficiently named in a statute when an intention to include it is manifest ".

25. The High Court of Madras, in the case of CENTURY FLOUR MILLS LTD. v. SUPPIAH, reported in (1975)88 LW 285, at paragraphs 5 to 8 of the judgment, has held as follows:

"5. Since the matter is not res integra, the best way to approach the question is to refer to the decided cases and in the light of it, to come to a conclusion. Cases are all agreed that, whether it is a stay order, or an injunction, essentially, there is no difference between them except that in the case of a stay order, it is

addressed to the court concerned, and in the other, to the person inhibited from doing a certain thing. There is also no difference that, so far as Order XXXIX, C.P.C. is concerned, it confers only limited powers and would not be of assistance in circumstances as in the present case. In *Mulraji v. Murti Raghunathji*, , the Supreme Court observed-

"As we have already indicated, an order of stay is as much a prohibitory order as an injunction order and unless the court to which it is addressed has knowledge of it, it cannot deprive that court of the jurisdiction to proceed with the execution before it. But there is one difference between an order of injunction and an order of stay arising out of the fact that an injunction order is usually passed against a party while a stay order is addressed to the court. As the stay order is addressed to the court, as soon as the court has knowledge of it, it must stay its hand; if it does not to so, it acts illegally. Therefore in the case of a stay order .as opposed to an order of injunction, as soon as the court has knowledge of it. it must stay its hand and further proceedings are illegal, but so long as the court has no knowledge of the stay order, it does not lose the jurisdiction to deal with the execution which it has under the Civil Procedure Code."

It went on to observe that, though the court to which the stay order was addressed, when it had no knowledge of the stay order, could not be said to be acting without jurisdiction in making an order contrary to the stay order, nevertheless, it is not powerless to undo any possible injustice that might have been caused to the party in whose favour the stay order was passed during the period till the court had knowledge of the stay order. The Supreme Court went on-

"We are of opinion that Section 151, C.P.C. would always be available to the court executing the decree, for in such a case, when the stay order is brought to its notice, it can always act under Section 151 and set aside steps taken between the time the stay order was passed and the time it was brought to its notice, if that is necessary in the ends of justice and the party concerned asks it be do so."

On facts, that was, a case of stay.

6. In *Mancharlal v Seth Hiralal*, the view was expressed that Section 151, C.P.C. itself said that nothing in the Code should be deemed to limit or otherwise affect the inherent power of the court to make orders necessary for the ends of justice. It, therefore, follows that Order XXXIX, C.P.C. should not be considered as placing any limit on the scope of the inherent power under Section 151. In *Senapathi V. Sri Amba Mills*, , which was quite akin to the circumstances in the instant case, a Division Bench consisting of Anantanarayanan, Offg. C. J. and Natesan J., after accepting the apology and dismissing petition for contempt for violating an injunction prohibiting the holding of a meeting, observed-

"most certainly the proceedings of the meeting were void, the meeting itself having been conducted in disobedience of the interim injunction, and that will equally apply to the resolution or resolutions passed therein. We make a record to that effect. This situation at law has not been disputed by any of the learned

counsel."

Though the learned Judges did not give the reason for their view, we are inclined to think, with respect, that the conclusion so drawn is unexceptionable, as we shall show presently.

7. Subodh Gopal v. State of Bihar, AIR 1969 Pat 72 and Harinandan v. S. N. Pandit, , are cases of injunction against parties. In the earlier case, the lesse deed executed was in violation of an injunction. After holding that Order XXXIX did not provide for relief, the court was of opinion that, in exercise of its inherent power, it could set aside the lease deed, as it was violative of the injunction order. In a similar view was held and it was said that in such circumstances the parties in the interests of justice should be put back in the same position as they stood prior to the issuance of the order of injunction. This is what the Allahabad High Court said-

"So far as F. A. F. O. No. 251 of 1973 and C. R. 875 of 1972 are concerned, it may be pointed out that the mere fact that the applicants had been dispossessed after the interim injunction order had been issued would not be enough to treat the chapter in regard to possession over the house as closed. If a person had been dispossessed by wilfully disobeying an order of injunction the court which issued the order of injunction can after considering the circumstances of each case and the conduct of the parties always pass such an order in the ends of justice as would undo the wrong done to the party in whose favour the order of injunction had been issued. The exercise of this inherent power vested in the court is based on the principle that no party can be allowed to take advantage of his own wrong in spite of the order to the contrary passed by the court, see State of Bihar v. Ushadevi and Magna v. Rustan.

8. In our opinion, the inherent powers of this court under Section 151 C.P.C. are wide and are not subject to any limitation. Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice. Even apart from Section 151, we should observe that as a matter of judicial policy, the court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's orders. But in this case it is not necessary to so to that extent as we hold that the power is available under Section 151 C.P.C. "

26. The High Court of Calcutta, in the case of SUJIT PAL v. PRABIR KUMAR SUN AND OTHERS, reported in AIR 1986 CAL 220, at paragraph 11 of the judgment, held thus:

"11. Thus it is apparent from the said observation of the Supreme Court that no technicality can prevent the Court from doing justice in exercise of its inherent power. Order 39, Rule 2A lays down a punitive measure for the purpose of

compelling a party to comply with the order of injunction. The process as contemplated by the said provision may or may not be ultimately effective but, in any event, the procedure laid down in Order 39, Rule 2A is incapable of granting an immediate relief to a party who has been forcibly dispossessed in violation of an order of injunction. We do not think that in such a case the Court is powerless to grant relief to the aggrieved party in exercise of its inherent power. The very object for which Order 39, Rule 2A has been enacted will be fulfilled by the grant of a temporary mandatory injunction and restoration of possession of the aggrieved party. The inherent power of the Court as recognised in Section 151 of the Code is in addition to the power conferred on the Court under the provisions of the Code. All that the Court is concerned is to prevent abuse of the process of Court and to do justice by immediately intervening under circumstances which require such intervention by the Court."

27. This Court, in the case of D.M. SAMYULLA v., COMMISSIONER, CORPORATION OF THE CITY OF BANGALORE AND OTHERS reported in 1991 KLJ 352 had an occasion to refer to the decision of Court of Appeal in HADKINSON v. HADKINSON reported (1952)2 ALL.ER 567, wherein, in the judgment of HADKINSON, it is observed as follows:

"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it....It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed."

28. Insofar as Order XXXIX Rule 2A of the Code of Civil Procedure is concerned, the High Court of Allahabad, in the case of SMT. SAVITRI DEVI v. CIVIL JUDGE (SR.DN.), GORAKHPUR AND OTHERS reported in AIR 2003 ALLAHABAD 321, at paragraphs 13 to 27, held as follows:

"13. So far as the scope of Order XXXIX, Rule 2A is concerned, the issue has been considered by the Court from time to time. The said provisions are of a different nature altogether. A Constitution Bench of the Hon'ble Supreme Court, in State of Bihar v. Rani Sana Bati Kumari, AIR 1961 SC 221, has categorically held that the said provisions deal with the wilful defiance of the order passed by the civil court. The Apex Court held that there must be wilful disobedience of the injunction passed by the Court and order of punishment be passed unless the Court is satisfied that the party was, in fact, under a misapprehension as to the scope of the order or there was an unintentional wrong for the reason that the order was ambiguous and reasonably capable of more than one interpretation or the party never intended to disobey the order but conducted himself in accordance with the interpretation of the order. The proceedings are purely quasi-criminal in nature and are, thus, punitive. Even the corporate body like

municipality/Government can be punished though no officer of it be a party by name. A similar view has been reiterated by the Hon'ble Supreme Court in *Aligarh Municipal Board and Others v. Ekka Tonga Mazdoor Union and Ors.* AIR 1970 SC 1767; by the Allahabad High Court in *Ratan Narain Mulla v. Chief Secretary, Government of U.P. and Ors.* 1975 Cr LJ 1283; and by the Delhi High Court in *Jyoti Limited v. Smt. Kanwaljit Kaur Bhasin and Anr.*, 1987 Cr LJ 1281.

14. In *Tayabbhai M. Bagasarwalla and Ors. V. Hind Rubber Industries Pvt. Ltd.*, AIR 1997 SC 1240, the Hon'ble Supreme Court dealt with a case of disobedience of an injunction passed under Order XXXIX, Rules 1 and 2 of the Code, wherein the contention was raised that the proceedings under Order XXXIX, Rule 2A cannot be initiated and no punishment can be imposed for disobedience of the order because the civil court, which granted the injunction, had no jurisdiction to entertain the suit. The Apex Court rejected the contention holding that a party aggrieved of the order has a right to ask the Court to vacate the injunction pointing out to it that it had no jurisdiction to approach the higher court for setting aside that order, but so long the order remains in force, the party cannot be permitted to disobey it or avoid punishment for disobedience on any ground, including that the Court had no Jurisdiction, even if ultimately the Court comes to the conclusion that the Court had no jurisdiction to entertain the suit. The party, who willingly disobeys the order and acts in violation of such an injunction, runs the risk for facing the consequence of punishment.

15. In *Samee Khan v. Bindu Khan*, 1999 (1) AWC 18 (SC) : AIR 1998 SC 2765, the Hon'ble Supreme Court held that in exercise of the power under Order XXXIX, Rule 2A of the Code, the civil court has a power either to order detention for disobedience of the disobeying party or attaching his property and if the circumstances and facts of the case so demand, both steps can also be resorted to. The Apex Court held as under :

"But the position under Rule 2A or Order XXXIX is different. Even if the injunction order was subsequently set aside the disobedience does not get erased. It may be a different matter that the rigour of such disobedience may be toned down if the order is subsequently set aside. For what purpose the property is to be attached in the case of disobedience of the order of injunction? Sub-rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment the Court is empowered to sell the property under attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of one year period. If the disobedience ceases to continue in the meanwhile the attachment also would cease. Thus, even under Order XXXIX, Rule 2A the attachment is a mode to compel the opposite party to obey the order of injunction. But detaining the disobedient party in civil prison is a mode of punishment for his being guilty of such disobedience."

16. Thus, in view of the above, it becomes crystal clear that the proceedings are analogous to the contempt of court proceedings but they are taken under the

provisions of Order XXXIX, Rule 2A of the Code for the reason that the special provision inserted in the Code shall prevail over the general law of contempt contained in the Contempt of Courts Act, 1971 (for short, "the Act, 1971"). Even the High Court, in such a case, shall not entertain the petition under the provisions of Act, 1971, (vide *Ram Roop Pandey v. R.K. Bhargava and Ors.*, AIR 1971 All 231; *Smt. Indu Tewari v. Ram Bahadur Chaudhari and Ors.*, AIR 1981 All 309 and *Rudraiha v. State of Karnataka and Ors.*, AIR 1982 Kant 182).

17. In *Md. Jamal Paramanik and Ors. v. Md. Amanullah Munshi*, AIR 1989 NOC 50, the Gauhati High Court held that it is not permissible for a Court to impose a fine or compensation as one of the punishments for the reason that the provisions of Order XXXIX, Rule 2A do not provide for it. In *Thakorlal Parshottamdas v. Chandulal Chunilal* AIR 1967 Guj 124, Hon'ble Mr. Justice P. N. Bhagwati (As His Lordship then was) held that the punishment for breach of interim injunction could not be set arise even on the ground that the injunction was ultimately vacated by the appellate court. In *Rachhpal Singh V. Gurudarshan Singh*, AIR 1985 P&H 299, a Division Bench of Punjab and Haryana High Court held that if an interim injunction had been passed and is alleged to have been violated and application for initiating contempt proceeding under Order XXXIX, Rule 2A has been filed but during its pendency the suit itself is withdrawn, the Court may not be justified to pass order of punishment at that stage. Thus, it made a distinction from the above referred Gujarat High Court's decision in *Thakorlal Parshottamdas* (supra) that contempt proceedings should be initiated when the interim injunction is in operation.

18. A Constitution Bench of the Hon'ble Supreme Court in *State of Bihar v. Rani Sonabati Kumari*, AIR 1961 SC 221, observed that the purpose of such proceedings is for the enforcement or effectuation of an order of execution. Similarly, in *Sitarami v. Ganesh Das*, AIR 1973 All 449, the Court held as under :

"The purpose of Order XXXIX, Rule 2A, Civil P. C. is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similar to the provisions of Order XXI, Rule 32, Civil P. C. which provide for the execution of a decree for injunction. The mode of execution given in Order XXI, Rule 32 is the same as provided in Rule 2A of Order XXXIX. In either case for the execution of the order or decree of injunction attachment of property is to be made and the person who is to be compelled to obey the injunction can be detained in civil prison. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by disobedience of the order is remedied and the status quo ante is brought into effect. This view finds support from the observations of the Supreme Court in the case of *State of Bihar v. Sonabati Kumari*, AIR 1961 SC 221 ; while dealing with Order XXXIX, Rule 2 (iii), Civil P. C. (without the U. P. Amendment) the Court held that the proceedings are in substance designed to effect enforcement of or to execute the order, and a parallel was drawn between the provisions of Order XXI, Rule 32 and of Order XXXIX, Rule 2 (iti), C.P.C. which is similar to Order

XXXIX, Rule 2A. This curative function and purpose of Rule 2A of Order XXXIX, Civil P. C. is also evident from the provision in Rule 2A for the lifting of imprisonment, which normally would be when the order has been complied with and the coercion of imprisonment no longer remains necessary. Hence, even if Sitaram had earlier been sent to the civil imprisonment he would have been released on the tinshed being removed, and it would therefore, now serve no purpose to send him to prison. For the same reason the attachment of property is also no longer needed. The order of the court below has lost its utility and need no longer be kept alive."

19. In *Kochira Krishnan v. Joseph Desouza*, AIR 1986 Ker 63, it has been held that violation of injunction or even undertaking given before the Court is punishable under Order XXXIX, Rule 2A of the Code. The punishment can be imposed even if the matter stood disposed of, for the reason that the Court is concerned only with the question whether there was a disobedience of the order of injunction or violation of an undertaking given before the Court and not with the ultimate decision in the matter. While deciding the said case, the Court placed reliance upon the judgment of the Privy Council in *Eastern Trust Co. v. Makenzie Mann & Co. Ltd.*, AIR 1915 PC 106, wherein it had been observed as under :

"An injunction, although subsequently discharged because the plaintiffs case failed, must be obeyed while it lasts....."

20. Thus, it is evident from the above discussion that the proceedings are analogous to the proceedings under the Act, 1971. The only distinction is that as the Legislature, in its wisdom, has enacted a special provision enacting the provisions of Order XXXIX, Rule 2A, it would prevail over the provisions of the Content of Courts Act. Though the High Court, by virtue of the provisions of Section 10 of the Act, 1971, can initiate the contempt proceeding even for disobedience of the injunction order granted by the civil court, but the exercise of such power is discretionary and generally does not require to be exercised in view of the special power conferred upon the civil court itself as held by the Division Bench of the Delhi High Court in *Dr. Bimal Chandra Sen v. Mrs. Kamla Mathur*, 1983 Cri LJ 495.

21. In *Andre Paul Terence Ambard v Attorney General for Trinidad and Tabago*, AIR 1936 PC 141, the Privy Council has observed that the proceedings under the Contempt of Courts Act are quasi-judicial in nature and orders passed in those proceedings are to be treated as orders passed in criminal cases. In *Sukhdeo Singh V. Hon'ble the Chief Justice Teja Singh and Hon'ble Justice the Par Pepsu High Court at Patiala*, AIR 1954 SC 186, the Supreme Court has taken the same view.

22. A Full Bench of Punjab and Haryana High Court, in *Sher Singh v. R.P. Kapoor*, AIR 1968 Pb 217, has held that the contempt proceedings are, by all means, a quasi-criminal in nature. The applicant must prove his allegations beyond



reasonable doubt and the alleged contemnors are entitled to the benefit of doubt. The same view has been taken by the Division Bench of Madras High Court in *B. Yegnaryaniah*, AIR 1974 Mad 313 ; and by the Lahore High Court in *Homi Rustom G. Pardiawala v. Sub-Inspector Baig and Ors.*, AIR 1941 Lah 196.

23. in *S. Abdul Kari v. M.K. Prakash*, AIR 1976 SC 859, the Hon'ble Apex Court has held that the standard of proof required to establish a charge in contempt proceedings is the same as in any other criminal proceedings. It is all the more necessary to insist upon strict proof of such charged act complained of is committed by a person performing judicial/quasi-judicial proceedings.

24. In *Jawand Singh Hakum Singh v. Om Prakash*, AIR 1959 Pb 632, the Punjab and Haryana High Court, while dealing with a contempt matter, had observed that guilt of a person of having committed contempt of court, must rest on reasonable certainty. Suspicion, no matter how strong and speculative, however, suspicions must not form the basis for contempt.

25. In *Chhotu Ram v. Urvashi Gulati and Ors.*, (2001) 7 SCC 530, the Hon'ble Supreme Court held that burden and standard of proof in contempt proceeding, being quasi-criminal in nature, is the standard of proof required in criminal proceedings, for the reason that contempt proceedings are quasi-criminal in nature.

26. In view of the above discussion, one reaches the inescapable conclusion that proceedings under Order XXXIX, Rule 2A are quasi-criminal in nature and are meant to maintain the dignity of the Court in the eyes of the people so that the supremacy of law may prevail and to deter the people of mustering the courage to disobey the interim injunction passed by the Court.

27. To sum up the case, the sale deeds allegedly executed by the respondent No. 3 in favour of respondent Nos. 4 to 6 are nullity as had been executed in disobedience of the interim order passed by the trial court on 18.8.1992. Secondly, respondent Nos. 4 to 6 could not be in possession of the land as there has been no partition by metes and bounds between co-sharers. If they are in possession, it is to be ignored, and thirdly, as the alleged sale deeds have to be ignored, the learned court below ought to have attached the entire property which, including the land sold vide two sale deeds."

29. In a celebrated case with regard to jurisdiction of the trial Court under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, by the Hon'ble Apex Court in the case of *TAYABBHAI M. BAGASARWALLA AND ANOTHER v. HIND RUBBER INDUSTRIES PVT. LTD AND OTHERS* reported in (1997)3 SCC 443, at paragraphs 23, 24 and 27 to 32 of the judgment, has observed thus:

"23. In *Hadkinson v. Hadkinson* [1952 All. E.R.567] the Court of Appeal held:

"It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is

shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C. said in *Chuck v. Cremer*: (1) (1 Coop. Temp. Cott.342).

"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it....It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. that they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.'

Such being the nature of this obligation, two consequences will in general follow from its breach. The first is that anyone who disobeys an order of the court (and I am not now considering disobedience of orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the court by such a person will be entertained until he has purged himself of his contempt."

24. In *United States of America v. John F. Shipp et al* [51 L.Ed. 319], the following statement by Holmes, J. occurs:

"It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt: *Re Sawyer*, 124 U.S. 200, 31 L. ed.402, 8 Sup. Ct. Rep.482; *Ex Parte Fisk*. 113 U.S. 713, 28 L.ed. 1117, 5 Sup. Ct. Rep. 724; *Ex parte Rowland*, 104 U.S. 604, 26 L. ed. 861. But even if the circuit court had no jurisdiction to entertain Johnson's petition , and if this court had no jurisdiction of the appeal, court and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S.379, 387, 278 L. ed. 462, 465, 4 Sup. Ct. Rep. 510. Until its judgment declining jurisdiction should be announced, it had authority, from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the State court was bound to refrain from further proceedings until the same time. Rev. Stat. 8 766; act of March 3; 1893 chap. 226, 27 Stat. at L. 751, u.s. Comp. Stat. 1901. p.597."

The decision in *Shipp* has been followed in several later decision of the American Supreme Court.

25 and 26 xxx xxx xxx

27. The learned counsel for the Defendants 1 and 2 submitted that this is not a proceeding for contempt but a proceeding under Rule 2-A of Order 39 of the Civil Procedure Code. Learned counsel submitted that proceedings under Order 39

Rule 2-A are a part of the coercive process to secure obedience to its injunction and that once it is found that the Court has no jurisdiction, question of securing obedience to its orders any further does not arise. Learned counsel also submitted that enforcing the interim order after it is found that the Court had no jurisdiction to try the said suit would not only be unjust and illegal but would also reflect adversely upon the dignity and authority of the Court. It is also suggested that the plaintiff had instituted the present suit in the Civil Court knowing full well that it had no jurisdiction to try it . It is not possible to agree with any of these submission not only on principle but also in the light of the specific provision contained in Section 9-A of Code of Civil Procedure (Maharashtra Amendment). In the light of the said provision, it would not be right to say that the Civil Court had no jurisdiction to pass interim order or interim injunction, as the case may be, pending decision on the question of jurisdiction. The orders made were within the jurisdiction of the Court and once this is so, they have to be obeyed and implemented. It is not as if the defendants are being sought to be punished for violations committed after the decision of the High Court on the question of jurisdiction of the Civil Court. Here the defendants are sought to be punished for the disobedience and violation of the order of injunction committed before the decision of the High Court in Vishanji Virji Mepani. According to Section 9-A, the Civil Court- and the High Court - did have the power to pass interim orders until that decision. If they had that power they must also have the power to enforce them. In the light of the said provision, it cannot also be held that those orders could be enforced only till the said decision but not thereafter. The said decision does not render them (the interim orders passed meanwhile) either non-est or without jurisdiction. Punishing the defendants for violation of the said order committed before the said decision (Vishanji Virji Mepani) does not amount, in any event, to enforcing them after the said decision. Only the orders are being passed now. The violations are those committed before the said decision.

28. The correct principle, therefore, is the one recognised and reiterated in Section 9-A - to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. the interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situation, it would be its duty to modify such orders or make appropriate directions. For example, take a case,

where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case, the court should, while holding that it has no jurisdiction to entertain the suit, must put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the violation is committed before the decision of the court on the question of Jurisdiction.

29. The learned counsel for Defendants 1 and 2 then argued that Defendants 1 and 2 are not guilty of disobeying and violating the order of injunction and that they did not carry on any construction activity after the grant of interim injunction by the Civil Court. The judgment under appeal does not refer to any such contention being advanced by Defendants 1 and 2 before the High Court. The impugned judgment under appeal deals only with the question of law. It is true that this factual submission was urged before the Civil Court. The contention was that the construction complained of was not carried on by Defendants 1 and 2 but by other defendants and in particular by defendant No.4. The Civil Court has dealt with this plea elaborately and has rejected it. The Civil Court has observed that the 4th defendant has come forward gratuitously to take the blame upon himself, with a view to save the second defendant and that his plea is totally unacceptable. Moreover, the orders of the High Court, referred to above, which are based upon the reports of the Court Receiver, Police and Municipal records do clearly show that it was the second defendant who, acting on behalf of the first defendant, had carried out the construction complained of and had even refused to purge himself of the contempt when given an opportunity to do so in the High Court. In the face of the consistent and repeated findings of the Civil Court and the High Court- which we have referred to in extenso hereinabove - and in the absence of any indication from the impugned judgment that this factual question was urged by Defendants 1 and 2 before it - we are not inclined to accede to their plea that the matter should be remitted to the High Court for deciding the factual issue viz., whether Defendant 1 and 2 have in fact violated the order of injunction or not. In our opinion, it would be an unnecessary and empty formality.

30. Accordingly, we allow the appeals and set aside the judgment of the High Court dated November 1, 1996 in A.O.No.1407 of 1991.

31. It is brought to our notice that respondents 4 and 5 in these appeals (Ashok Temkar and Kiran Patil) also claimed to be tenants of certain portions in the said building. Their claims have not been investigated by the High Court, probably in view of the finding on the aforesaid question of law. The matters shall go back to the High Court to the extent of the said respondents (i.e. other than Defendants 1 and 2) to determine whether any or both of them are guilty of violating the injunction order.

32. Insofar as Defendant No. 2 (Sri K.S. Jhunjhunwala) is concerned, the order

of the Civil Court holding him guilty of contempt and sentencing him to one month's imprisonment is affirmed."

30. It is held by the Apex Court that, in order to uphold the dignity and authority of judiciary, the courts have jurisdiction to entertain and proceed with an application under Order XXXIX Rule 2A of the Code of Civil Procedure for punishing parties who have violated an order of injunction. Disobedience of the order of the trial Court is between the contemnor and the Court, to uphold majesty of law and to protect the dignity of the Court. Not only resolution of disputes between the parties, but also the orders of the Court to be implemented in true sense unless it is reversed by the Higher Court, being a protector of the rights of the people at large. In order to maintain rule of law principles, the orders of the Court to be adhered to and any violation of the same to be viewed strictly.

31. In the case of DELHI DEVELOPMENT AUTHORITY v. SKIPPER CONSTRUCTION CO. reported in (1996)4 SCC 622, at paragraph 19 of the judgment, Hon'ble Apex Court held thus:

"19. To the same effect are the decisions of the Madras and Calcutta High Courts in Century Flour Mills v. S. Suppaiah & Ors. [A.I.R.1975 Madras 270] and Sujit Pal v. Prabir Kumar Sun [A.I.R.1986 Calcutta 220]. In Century Flour Mill Limited, it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the Court, as a policy, to set the wrong right and not allow the perpetuation of the wrong-doing. The inherent power of the Court, it was held, is not only available in such a case, but it is bound to be exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognize that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order."

32. In the case of FOOD CORPORATION OF INDIA v. SUKH DEO PRASAD, reported in (2009)5 SCC 665, at paragraph 38 of the judgment, the Hon'ble Apex Court has observed thus:

"38. The power exercised by a court under order 39, Rule 2A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under order 39 Rule 2A, the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the 'order', on surmises suspicions and inferences. The power under Rule 2A should be exercised with great caution and responsibility."

33. In the case of V. UMA v. V. BALAJI, reported in AIR 2011 Mad. 197, the Division Bench of Madras High Court, at paragraphs 11 to 13 observed thus:

"11. Therefore Order XXXIX Rule 2A takes care of situations in case, a party against whom an order of injunction was issued violates the said order. Rule 2A (2) provides for attachment and sale of the property belonging to the contemner, in case disobedience or breach continues even after a period of more than one year. Similarly Order XXI Rule 32(2) provides for enforcing the decree for specific performance, restitution of conjugal rights or for injunction. Therefore, the Civil Procedure Code itself takes care of situations arising on account of violations of the order of injunction or disobedience of order or decrees passed by the Civil Court.

12. Order XXXIX Rule 2A and Order XXI Rule 32(2) are intended for enforcing the order or decree of injunction and as such those provisions are adequate remedies. In the event of initiating proceedings for violation of decree or order of injunction, it is open to the parties to collect evidence to prove their respective contentions, and it would enable them to demonstrate before the Trial Court the circumstances under which the order of injunction was granted and the alleged act of disobedience at the instance of the opposite party. It would also enable the contemner to produce materials to show that he has not committed any act of contempt as alleged. The orders passed by the trial Court under these provisions are appealable orders. Therefore, the Civil Procedure Code itself contains an inbuilt provision to safeguard the interest of parties.

13. The contempt is essentially a matter between the Court and the contemner. The petitioner in a contempt jurisdiction could only appraise the Court of the contempt committed by a party to the lis. It is for the Court to take cognizance of the contempt and proceed further. Therefore, the issue is whether this Court is bound to proceed under the Contempt of Courts Act in spite of an alternate remedy to the petitioner to appraise the Concerned Trial Court about the acts of disobedience of the order.

34. Further at paragraphs 16 to 18, it is observed thus:

"16. The question, whether the Civil Procedure Code contains adequate and satisfactory remedy in the event of disobedience of the order of injunction granted by the Civil Court, came up for consideration before a Division Bench of this Court in Ramalingam v. Mahalinga Nadar (1965 (2) Madras Law Journal 162). While interpreting the existing provision as contained under Order XXXIX Rule 2(3) of the Civil Procedure Code, the Division Bench observed thus:-

"Essentially, Contempt of Court is a matter which concerns the administration of justice, and the dignity and authority of judicial tribunals; a party can bring to the notice of Court, facts constituting what may appear to amount to contempt of Court, for such action as the Court deems it expedient to adopt. But, essentially, jurisdiction in contempt is not a right of a party, to be invoked for the redressal of his grievances; nor is it a mode by which the rights of a party, adjudicated

upon by a tribunal, can be enforced against another party. The entire corpus of execution law exists for the enforcement of rights, by one party against another, which have been the subject matter of adjudication. In our view, there are sufficient grounds here to show that it will be expedient and undesirable to institute proceedings in contempt jurisdiction, in a situation of this kind. Firstly, the facts themselves may be in controversy, whether a deliberate flouting of a judicial order or decree has occurred and we state this, irrespective of the merits of the instant case. When they are in controversy, they cannot be ascertained without due enquiry. If the Court is to commence an action in contempt jurisdiction, only after ascertaining facts at such an enquiry, obviously it will be converting itself into an agency for arriving at findings of fact which may be a foundation for contempt jurisdiction. On the contrary, it would be in the interests of justice to exercise contempt jurisdiction, or to commence to do so, only when the facts of the record *ex facie* support such a proceeding; any detailed enquiry must be left to the Court which has passed the order, and which is presumably fully acquainted with the subject-matter of its own decree of temporary prohibitory injunction. For this reason, we are of the view that Order XXXIX Rule 2(3) of the Civil Procedure Code, is far more adequate and satisfactory remedy in such cases. Again, where the situation is strictly inter parties and third party rights are not involved, it is clearly more desirable that the Court which made the order of injunction, should go into the facts, and ascertain the truth of the alleged disobedience, and the extent to which it has been wilful.

... Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it, as distinguished from a wrong that might be inflicted on a private party, by infringing a decretal order of Court."

17. The learned counsel for the petitioner further contended that the Trial Courts are not taking up the contempt petitions then and there and whenever, disobedience to the order injunction is brought to the notice of Court, such applications used to be tagged along with the main suit.

18. The trial Court should make an attempt to take up such violation applications before the disposal of the suit as otherwise there is no point in giving interlocutory injunction after making out a *prima facie* case. Parties to the lis should not be allowed to flout the order of Court and avoid actions under the guise of pendency of the substantial proceedings. The main object of Rule 2A of Order XXXIX is to uphold the majesty of judicial orders, as otherwise, it would erode the faith of litigants in the justice delivery system."

35. The Hon'ble Supreme Court, in the case of *SURYA VADANAN v. STATE OF TAMIL NADU*, reported in AIR 2015 SC 2243, at paragraph 58 of the judgment, has observed thus:

"58. As has been held in *Arathi Bandi* a violation of an interim or an interlocutory order passed by a court of competent jurisdiction ought to be viewed strictly if

the rule of law is to be maintained. No litigant can be permitted to defy or decline adherence to an interim or an interlocutory order of a court merely because he or she is of the opinion that that order is incorrect - that has to be judged by a superior court or by another court having jurisdiction to do so. It is in this context that the observations of this court in *Sarita Sharma and Ruchi Majoo* have to be appreciated. If as a general principle, the violation of an interim or an interlocutory order is not viewed seriously, it will have widespread deleterious effects on the authority of courts to implement their interim or interlocutory orders or compel their adherence. Extrapolating this to the courts in our country, it is common knowledge that in cases of matrimonial differences in our country, quite often more than one Family Court has jurisdiction over the subject matter in issue. In such a situation, can a litigant say that he or she will obey the interim or interlocutory order of a particular Family Court and not that of another? Similarly, can one Family Court hold that an interim or an interlocutory order of another Family Court on the same subject matter may be ignored in the best interests and welfare of the child? We think not. An interim or an interlocutory is precisely what it is - interim or interlocutory - and is always subject to modification or vacation by the court that passes that interim or interlocutory order. There is no finality attached to an interim or an interlocutory order. We may add a word of caution here - merely because a parent has violated an order of a foreign court does not mean that that parent should be penalized for it. The conduct of the parent may certainly be taken into account for passing a final order, but that ought not to have a penalizing result."

36. In the case of *U.C. SURENDRANATH v. MAMBALLY'S BAKERY* reported in (2019)20 SCC 666, at paragraph 7 of the judgment, it is held thus:

"7. For finding a person guilty of willful disobedience of the order under XXXIX Rule 2A C.P.C. there has to be not mere "disobedience" but it should be a "willful disobedience". The allegation of willful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere "disobedience" but a "willful disobedience". As pointed out earlier, during the second visit of the Commissioner to the appellant's shop, tea cakes and masala cakes were being sold without any wrappers/labels. The only thing which the Commissioner has noted is that "non removal of the hoarding" displayed in front of the appellant's shop for which the appellant has offered an explanation which, in our considered view, is acceptable one."

37. In the case of *SAMEE KHAN v. BINDU KHAN* reported in AIR 1998 SC 2765 at paragraphs 5 to 8, the Hon'ble Supreme Court as observed thus:

"5. Order 39 Rules 1 and 2 of the Code deal with powers of the Court to grant temporary injunction. Rule 2A has been inserted in the order as per Act 104/1976. Rule 2A reads thus:-

"Consequence of disobedience or breach of injunction - (1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule



2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order made, the Court granting the injunction or making the order or any court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, If the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court, may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the property entitled thereto."

6. Along with the insertion of the said Rule, legislature has deleted the erstwhile corresponding provision which was sub-rule (3) to Rule 2. It was worded as follows:-

" In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release."

7. It can be noted from the "Objects and Reasons" for the aforesaid amendment in 1976 that it is intended to make the provision applicable also to cases where injunction orders passed under Rule 1 are disobeyed, and for empowering a transferee court also to exercise such powers. Otherwise the deleted provision is the same as the present sub-rule 2A(1).

8. Learned Single Judge Considered the said Rule in juxtaposition with Order 21 Rule 32(1) of the Code and has observed that the latter provision deals with execution of a decree of injunction against a judgment debtor while the former deals with ad-interim or interlocutory order of injunction by providing remedies for disobedience or breach of such orders.

38. On careful examination of the aforementioned judgments of the Hon'ble Apex Court and this Court, I am of the view that, the litigant shall not be allowed to defy the interim order passed under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, as any such violation, not only defeat the legislative intent of scope and ambit of Order XXXIX Rule 2A read with Section 151 of Code of Civil Procedure, but also undermine the orders of the Courts and therefore, each case has to be evaluated on the facts and prayers made in the plaint and the application filed under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, so also, defence of the contemnor in the proceedings under Order XXXIX Rule 2A of the Code of Civil Procedure.

39. This Court, in the case of M.D. NANAIHAH v. K. NAGARAJU reported in ILR

1995 KAR 1705, at paragraph 25 of the judgment, has observed thus:

"25. A proceeding under Rule 2A of Order 39 is a serious matter. The Court is empowered to order to take away the liberty of an individual and order detention of the person who violates the order in Civil Prison. This power is penal in nature. If so, the burden is heavily on the person who alleges disobedience to prove the ingredients of the offence beyond reasonable doubt. An order under Rule 2A can not be passed on suspicion or as a matter of course. There should be clear proof that the order to be obeyed was clear, unambiguous and with full knowledge of the content of the order it was disobeyed. In the instant case, the plaintiffs wanted the 1st defendant not to hold election to the office of the President at Shimoga on 22-1-1995 contrary to Rule 14A. This was the content of the interim order as well. As the Executive Committee of the 1st defendant Central Working Committee which was meeting on 22-1-1995 was not holding election to the office of the President, it cannot be ruled that the defendants violated the order of the Court passed in I.A.No.1."

40. In the case of FAKRU SAB v. HUSSAIN BE reported in ILR 1989 KAR 681, at paragraphs 5 to 9 of the judgment, it is observed thus:

"5. Rule 2A(1), by the very language of it, confers two alternative powers on the Court to punish the person guilty of disobedience. The Court may order attachment of the property of the person. Court may also impose the punishment of imprisonment in the civil prison. One mode of punishment is not dependent upon the other mode also being invoked.

6. From the words "and may also order such person to be detained" it was contended that, attachment of property is the primary punishment to be imposed; further, since detention results in the deprivation of personal liberty, such a punishment should be imposed only under exceptional circumstances.

7. A person guilty of disobedience of an order of the Court cannot claim the protection of a right to his personal liberty. The power to make an order of temporary injunction cannot be effectively executed without an appropriate power to enforce it and to prevent its disobedience, by imposing punishment. Therefore, the plea based on personal liberty in the context of this Rule, cannot be countenanced.

8. When two alternative powers are available to the Court, the question of choosing one or the other power, will be a matter of judicial discretion. The exercise of this judicial discretion would depend upon, like so many other judicial discretions, circumstances of each case. Gravity of the disobedience is one such factor. Another factor will be, the suitability of the particular action to prevent the recurrence of the disobedience. In a given case, attachment of the property of the guilty person may be an appropriate action to prevent him from repeating the delinquency. In another case, a deterrent punishment of civil imprisonment may be necessary. As observed by the Allahabad High Court, in NIRANJAN SHUKLA AND ANR. v. SHANKER SHUKLA - -

"The nature of punishment will depend on the nature of breach. The violation of an injunction is a civil wrong and it is discretionary with the Court not to award any punishment when the breach is a minor breach or where the breach has not been the result of deliberate action. In a case where the breach is a continuing one and further disobedience is sought to be stopped, attachment of the property may be an appropriate remedy. But where the breach is a single completed breach, punishment by detention in civil prison alone will not be an inappropriate order."

Lack of bona fide, i.e., a purposeful disobedience is necessary for imposing the punishment of any kind under this Rule. Therefore, the fact that, the person who committed the breach, deliberately committed it, by itself cannot be a reason to impose the punishment of imprisonment. Read with some other circumstance, imprisonment may be the appropriate punishment. As already observed, choosing of the punishment depends upon several factors which are relevant in the matter of exercising a judicial discretion.

9. In this case, the only reason given by the learned Munsiff, for imposing the punishment of imprisonment, was that, the petitioner, deliberately committed the breach of the injunction order. Lack of bona fides on the part of the petitioner gave the cause to invoke Rule 2A. But, the circumstance justifying the particular penalty has not been stated. Though an elaborate order is not expected by the Court, the order penalising a person, should indicate in clear terms the circumstance, justifying the selection of the particular penalty, having regard to the alternatives available to the Court under this Rule."

41. The High Court of Kerala, in the case of KOCHIRA KRISHNAN v. JOSEPH DESOUZA reported in AIR 1986 KERALA 63 at paragraph 6 of the judgment, has observed thus:

"6. Any action by which the process of the Court is attempted' to be thwarted has to be viewed seriously. If an order of injunction is violated, that violation has to be dealt with sternly and seriously, for, otherwise, it will undermine the very basis of the Rule of Law. There is no difference, whether the violation pertains to an order, or to an undertaking made before a Court of law, which too will have as much effect as an interim injunction in such circumstances. The Court below disposed of such a serious complaint without considering it on merits. In so doing, it has erred; that error has to be corrected."

42. After referring to the aforementioned ratio laid down by the Hon'ble Apex Court and various High Courts, I have carefully, examined the finding recorded by the trial Court. It is not in dispute that the respondent herein filed Original Suit No.226 of 2013 against the defendants, wherein petitioner herein has been arraigned as defendant No.6 in the suit, seeking relief of permanent injunction as set out in the plaint. Along with the plaint, plaintiff has filed IA.I under Order XXXIX Rule 1 and 2 of Code of Civil Procedure seeking temporary injunction.

The trial Court granted ad-interim injunction on 05th November, 2013,

restraining the defendant/petitioner herein from making allegation against the plaintiff as set out in the application. In the meanwhile, the respondent herein filed application in IA.12 under Order XXXIX Rule 2A of Code of Civil Procedure, alleging violation of ad interim injunction order dated 05th November, 2013 as per Annexure-C. The petitioner entered appearance, filed counter statement to the said application. The trial Court framed points for consideration in the Civil Misc. Petition No.3 of 2015. Evidence was recorded. Power of Attorney holder of the respondent-B. Vardhamana was examined as PW1. He produced 19 documents and same were marked as Exhibits P1 to P20. Power of Attorney holder of the Petitioner-Ranjan Rao Yerboor was examined as RW1 and petitioner has examined another Witness-Ramesh as RW2. The respondent herein has also filed Civil Miscellaneous Petition No.8 of 2015 against the petitioner herein for continuance of disobedience of the order on IA.I. After conclusion of evidence, trial Court heard the learned counsel representing the parties and by order dated 28th August, 2017, allowed the petition and also sentenced the petitioner for civil imprisonment with cost. Being aggrieved by the same, petitioner herein has filed MA.10 of 2017 and MA.11 of 2017 before the First Appellate Court and the First Appellate Court by common order dated 07th February, 2018 allowed the appeal by setting aside the order dated 28th August, 2017 in Civil Miscellaneous Petition No.3 of 2015 and Civil Miscellaneous No.8 of 2015. Perusal of the paragraph 29 of the order dated 07th February, 2018 reveals that the First Appellate Court set aside the order of the trial Court to provide an opportunity to both the sides for adducing further evidence and addressing arguments on merits. After remand, the trial Court, provided an opportunity to both the parties to adduce evidence in the matter and by order dated 23rd March, 2018 allowed Civil.Misc. Petition No.3 of 2015 by awarding cost of Rs.3,000/-, so also, sentenced imprisonment of the petitioner herein for three months in Civil prison. The trial Court has also awarded compensation Rs.4,93,000/- . The said order dated 23rd March, 2018 was challenged before the First Appellate Court in MA.8 of 2018. The First Appellate Court by order dated 08th November, 2019 remanded the case to the trial Court for fresh consideration. Operative portion of the order reads as under:

"The Civil Misc No.3 of 2015 is remanded to lower court to dispose off the same after affording opportunities to appellant herein to lead further evidence if any and after hearing both the parties in accordance with law."

43. After the aforementioned order in MA No.8 of 2018, the petitioner examined RW2 and thereafter, the trial Court by impugned order dated 08th June, 2021 (Annexure-B) allowed the petition with cost of Rs.2,000/-, holding that petitioner herein is guilty of disobedience of the order dated 05th November, 2013 in Original Suit No.226 of 2013 and as such, directed the petitioner herein to be detained in civil prison for a period of three months. Further, the trial Court awarded compensation of Rs.4,50,000/-to the respondent herein. Feeling aggrieved by the same, petitioner herein has filed MA No.8 of 2021 before the First Appellate Court and the First Appellate Court by order dated 22nd March, 2022, dismissed the appeal, consequently, confirmed the order dated 08th June,

2021 in Civil Miscellaneous Petition No.3 of 2015 passed by the trial Court.

44. In the meanwhile, the main suit in Original Suit No.226 of 2013 was decreed on 07th July, 2020 and being aggrieved by the Same, petitioner herein filed RA No.23 of 2020, which came to be dismissed on 08th October, 2021. In sufferance of the judgment and decree passed by both the courts below, petitioner herein has filed RSA No.187 of 2022 before this Court and the same is pending consideration. With these factual aspects on record and in the light of the arguments advanced by the learned counsel appearing for the parties, I have carefully examined the evidence on record by the parties.

45. The Power of Attorney holder of the Petitioner/defendant, in the cross-examination deposed as follows:

(emphasis supplied)

46. At paragraphs 5 and 6 of the cross-examination on 26th July, 2017, RW1 deposed as follows:

(underlining supplied)

47. RW1, during cross-examination on 14th July, 2017

(emphasis supplied)

48. At paragraph 4 of the cross-examination, it is deposed thus:

(emphasis supplied)

49. Further, at paragraph 5, it is deposed thus:

(emphasis supplied)

50. It is also relevant to extract the cross-examination of RW1 dated 26th July, 2017, wherein at paragraph 7 it is deposed as follows:

(emphasis supplied)

51. It is further deposed thus:

52. At paragraph 10 of the cross-examination, RW1 has deposed as follows:

(emphasis supplied)

53. At paragraph 11, it is deposed thus:

(emphasis supplied)

54. RW1 deposed as under:

(emphasis supplied)

55. At paragraph 6 of cross-examination, RW1 deposed as under:

para No.8 of his cross-examination he deposed that:

(emphasis supplied)

56. On perusal of the aforementioned evidence by the parties on record and after applying the law declared by the Hon'ble Apex Court and various Courts referred to above, relating to "disobedience" under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, I am of the considered opinion that the trial Court has appreciated and considered the entire evidence on record in detail and had rightly come to the conclusion that the statement made by the petitioner, invariably affects the reputation of the respondent herein. The First Appellate Court, reappreciated the material on record, in detail and taking into consideration the issue involved in the proceedings, confirmed the order of the trial Court, which is in accordance with the realm of Order XXXIX Rule 2A of Code of Civil Procedure. It is well established principle that the object of Order XXXIX Rule 2A of Code of Civil Procedure, is to maintain the majesty of judicial Order to ensure the faith of litigants in the administration of justice. Rule of law is the hallmark and bedrock of the Indian Constitution. In order to preserve the Rule of Law principles, Orders/Judgments of the Courts have to be respected and dignity of the judiciary, being the guardian of the rights of the people is to be protected. In that view of the matter, orders/directions issued by Courts have to be implemented with utmost respect and any disobedience of such orders would send a wrong signal to the society. Any disobedience of the order of the Court is in the realm of the Court and the contemnor. Peoples' faith with the judiciary is the significant aspect in a democratic country and same has to be safeguarded by the Courts with potent provisions like Order XXXIX Rule 1 and 2 of Code of Civil Procedure or under the law relating to Contempt of Courts Act. Taking into consideration the aforementioned principle in law, I have carefully considered arguments advanced by the learned Senior Counsel Sri Pramod N Kathavi, relying upon the judgment of PRAKASH (supra), wherein at paragraphs 26 and 27 of the judgment, the Hon'ble Apex Court held as follows:

"26. The High Court took into account only the latter part of the answer given by Prakash, namely, that he held a cover. From this, the High Court concluded that "The fact that the fingerprint of the accused was found on Ex. P-18 (sic Ex. P-20) is accepted by the accused himself." In doing so, the High Court ignored the first part of Prakash's statement that this happened on 7th November, 1990. If any credibility is to be given to Exh.P-20 then it must be held that Prakash was arrested on 7th November, 1990 but that is not the case of the prosecution. We have, therefore, to proceed on the basis that Prakash was in fact apprehended and arrested on 11th November, 1990 and proceeding on that basis, there cannot be any question of his being given a cover to hold by the Investigating Officer on 7th November, 1990 for the purpose of obtaining his fingerprint. The ultimate conclusion is that there is absolutely no evidence on record to show how Exh. P-20 which is said to be the admitted fingerprint of Prakash came into existence. In the absence of any admitted fingerprint, there is nothing to show that the handprint or the fingerprints on Exh. P-18 was that of Prakash.

27. In *Hanumant Govind Nargundkar v. State of M.P*[19] it was held:

"23. ... It is settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all. A similar view was expressed, rather expansively, in *Narain Singh v. State of Punjab* and *Dadarao v. State of Maharashtra*."

57. The above judgment of Apex Court is not applicable to facts on record, as on perusal of the evidence of PW1 and RW1 makes it clear that the petitioner herein, with deliberate intention, makes statement in public to disrepute the respondent, despite being aware of the interim order passed in the suit. Perusal of the findings recorded by both the courts below reveals that petitioner herein continuously making statement against the respondent and therefore, the said judgment cannot be made applicable to facts on record.

58. Insofar as the judgment of the Hon'ble Supreme Court in the case of *SUSHIL MITTAL* (supra), at paragraph 15 of the judgment, it is observed thus:

"15. It is settled position that before a party can be punished for disobeying order under Rule 2-A of Order 39, it must be established by the other party that the order which is alleged to have been disobeyed was clear, unambiguous and the party was not under a bona fide apprehension as to the scope of such an order. It is equally true that when the injunction is in force, irrespective of the legality of the orders, the party is bound to obey the orders of the Court. In case of disobedience; such a party is liable to be proceeded under Order 39, Rule 2A(1) of the Code. The Jurisdiction of the Court to punish a contumacious party is to vindicate the majesty of rule of law. It is not intended to benefit the parties. It is equally settled that in a suit for permanent injunction to restrain the defendant and their servants etc. from doing certain activity, the persons who are not party to the lis, cannot be held responsible in case of disobedience of the orders."

59. The said judgment also cannot aid the arguments advanced by learned senior counsel, as the petitioner herein has been arraigned as defendant No.6 in the suit and careful examination of Exhibits P2 to P17 would substantiate the "disobedience" on the part of petitioner and therefore, the said argument of the learned Senior Counsel is feeble one and not a defence to the findings recorded by the trial Court.

60. Though I find force in the submission of Sri Pramod Kathavi, learned Senior Counsel that the evidence of PW1 cannot be a basis to assess the reputation of the respondent herein, however, petitioner herein has filed Writ Petition No.14690 of 2016 before this Court, challenging the evidence of PW1 tendered as Power of Attorney holder of the respondent and this Court, by order dated 13th April, 2016, rejected the Writ Petition and same has reached finality and this Court, at paragraph 4 of the judgment, has held as follows:

"4. Having heard the learned advocates appearing for parties and on perusal of the records it is noticed that respondent herein alleging violation of order of temporary injunction granted in O.S.226/2013 has filed an application under Order XXXIX Rule 2-A CPC which has been registered separately as Civil Miscellaneous proceedings in C.Mis.No.3/2015. In the said proceedings petitioner therein through power of attorney holder has tendered evidence in support of his claim of willful disobedience of interim order of temporary injunction by defendant/writ petitioner. Thus burden is cast very heavily on the petitioner therein i.e., 1st respondent herein namely to prove there has been willful disobedience of order of temporary injunction. As rightly observed by trial court power of attorney holder of a party can be examined not only as an agent on behalf of principal and but also he can tender evidence as a witness on behalf of principal. As to the extent of such evidence which can be eschewed by court is an issue which will be considered by court below at the time of examining as to whether there has been willful disobedience of order of injunction on the part of defendant or not. It is in this background trial court has rightly observed "question of personal knowledge about matters in controversy can only be decided after cross examination, added to that personal knowledge has nothing to do with the competence of power of attorney holder to depose before this court". It cannot be gain said by writ petitioner/6th defendant that even if agent is having personal knowledge about certain acts of his principal, his evidence cannot be eschewed or considered by court below. As to what extent such evidence tendered by the agent on behalf of Principal can be looked into or taken note of for the purpose of adjudicating alleged willful disobedience of order of injunction by writ petitioner/6th defendant would be within the domain of trial court at the time of adjudication of C.Mis.No.3/2015 on merits. In that view of the matter question of discarding the evidence of power of attorney holder of 1st respondent at this stage does not arise. No other good ground is made out to entertain this petition."

Taking into consideration the order passed by this Court referred to above, I am of the opinion that the arguments advanced on the part of petitioner that the evidence of PW1 regarding right in persona of the respondent, cannot be accepted.

61. Nextly, I have carefully evaluated the arguments advanced by Sri Pramod N. Kathavi, learned senior counsel, to the apology tendered by the petitioner at paragraph 8 of the affidavit filed in lieu of evidence as RW1 (Annexure-F). The same reads thus:

"8. I say that the respondent made the impugned statement as head of Nagarika Seva Trust and not on his personal capacity. Nagarika Seva Trust was not enjoined in the ad-interim prohibitory order. Further statement impugned was only reading of a public document and demand for speedy enquiry of misdeeds complained against. The statement was not made with an intention to violate the order of the court. Without prejudice to the above facts the respondent submits



that he is having utmost respect on the courts and if the court finds the impugned statement of truth supported by public documents also to be contemptuous, the respondent hereby tenders an unconditional apology of the Court.”

(emphasis supplied)

62. Having noticed the deponent version, it could be inferred that the Court has to evaluate all the material, and if at the end of the proceedings, when the Court wants to punish the petitioner, at that juncture, the apology is to be accepted. The said version reflects the adamant character of the contemnor, so also, disrespect to the court majesty.

63. It is pertinent to refer to the observation made by the Hon'ble Apex Court in the case of *ESTRALLA RUBBER* (supra) wherein at paragraphs 6 and 7 of the judgment, it is observed thus:

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or Tribunal has come to.

7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. vs. Ramtahel Ramamand and Ors.* [AIR 1972 SC 1598] in para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case *Waryam Singh & Anr. vs. Amarnath & Anr.* [1954 SCR 565]. This court in *Babhutmal Raichand Oswal vs. Laxmibai R. Tarte and Anr.* [AIR 1975 SC 1297] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert

itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”

64. While advertent to the interpretation with regard to Article 227 of the Constitution of India, the Hon’ble Supreme Court, in the case of RADHESHYAM AND ANOTHER v. CHHABINATH AND OTHERS reported in (2009)5 SCC 616, held as follows:

“Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.”

65. The said aspect of the matter was also considered by the Hon’ble Supreme Court in the case of JAISINGH AND OTHERS v. MUNICIPAL CORPORATION OF DELHI AND ANOTHER reported in (2010)9 SCC 385. In the said judgment, it is held as follows:

“The High Court under Article 227 of the Constitution of India, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law.”

In the said judgment, it is further held that:

“It can not be exercised like a “bull in a china shop”, to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.”

66. The jurisdiction conferred on the High Court under Article 227 of the Constitution of India had come up before the Hon’ble Supreme Court in the case of DR. KAZIMUNNISA (DEAD) BY LEGAL REPRESENTATIVE v. ZAKIA SULTANA (DEAD) BY LEGAL REPRESENTATIVE AND OTHERS reported in (2018)11 SCC 208, wherein the Hon’ble Supreme Court has held as follows:

“The High Court should have decided the matter by keeping in view the scope and ambit of Article 227 of the Constitution of India for its exercise as explained by the Supreme Court consistently in a series of decisions. The High Court while reversing the findings of the Special Court decided the writ petition under Article 227 like a first appellate court by appreciating the entire evidence little realizing that the jurisdiction of the High Court while deciding the writ petition under Article 227 is not akin to an appeal and nor can it decide the writ petition like an

appellate court.”

67. It is settled principle of law that the power of superintendence conferred by Article 227 of the Constitution of India is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. In a catena of decisions by the Hon'ble Supreme Court, it is held that the High Court, could not, in the guise of exercising its jurisdiction under Article 227 of the Constitution of India, convert itself into a court of Appeal when the Legislature has not conferred the right of appeal. Applying the aforementioned principles laid down by the Hon'ble Apex Court on exercising jurisdiction under Article 227 of Constitution of India, in my considered opinion no merit in the arguments advanced by the learned Senior Counsel on facts and law. The judgments relied upon by the learned Senior Counsel, do not support his contentions.

68. In the case of ESTRALLA RUBBERS (supra), the Hon'ble Supreme Court observed that Article 227 of the Constitution of India does not confer an unlimited prerogative upon the High Court to correct allowing decision or to prevent hardships caused thereby. Power under Article 227 of Constitution of India can be exercised to interference with orders of lower courts and Tribunals only in cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where in the absence of intervention by the high court, grave injustice remain unchecked and uncorrected.

69. As regards the Temple in question, in respect of the very same Sri. Manjunathaswamy Temple, the Hon'ble Apex Court in the case of SRI RATNAVARMA HEGGADE (supra), at paragraphs 3, 33 to 36 and 44 to 49, has observed thus:

“3. It is not in dispute that, even according to the Heggade, Dharmasthal has a number of institutions including the following main institutions,--

1. Nelleyadi Beedu,
2. Chandranatha Basthi,
3. Manjunatha temple,
4. Ammanvaru temple, and
5. Heggadeship.

These institutions have been shown in exhibit A 59 which is said to be a rough sketch of the Dharmasthal. It is also not in dispute before us that "Daivas" were first established in Nolleyadi Beedu, by an ancestor of Heggade who was a Jain, and were worshiped there. Heggade began to give charity to persons of all religions, and the institution became well known and travellers began to visit it in large numbers. It is the common case of the parties that Sri Vadiraja Swamjar of Sode Mutt, Udipi, who was a Sanyasi, happened to pass that way and was invited by Heggade to stay there. The Swamiar however refused to accept food there on

the ground that it was "Bhuta Kshetra". Heggade felt very sorry as the great Sanyasi was starving in his house. It is said that Heggade thereupon arranged to instal the idol of Sri Manjunatha in the "garbagriha." The Swamjar was appeased and performed the first "pooja" in that temple, which thereafter came to be known as Dharmasthal. This is said to have happened in the sixteenth century and is, at any rate, said to be the origin of the Manjunatha temple in the Dharmasthal campus.

4 to 32 xxx xxx xxx

33. The case of the Heggade or the managing trustee was far from consistent. He took up the following positions: firstly, that the temple was "private" and not a public temple and was exempt from the provisions of the Act for that reason; secondly, that the temple was a Jain institution, or, an integral part of it, and, therefore, excluded from the purview of the Act; and, thirdly, that the temple, even if it was to be deemed to be a Hindu temple, as a place at which the Hindu public could worship as of right, was really not separable from the larger Jain institution, so that, irrespective of the character of worship or the beliefs of the worshippers at the temple, it was not an institution which could be viewed separately from the Dharmasthala or be held to be just a Hindu temple as an "institution". The Board considered the Heggade's case to be "that the Institution is a unique institution where a Hindu temple was round- ed and managed by a Jain family". A subtle distinction was thus made between the temple as a place of worship and as a part of a larger Jain institution. Although, I am doubtful of the correctness of this distinction, on facts, yet, for the reasons given below, I do not consider this to be a fit case for interference with the findings of the High Court, accepting the correctness of this distinction, on the par- ticular facts of the case before us.

34. It seems to me that the question whether the Manjunatha temple could be described as a Hindu temple as defined by the Act, could be conclusively answered by a reference to a number of admissions of the Heggade and his witnesses. Indeed, the exemption of the temple from the provisions of the Act by the State Government in exercise of its powers under Section 3(1) of the Act, could be sought by the Heg- gade only on the assumption that the temple constituted a Hindu religious endowment which ought to be exempted from the operations of the provisions of the Act. If it was exempt by virtue of a statutory provision from the provi- sions of the Act, as a Jain institution, there was no need for an order to exempt it. The scope of proceedings which have come up before us seems to go no further than resolu- tion of certain disputes. They may, however, involve making of certain declarations.

35. The origin of the temple was said to be given in a document containing a statement of 1806, 'by the then Dharmasthala Heggade, produced by the managing Heggade, which runs as follows:

"There was formerly a woman called Amoo Devi Ballalathi placed there by the

favour of God to perform the ceremonies. The God's name was Durga Amba Kallarkie, but was subsequently changed to Kanya Kumari. God appeared to the woman in a dream and revealed himself to her telling her he would remain in her house and 'she should therefore procure a bed and a light for him to perform ceremonies, also that she should build another house near to his to perform ceremonies in and that her children and heirs should accordingly succeed her. Under this arrangement, the temple shall ever flourish. As related before, the God in the shape of a woman revealed himself to Ballalthy and the Ballalthy acted accordingly. In the 1396 Sahvahanam, the Peer of Udipi, Wadirajaswamy, arrived at Dharmasthala where the Ballalthy ordered him to prepare his dinner and on the next day to leave the place. The Peer replied: "This is the residence of Devil. I must establish God in it before I eat my dinner". On this, the Ballalthy consulted the God in her sleep, who appeared and encouraged her, desired her to give the Peer whatever was required and told her he would establish the Kuddera God there saying 'you will tell this to the Peer who on hearing it will eat his dinner'. When I bring the God from Kuddera you will have a place prepared on the left hand side for his residence and a Brahmin appointed to perform ceremonies. "On the same evening the Manjunatha (Kudder God) was brought and a house built and he was lodged in it on the next morning, this was all seen. The Ballalthy informed the Peer of this. He accordingly came and after dining departed. Sometime afterwards the Ballalthy built a house on the right hand side and made it the residence of the God and Brahmins were appointed to perform ceremonies to both. The old God (viz., that of the Ballalthy) some time afterwards told the Ballalthy he had appointed the devil Kulataya to preside over the offerings and therefore she must build a house for him, to expend all the religious offerings properly, should any dispute arise, proper investigations were to be made. 'Some delay being made in the collection of the offerings by Kulataya, Annappa, another Devil was fixed, for whom another residence was built and four people were chosen to superintend the charities which the offerings admitted of...".

36. As the Board observed, it appeared that Sri Manjunatha idol was installed on the occasion of Vadirajaswamy of Udipi's visit to the Dharmasthala. This was taken to be the introduction of the worship of God as opposed to that of the Devil. Sri Manjunatha was the installed God. It was asserted that this was in accordance with Jain beliefs. It was said that God spoke through the Heggade who acted as the oracle and used to answer questions put to him by devotees at special sessions arranged for this purpose. It was, however, clear that Hindus in general were not prohibited from worshipping at this temple. They had worshipped here long enough freely and publicly to acquire the right to worship as members of the Hindu public in general. This right, I think, could not now be denied to them whatever be its origin.

37 to 45 xxx xxx xxx

46. If, therefore, there is a distinction between the meanings of "temple" merely

as a place of worship, as defined in Section 9(12), and a "temple" as an institution, as there seems to me to be, an authority deciding the issue whether it is an "institution", as contemplated by Section 84(1)(a) of the Act, will have to consider whether the history, the beliefs lying at the inception and sought to be propagated, the forms of worship meant to be kept alive, the prevalent customs and practices, the exact nature and process of the endowments connected with the institution, the established rules for its management, the objects to be carried out by those in charge of the endowment, taken together, would justify the inference that a particular "temple", as defined by the Act, is also a separate or separable institution by itself or is just an integral and organically inseparable part of an institution or organisation outside the Act. These wider aspects, which may not appear to be relevant at first sight, seem quite necessary to consider when we closely examine the nature of the issue contemplated by Section 84(1)(a) of the Act and decided by the High Court.

47. In the case before us, the findings of the High Court show that the institution or organisation of which Manjunatha temple is an inseparable part, is predominantly Jain in character. On such a finding, it would be exempt from the operation of the Act by reason of the explanation to section 2 excluding Jain "religious endowments" from the benefits of the Act. It may be that very good grounds could be given for holding that the temple is a separable or separate entity dedicated, by user, for worship by Hindus in general, without restriction of worship by Jains only as a matter of right. But, as two views seem, to be reasonably open on the question-- whether it is such a separate or separable institution or entity: I do not consider it fit to be reopened by us under Article 136.

48. A consideration of the property which belongs to or is "endowed for the support of maths or temples or for performance of any service or charity connected therewith and includes the premises of maths or temples" may also become necessary so as to determine the character of an endowment as a part of the "institution" and the process by which it took place. The institution endowed, on the findings of the High Court, being more than or wider than the Manjunatha temple, is not just a Hindu temple although a temple, by itself, could be such an institution if it were a separable entity."

49. The origin and process of dedication is not always found embodied in a document. Where the dedication itself is evidenced by a document, its objects, such as they may be can be determined by interpreting the document which makes the task of the authorities deciding the question generally easier. There are, however, many cases in 8 --1338SCI/76 which dedication or endowment of property for a particular purpose has to be inferred from immemorial user of a property in a particular manner or from the conduct of a party, such as permission to build a road for use by the public or permission to bury the dead on a piece of land. The last. mentioned type of case may also give rise sometimes to an estoppel against the owner of the land."

## CONCLUSION

70. Sri Kshetra Dharmasthala Manjunatha Temple has got large number of devotees not only in the State of Karnataka but also across the Country. People have utmost respect to Sri Kshetra Dharamasthala, Temple and Institution. People identify the respondent as a Dharmadhikari. Perusal of the record would indicate that respondent has been conferred title of "Karnataka Ratna" and the Union Government conferred "Padma Vibhushana" and "Padma Bhushana". In the backdrop of these aspects and careful examination of the documents viz., Exhibits P2 to P17, would indicate that the petitioner, in the guise of representing the Nagarika Seva Trust, put all efforts to malign the temple as well as the Administrators of the temple, particularly the family members of the respondent. Respondent and his family members are known to nook and corner of the State of Karnataka and any statement, which would go adverse to their interest, would directly affect the faith of the people, not only with the respondent and their family, but also with the Diety-Lord Sri Manjunathaswamy. In this regard, I have carefully considered the finding recorded by the courts below, particularly, the evidence on record, inter alia, the documents marked as Exhibits P2 to P17. The respondent herein has met all the contentions raised by the petitioner herein before the Courts below as well as in this Writ Petition. A reference made to letter dated 13th November, 2013-Copy of the Resolution (Exhibit R17), would substantiate that the petitioner herein representing as President of the Nagarika Seva Trust, addressed letter to the then Hon'ble Chief Minister of Karnataka relating to CBI enquiry into death of one Kum. Soujanya in Dharmasthala and same was published in the Daily newspaper. If at all the said Nagarika Seva Trust is having any interest towards the protection of the society as a whole, nothing prevented the said Trust to lodge complaint to Police authorities or file petitions to the competent authorities/courts to refer the matter to the Central Bureau of Investigation. Sri Chandranath Ariga, learned counsel appearing for the respondent argued that the CBI enquiry was conducted in respect of the said allegations and the CBI filed report to the government, absolving the interference of the respondent, his family and the temple in the said untoward incident. These facts would be a basis to thwart the allegations made by the petitioner against the respondent. At this juncture, though the learned Senior Counsel submitted that the remarks made by the petitioner herein through the voice of the Nagaraika Seva Trust, however, I do not find acceptable ground as urged by the learned Senior Counsel. In this aspect, it is useful to refer to the law declared by the Privy Council in the case of *EASTERN TRUST COMPANY v. MAKENZIE MANN AND CO. LIMITED* reported in AIR 1915 PC 106; and the judgment of the Patna High Court in the case of *SRI SUBHOD GOPAL BOSE v. DAHNIA JAIN AND CO. LTD* reported in AIR 1951 PAT 266, followed by the High Court of Madhya Pradesh in the case of *UMRAO SINGH v. RAM GOPAL AND ANOTHER* reported in ILR 1960 MP 1085, wherein it was held that a party to an order of injunction cannot, with impunity, disobey the order by assuming or taking a different capacity in respect of the act or acts which constitute a breach of the order of

injunction. Referring to the pleadings and evidence on record by the parties in the instant proceedings, I am of the view that the petitioner is guilty of the breach of the order of the Court, looked at in any manner whatsoever. His conduct, being highly contemptuous, both the courts below, rightly, awarded punishment and even though learned Senior Counsel appearing for the petitioner contended that the petitioner is having high regard to the Court of law, however, taking into consideration the continuous breach of injunction order by the petitioner as per the records made available by the parties, I am of the view that the impugned orders are just and proper and do not call for interference in this writ petition.

71. It is also relevant to refer to the judgment of the Hon'ble Supreme Court in the case of PATEL RAJNIKATNH DHULABHAI (supra) wherein at paragraphs 65 to 70 and 72 to 77, it is observed as follows:

"65. In Commissioner, Karnataka Housing Board v C. MUddaiah, , (2007) 7 SCC 689, one of us (C.K. Thakker, J.) observed that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. Upholding of such argument would seriously affect and impair administration of justice.

66. In all Bengal Escise Licensees Association v. Raghabendra Singh & Ors., (2007) 11 SCC 374, this Court considered several cases and observed that wilful and deliberate act of violation of interim order passed by a competent Court would amount to contempt of Court.

67. A reference in this connection may also be made to a decision of this Court in Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443. In that case, the plaintiff-landlord filed a suit against the defendant-tenant in the City Civil Court for permanent injunction restraining the defendant from carrying on construction in the suit premises. Ad interim injunction was granted by the Court. Defendant's application for vacating injunction was dismissed. The defendant, however, committed breach of injunction. The plaintiff, hence, filed an application under Order XXXIX, Rule 2-A of the Code. The defendant came forward and raised an objection as to jurisdiction of the Court and power to grant injunction. The High Court, ultimately, upheld the objection and ruled that City Civil Court had no jurisdiction to entertain the suit. It was, therefore, argued by the defendant that he cannot be punished for disobedience of an order passed by a Court which had no jurisdiction to entertain a suit or to grant injunction. The High Court upheld the contention. The plaintiff approached this Court.

68. This Court observed that until the question of jurisdiction had been decided,



the City Civil Court possessed power to make interim orders. The Court could also enforce them. A subsequent decision that the Court had no jurisdiction to entertain the suit did not render interim orders passed earlier non est or without jurisdiction. A party committing breach of such orders could not escape the consequences of such disobedience and violation thereof. Accordingly, the Court held the defendant guilty for intentionally and deliberately violating interim order and convicted him under Rule 2-A of Order XXXIX of the Code and sentenced him to one month's imprisonment.

69. Speaking for the Court, Jeevan Reddy, J. stated;

"16. Can it be said that orders passed by the Civil Court and the High Court during this period of six years were all non est and that it is open to the defendants to flout them merrily, without fear of any consequence. The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/ interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of the Rule of Law and would seriously erode the dignity and the authority of the courts. (emphasis supplied)

70. From the above decisions, it is clear that punishing a person for contempt of Court is indeed a drastic step and normally such action should not be taken. At the same time, however, it is not only the power but the duty of the Court to uphold and maintain the dignity of Courts and majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with the orders passed by a Court, it is required to take strict view under the Act, it should not hesitate in wielding the potent weapon of contempt.

71 xxx xxx xxx

72. The question then is whether the case calls for imposition of punishment on the contemnors. The learned counsel for the contemnors submitted that in the affidavit in reply, the respondents have stated that if this Court comes to the conclusion that they had committed contempt of Court, the Court may accept unconditional and unqualified apology and may discharge notice. The counsel submitted that the statutory provision itself enacts that no apology shall be rejected merely on the ground that it is qualified or conditional [Explanation to Section 12(1)].

73. We must frankly admit our inability to agree with the learned counsel. In the light of what is stated above, we are convinced that the contemnors have intentionally and deliberately violated the orders of the Court. We are also convinced that the orders were clear, unambiguous and unequivocal having one and only one meaning. Wilful and deliberate disobedience of the orders passed

by the apex Court of the country can never be said to be bona fide, honest or in good faith. If it is so, the action calls for serious view to ensure proper administration of justice.

74. In *Hiren Bose, Re*, AIR 1969 Cal 1 : 72 Cal WN 82, the High Court of Calcutta stated;

"It is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a Court of justice But before it can have that effect, it should be tendered at the earliest possible stage, not the latest. Even if wisdom dawns only at a later stage, the apology should be tendered unreservedly and unconditionally, before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be".

75. It is well-settled that an apology is neither a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, it is intended to be evidence of real contriteness [Vide *M.Y. Shareef v. Hon'ble Judges of the High Court of Nagpur*; (1955) 1 SCR 757 : *M.B. Sanghi V. High Court of Punjab & Haryana*, (1991) 3 SCR 312].

76. In *T.N. Godavarman Thirumulpad through the Amicus Curiae v. Ashok Khot & Anr.*, 2006 (5) SCC 1, a three Judge Bench of this Court had an occasion to consider the question in the light of an 'apology' as a weapon defence by the contemner with a prayer to drop the proceedings. The Court took note of the following observations of this Court in *L.D. Jaikwal v. State of U.P.*.....:

"32. We are sorry to say we cannot subscribe to the 'slap-say sorry-and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slipper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry".

The Court, therefore, rejected the prayer and stated;

"31. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward".

Similar view was taken in other cases also by this Court.

77. We are also satisfied that the so- called apology is not an act of penitence, contrition or regret. It has been tendered as a 'tactful move' when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court. In our considered opinion, on the facts and in the circumstances of the case, imposition of fine in lieu of imprisonment will not meet the ends of justice."

(emphasis supplied)

72. Applying the principle "slap - say sorry and forget", laid down by the Hon'ble Apex Court in the aforementioned judgment to the case on hand, I am of the considered view that the apology tendered by the petitioner at paragraph 8 of the affidavit in lieu of evidence as PW1 that, "if the courts finds" cannot be accepted as an apology, in the peculiar facts and circumstances of the case.

73. I am also surprised that the petitioner has not produced any material before the trial Court or before the Appellate Court or before this Court to substantiate the benevolent measures taken by the said Nagarika Seva Trust except making allegation against the respondent, his family members or the temple in question. On the other hand, perusal of the record substantiate the public good policies undertaken by the respondent and the temple in question. The complaint lodged by RW1-the General Power of Attorney of the petitioner, was quashed by this Court in Writ Petition No.21974 of 2016 by order dated 22nd July, 2019. The said judgment has reached finality. Though the petitioner has raised hue and cry against the respondent with regard to excess holding of land, however, the perusal of the record would indicate that the respondent and his family members had given lands to the cultivators and have taken innumerable steps/measures in the State of Karnataka to uplift the downtrodden; and by providing financial assistance to the women as well as constructions of Public Toilets in the State of Karnataka. The petitioner has addressed letter to His Excellency the President of India and His Excellency the Governor of Karnataka regarding conferment of Padma Vibhushana and Padma Bhushana titles on the respondent. The petitioner has made allegation against the then Law Minister, Sri Jayachandra, linking to the respondent herein. Perusal of the Exhibit R7, declaration issued by the Land Tribunal, Belthangady would indicate the actual land belonging to the respondent and their family members and the said fact is self-explanatory with regard to the frivolous allegation made by the petitioner to disrepute the respondent and his family members. These facts have been critically analysed by both the courts below and arrived at the conclusion with cogent reasons that the petitioner herein has violated the interim order dated 05th November, 2013.

74. Be that as it may, violation of interim order passed by the trial Court by the petitioner herein, amounts to "disobedience" under Order XXXIX Rule 1 and 2 of Code of Civil Procedure as per the law declared by the Hon'ble Apex Court narrated above and on analysing the finding recorded by both the courts below, I am of the view that there is no infirmity or perversity in the impugned orders

passed by both the courts below.

75. This Writ Petition is filed under Article 227 of the Constitution of India. Appreciation of the impugned orders in the present Writ Petition is akin to revisional jurisdiction under Section 115 of Code of Civil Procedure. Though this Court is having supervisory jurisdiction with finding of the trial Courts under Article 227 of the Constitution of India, it is trite law that the interference be made to the order passed by the trial Court, only when there is flagrant violation of principles of law. After analyzing the entire documents on record, appreciation of the material, so also, finding recorded by both the courts below, I find no violation of principles of law in the orders passed by the Courts below. Following the law declared by the Hon'ble Apex Court with regard to interference under Article 227 of the Constitution of India, I am of the view that the Writ Petition deserves to be dismissed. At this juncture, it is relevant to extract the principles laid down by this Court in the case of K.S. SIDDAPPA v. LAKSHMANNA AND OTHERS reported in AIR 1965 MYS 313 wherein, this Court, following the law declared in Md. HUSSAIN V. BALA LAKSHMAN reported in AIR 1947 ALL. 343 wherein His Lordship Vivian Bose J., observed that "the substantial justice in the context must relate to the rights to which a party has a legal has opposed to purely moral claim. High Court is not bound to interfere in exercise of its power under Section 115 of CPC, if substantial justice has been done.", this Court through D.M. Chandrashekar J., has held that, where the order of a subordinate Court, though suffers from an illegality or irregularity, has brought about just result and where setting aside that order would bring about an unjust result, the High Court would not exercise its discretion under Section 115 CPC and interfere with such order." Following the aforementioned dictum of this Court, I am of the view the award of compensation of sum of Rs.4,50,000/- by the trial Court is just and proper and same is within the jurisdiction of the Court to compensate the aggrieved party in the peculiar circumstances of the case. The principal argument of the learned Senior Counsel was that, the trial Court has no jurisdiction to award compensation, under the circumstances of the case. In this regard, perusal of the impugned orders would indicate that the Civil Miscellaneous Petition is filed by the respondent-plaintiff under Order XXXIX Rule 2A read with Section 151 of Code of Civil Procedure. The language employed under Section 151 of Code of Civil Procedure provides for saving of inherent powers of Court. This provision reminds the judges of what they ought to know already, viz. that if the ordinary rules of procedure result in injustice in any case and there is no other remedy, they can be broken for the ends of justice. In terms of the Section, the inherent powers saved are such as are used to secure the ends of justice and these inherent powers to be exercised in a very exceptional circumstances. Section 151 of Code of Civil Procedure merely saves by expressly preserving to the Code and of both, the court of equity and law. Inherent power to act according to justice, equity and good conscience and make such orders as may be necessary for ends of justice or to prevent the abuse of process of Court. In this regard, it is relevant to refer to the law enunciated by the Hon'ble Supreme Court in the case

of ARJUN SINGH V. MOHINDRA KUMAR AND OTHERS reported in AIR 1964 SC 993 wherein, in the course of the judgment, the Hon'ble Supreme Court observed thus:

"The inherent power of the Court cannot override the express provisions of the law. If there are specific provisions of the Code dealing with a peculiar topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code."

76. It has been held by the Hon'ble Apex Court in MANOHARLAL v. HIRALAL reported in AIR 1962 SC 527 that, the inherent powers are to be exercised by the Court in very exceptional circumstances, for which the Code lays down no procedure. This principle is reiterated by the Hon'ble Apex Court in the case of RAMKARANDAS RADHAVALLABH V. BHAGWANDAS DWARKADAS reported in AIR 1965 SC 1144. The Hon'ble Supreme Court in the case of K.K. VELUSAMY v. N PALANISAMY reported in (2011)11 SCC 275, at paragraph 10 of the judgment has observed thus:

"10. The scope of Section 151 has been explained by this Court in several decisions (See : Padam Sen vs. State of UP-AIR 1961 SC 218; Manoharlal Chopra vs. Seth Hiralal - AIR 1962 SC 527; Arjun Singh vs. Mohindra Kumar - AIR 1964 SC 993; Ran Chand and Sons Sugar Mills (P) Ltd. vs. Kanhay Lal - AIR 1966 SC 1899; Nain Singh vs. Koonwarjee - 1970 (1) SCC 732; The Newabganj Sugar Mills Co.Ltd. vs. Union of India - AIR 1976 SC 1152; Jaipur Mineral Development Syndicate vs. Commissioner of Income Tax, New Delhi - AIR 1977 SC 1348; National Institute of Mental Health and Neuro Sciences vs. C.Parameshwara - 2005 (2) SCC 256; and Vinod Seth vs. Devinder Bajaj - 2010 (8) SCC 1). We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or by necessary implication exhaust the scope of the power of the court or the jurisdiction that may be exercised in relation to that matter, the inherent power

cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a *carte blanche* to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.

77. Keeping in view the factual aspects of the as well as the scope of Section 151 of Code of Civil Procedure, and the judgment of as stated hereinabove, the aspects to be considered under Section 151 of Code of Civil Procedure be succinctly summarised as follows:

(i) The inherent powers of the Code under Section 151 Code of Civil Procedure is very wide and are not controlled by the provisions of the Code. These powers are in addition to the powers specifically conferred on the Court by the Code and the Courts are free to exercise them;

(ii) The only limitation put on the exercise of the inherent powers is that, when exercised, they are in conflict with what has been expressly provided for or covering a power a particular provision under the Code or against the intention of the Legislature and these inherent powers are to be exercised where specific provision does not meet the necessities of the case.

78. It is trite law that no party to the proceedings has right to insist on the Code exercising its inherent jurisdiction and this jurisdiction has to be exercised by the Court in a very exceptional circumstance for which Courts provides no procedure. It is equally pertinent to say that the inherent powers under Section 151 of Code of Civil Procedure cannot be used as an instrument to intrude the powers of the Court in regard to a procedure or a remedy if specifically provided in other provisions of Code of Civil Procedure. Therefore, as Order XXXIX Rule 2A of Code

of Civil Procedure do not provide for awarding of compensation under the Code and as the Civil Miscellaneous Petition is filed under Order XXXIX Rule 2A read with Section 151 of Code of Civil Procedure, I am of the view that awarding compensation by the trial Court by invoking Section 151 of Code of Civil Procedure is just and proper and the point No.3 that arose for consideration before the trial Court, has rightly been answered in the affirmative as undoubtedly proceedings under Order XXXIX Rule 2(3) of Code of Civil Procedure have a punitive effect and as evident from the factual aspects of the case and the finding narrated above, the contemnor/petitioner herein (defendant No.6) being liable to be ordered to be detained in civil prison, inter alia, awarding compensation in favour of the respondent/plaintiff is well within the spirit of Section 151 Code of Civil Procedure. In this regard, the law declared by the Constitution Bench of the Hon'ble Apex Court in the case of RANI SONABATI KUMARI (supra) is aptly applicable to the facts of the present case. Following the law declared by the Hon'ble Apex Court referred to above and the finding recorded by me on the factual aspects of the case, I do not find any acceptable ground as raised by the learned Senior Counsel Sri Pramod N. Kathavi with regard to the jurisdiction of the trial Court to award compensation as the finding recorded by the trial Court on point No.3 is based on the evidentiary value and the mental agony caused to the respondent at the instance of the derogatory remarks made by the petitioner in defiance of the interim order of injunction dated 05th November, 2013. The uncalled for and frivolous allegation made by the litigants, like the petitioner herein, in defiance of interim order, have to be dealt with strictly in accordance with principles laid down by the Hon'ble Apex Court referred to above. It is a matter of common experience that valuable time of the Court is consumed or more particularly wasted in a large number of uncalled for cases. The credibility of the entire judiciary is at stake, in view of the attitude of the petitioner herein and effective remedial steps are to be taken by imposing exemplary costs or award compensation to the aggrieved person, like respondent herein. Every case emanates from egoistic and undeterred person, like petitioner herein, making frivolous allegations, inter alia, malign the reputation of the public benevolent person, have to be assessed with cogent evidence and award compensation to such aggrieved person like respondent herein, to put an end to adamant characterised person like petitioner. Trial Courts have to adopt the principle of awarding compensation by exercising inherent powers under Section 151 of Code of Civil Procedure, if there is deliberate violation of the interim orders passed under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, by exercising power under Order XXXIX Rule 2A of Code of Civil Procedure and trial Court must adopt realistic and pragmatic approach in granting compensation to the aggrieved party, whose reputation is being maligned, despite knowing fully well that the trial Court has passed the ad interim injunction. Imposition of cost, and awarding of compensation would go a long way in controlling the tendency of introducing false allegation by the contemnor. No one should be allowed to abuse the process of the Court.

79. Pleadings are the foundation of the claim of the parties. Civil litigation is largely based on documents. Documents have to be scrutinised, checked and verified. Courts should be extremely careful and cautious while imposing punishment for violation of order of temporary injunction. On the other hand, violation of Court orders by the litigant should be viewed seriously, as same would affect the fabric of administration of justice by the court of law. In the celebrated decision of ATTORNEY GENERAL v. TIMES NEWSPAPER LIMITED reported in (1973)3 All.ER 54, Lord Diplock observed thus:

“there is an element of public policy in punishing civil contempt, since the administration of justice could be undermined if the order of any court of law could be disregarded with impunity....”

80. In the light of the judgments referred to above, and the aforesaid observation, points that arose for consideration in this petition, are answered favour of the respondent holding that the petitioner has committed disobedience of the order dated 05th November, 2013 passed in Original Suit No.226 of 2013 on the file of Civil Judge and JMFC, Belthangady. In the light of the aforesaid facts and circumstances, position of law and the judgment relied upon by the parties, the petitioner/defendant No.6 does not entitled for exoneration from the well-reasoned orders of the courts below. Both the courts below acted in the letter and spirit of Order XXXIX Rule 2A read with Section 151 of Code of Civil Procedure and the law enunciated by the Hon'ble Supreme Court. Thus, impugned orders are confirmed. Having analysed the finding recorded by both the courts below, I do not find merit in the writ petition as to interfere with the same by exercising power and jurisdiction under Article 227 of the Constitution of India. The petitioner/defendant No.6, is guilty of disobedience of Order dated 05th November, 2013 passed by the trial Court in Original Suit No.226 of 2013. In the result, I pass the following:

#### ORDER

1. Writ Petition is dismissed;

2. Order dated 22nd March, 2022 passed in MA No.8 of 2021 by the Principal Senior Civil Judge and JMFC; and order dated 08th June, 2021 passed in Civil Misc. Petition No.3 of 2015 passed by Additional Civil Judge and JMFC, Belthangady, are confirmed.

No order as to costs.