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**(1989) 12 KAR CK 0023**  
**In the Karnataka High Court**  
**Case No : C.C.C. (Civil) No. 35 of 1989**

Kanaka Raj Mehta

APPELLANT

Vs

K.V. Shivakumar

RESPONDENT

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**Date of Decision :** 14-12-1989

**Acts Referred:**

Constitution of India, 1950 — Article 215, 226  
Contempt of Courts Act, 1971 — Section 20

**Citation :** (1990) ILR (Kar) 42

**Hon'ble Judges :** Ramakrishna, J; Rama Jois, J

**Bench :** Division Bench

**Advocate :** R.N. Narasimhan Murthy and K.S. Desai, for the Appellant; K.R.D. Karanth and G.S. Bhat for R-1 and C. Shivappa, General for R-2, for the Respondent

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## Judgement

Rama Jois, J.—In this complaint presented under Article 215 of the Constitution of India read with Sections 11 and 12 of the Contempt of Courts Act, 1971 (the Act for short) in which the complainant complains that respondent No. 1 has failed to comply with the directions issued to him by this Court in W.P. No. 33040/1982, DR. H.L. Thimme gowda v. Deputy Commissioner - DD 8-5-1986, in view of the preliminary objections raised by the 1st respondent, the following question of law arises for consideration:

"Whether the period of limitation of one year for initiating proceedings for contempt of Court from the date on which the contempt is alleged to have been committed, prescribed u/s 20 of the Contempt of Courts Act, 1971 applies to the exercise of power conferred on this Court under Article 215 of the Constitution of India, to punish for contempt of itself?"

2. The facts of the case, in brief are these:- There have been number of Writ Petitions including public interest petitions presented before this Court questioning the legality of the lease of a very valuable site located in the most important business locality of Bangalore City belonging to the State Government

to the 1st respondent. In one of the Writ Petitions (W.P. No. 15996/ 1981) there was also an interim order directing the 1st respondent not to construct the building. But it so happened the 1st respondent despite the said order managed to construct the building. The history of the case and as to how the 1st respondent managed to put up the construction are fully set out in S.K. Sharma Vs. Corporaion of the City of Bangalore, and the order made in W.P. No. 33040/1982 in which the legality of the lease in favour of the 1st respondent was considered, out of which the present complaint arises. The Court came to the conclusion that the decision of the Government to lease the site to the 1st respondent suffered from serious illegalities and was an act of favouritism in favour of the 1st respondent. However, as the building had already been constructed and as the 1st respondent gave an undertaking that instead of the monthly rental of Rs. 16,350/- for which the site was leased to the 1st respondent, he would pay rent at the rate of Rs. 25,000/- per month from the date of lease of the site, instead of quashing the lease in favour of the 1st respondent, a direction was issued to the 1st respondent, who was respondent-3 in the said Writ Petition. The relevant portion of the Judgment in W.P. No. 33040/1982 S.K. Sharma Vs. Corporaion of the City of Bangalore, reads:

"14. Though we have accepted the first contention urged for the petitioners, on account of the withdrawal of the proceedings by the persons who had challenged the impugned order, the details of which have been set out earlier and the events that had taken place during the pendency of these proceedings, a fait accompli has been brought into existence rendering it difficult for this Court to set aside the impugned grant.

15. At this stage, it is appropriate to state that in the course of hearing of W. P. No. 4952 of 1981, after withdrawal of all other 1proceedings by competitors, on the suggestion made by the Court as to whether respondents were prepared to pay higher rent as offered by the bidders who had withdrawn their cases. Respondent-3 agreed to pay a rental of Rs. 25,000/- per month. Accordingly, a memo was filed in the said Writ Petition agreeing to pay a rental of Rs. 25,000/- per month instead of Rs. 16,350/- fixed in the impugned Government Order. But, it was submitted on behalf of the third respondent, before the Bench of which one of us (Rama Jois, J) was a Member, that the above offer should also be subject to the condition that the suit pending before the City Civil Court should be withdrawn. But, one of the public interest petitioners, who had filed the suit, did not agree to withdraw the suit. In the circumstances, the Writ Petition was dismissed solely on the ground of pendency of the civil suit by order dated 7-7-1982, extracted earlier. But, curiously, as stated earlier, after the dismissal of the Writ Petition, the said public interest petitioner withdrew the suit and thereby brought about the successful defeat of the earlier public interest petition as also the Original Suit No. 106 of 1980 filed by him against the impugned order.

16. In this Writ Petition also, learned Counsel for respondent-3 submitted that he was making the same offer once again and prayed that an order may be made

partially setting aside the impugned order and directing respondent-3 to pay a rent of Rs. 25,000/- instead of Rs. 16,350/-. He has also filed a memo in this behalf. It reads:

"Without prejudice to the objections raised, the third respondent above named states as follows:- The third respondent gives an undertaking to pay a rent at Rs. 25,000/- (Rupees Twenty-five Thousand) only per month instead of the existing rent and in that behalf, a suitable direction may please be issued to the second respondent to make appropriate rectification or amendment of the lease Deed.

He submitted that excluding the offer made by Shanthilal Mutha of rental of Rs. 42,000/- for a period of thirty years, which was treated by the Government as a speculative one, and was accepted as such in the order made in the earlier petitions, the next highest offer was a rental of Rs. 25,000/- for 25 years and, therefore, the grant may not be interfered with in view of the offer. He also submitted that having regard to the fact that during the pendency of this Writ Petition respondent-3 has already constructed the building, the prayer for striking down the impugned order may be rejected as otherwise respondent-3 would be put to greater and irreparable financial loss and hardship."

xxx xxx xxx "20. In the result, we make the following order:

- (i) The Writ Petitions are partly allowed;
- (ii) The impugned order of the State Government in so far as it relates to the fixation of the rental at Rs. 16,350/-per month, is set aside. An amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) as monthly rental shall stand substituted in the place of Rs. 16,350/-fixed in the impugned order;
- (iii) Respondent No. 3 shall pay the difference of the rental amount up-to-date within a period of three months from today and shall commence and continue to pay the rent of Rs. 25,000/- per month thereafter;
- (iv) Respondent-3 shall execute the necessary correction document of the lease deed, within three months from today;
- (v) The period of lease shall remain unaltered."

The above order was made on 8-5-1986.

3. In this complaint, it is stated that the 1st respondent has failed to comply with the undertaking given to the Court and the direction issued by this Court on the basis of the undertaking. In the complaint it is stated that the 1st respondent has paid a total amount of Rs.8 lakhs between 20th. December 1979 and 20th December, 1988 for a period of 9 years, whereas the amount due to be paid by respondent No. 1 to the Government was Rs. 38,39,680/-. The statement of dues signed by the Special Deputy Commissioner is produced as Annexure-B. It reads:-

Statement showing the details of amount to be recovered from Sri K.V.

Shivakumar, Managing Partner, Rajatha Enterprises, No. 495, Avenue Road, Bangalore, towards lease rent in respect of property No. 812/1 of O.T.C. Road, Chickpet, Bangalore.

lease rent in respect of property No.812/1 of O.T.C. Road, Chickpet, Bangalore.

1.

Date of handing over possession of the property:

20-12-1979

2.

Lease rent from 20-10-1979 to 20-12-1988, 108 months at Rs.25,000/- per month:

Rs.27,00,000.00

3.

Amount of lease rent paid by the lessee so far:

Rs. 8,54,000.00

4.

Balance due as on 20-12-1988:

Rs.18,46,000.00

5.

Interest at 12% on the balance amount from 20-12-79:

Rs.19,93,680.00

6.

Total amount due by the lessee as on 20-12-1988:

Rs.38,39,680.00

Address of the Lessee:

Sri K.V. Shivakumar,

Managing Partner,

Rajatha Enterprises,

No.495, Avenue Road,

Bangalore - 560 002. Sd/- M. Krishnappa, Spl. Deputy Commissioner (Rev), Bangalore District." The fact that the 1st respondent has not complied with the Writ issued is not controverted by the 1st respondent.

4. Sri K.R.O. Karanth, learned Counsel for the 1st respondent, however, has raised a preliminary objection to the maintainability of the petition relying upon Section 20 of the Contempt of Courts Act. The said Section reads:-

"20. Limitation for actions for contempt:-No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

The learned Counsel submitted that the direction was Issued by this Court on 8-5-1986 and according to the directions, the 1st respondent was required to pay the arrears of rent within a period of 3 months from the date of Judgment and as the petition praying for taking action against the 1st respondent for having committed contempt of this Court been instituted on 6-2-1989 after a period of one year, after the expiry of 3 months from the date of the order it was barred by time and therefore the petition was liable to be dismissed in limine.

5. Sri R.N. Narasimha Murthy, learned Senior Counsel for the complainant and Sri C. Shivappa, learned Advocate General appearing for the 2nd respondent submitted that the power and jurisdiction of this Court to punish for contempt of itself was not derived from the provisions of the Contempt of Courts Act, but was conferred by Article 215 of the Constitution and as there was no provision in the Constitution which imposes any limitation in point of time for taking action either suo moto or on a complaint made by any person against a person, who is alleged to have committed contempt of this Court, any provision contained in any Act of Legislature, which prescribed the period of limitation for exercising power and jurisdiction to punish for contempt of Court, would not apply to the jurisdiction of the High Court under Article 215 of the Constitution and would only apply in respect of the jurisdiction of this Court to punish for contempt of subordinate Courts, which power is conferred on the High Court by an act of Legislature.

6. The learned Counsel submitted that the matter was not res integra, but had been so laid down by the Supreme Court, in the case of R.L. Kapur Vs. State of Madras, . That was a case In which the question for consideration was, whether the period of limitation prescribed u/s 70 of the Penal Code read with Section 25 of the General Clauses Act, constituted a bar for recovery of fine imposed by the High court in exercise of its powers under Article 215 of the Constitution. At that time, the Contempt of Courts Act, 1952 was in force. The question was answered in the negative by the Supreme Court. Relevant portion of the Judgment reads:-

"5. The question is, does not power of the High Court of Madras to punish contempt of itself arises under the Contempt of Courts Act, 1952, so that u/s 25 of the General Clauses Act, 1897, Sections 63 to 70 of the Penal Code and the relevant provisions of the Code of Criminal Procedure would apply? the answer to such a question is furnished by Article 215 of the Constitution and the provisions of the Contempt of Courts Act, 1952 themselves. Article 215 declares that every High Court shall be a Court of record and shall have all powers of such a Court

including the power to punish for contempt of itself. Whether Article 215 declares the power of the High Court already existing in it by reason of its being a Court of record, or whether the Article confers the power as inherent in a Court of record, the jurisdiction is a special one, not arising or derived from the Contempt of Courts Act, 1952, and therefore, not within the purview of either the Penal Code or the Code of Criminal Procedure. Such a position is also clear from the provisions of the Contempt of Courts Act, 1952. Section 3 of that Act provides that every High Court shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice in respect of contempt of Courts subordinate to it as it has and exercises in respect of contempt of itself. The only limitation to the power is, as provided by Sub-section (2), that it shall not take cognizance of a contempt committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Penal Code. As explained in *Sukhdev Singh Sodhi v. The Chief Justice and Judges of the Pepsu High Court* 1954 SCR 454 463 : AIR 1954 SC 186 Section 3 of the Act is similar to Section 2 of the 1926 Act, and "far from conferring a new jurisdiction, assumes, as did the Old Act, the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure, for it says that every High Court shall exercise the same jurisdiction, powers and authority "in accordance with the same procedure and practice..." In any case, so far as contempt of the High Court itself is concerned, as distinguished from that of a Court subordinate to it, the Constitution vests these rights in every High Court, and so no Act of a Legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. No doubt, Section 5 of the Act states that a High Court shall have jurisdiction to inquire into and try a contempt of itself or of a Court subordinate to it whether the alleged contempt is committed within or outside the local limits of its jurisdiction and whether the contemner is within or outside such limits. The effect of Section 5 is only to widen the scope of the existing jurisdiction of a special kind and not conferring a new jurisdiction. It is true that u/s 4 of the Act the maximum sentence and fine which can be imposed is respectively simple imprisonment for six months and a fine of Rs. 2,000/- or both. But that again is a restriction on an existing jurisdiction and not conferment of a new jurisdiction. That being the position, Section 25 in the General Clauses Act, 1897 cannot apply. The result is that Section 70 of the Penal code is no impediment by way of limitation in the way of the recovery of the fine."

7. The learned Counsel pointed out that in the above Judgment of the Supreme Court a clear distinction has been made between the power of the High Court as a Court of record to punish for contempt of itself which is conferred on it by Article 215 of the Constitution and the powers of the High Court to punish for contempt of subordinate Courts conferred on it by an Act of Legislature i.e. The Contempt of Courts Act, 1952. In our opinion, the ratio of the above decision of the Supreme Court applies on all fours to the question raised in this case based on Section 20 of the Contempt of Courts Act, 1971 and on that basis the

preliminary objection raised by the learned Counsel for the respondents has to be rejected.

8. The learned Counsel for the respondents, however, argued strenuously that the above decision was of no assistance to answer the question arising for consideration in this case as that decision was rendered with reference to the provisions of the Contempt of Courts Act, 1952, in which there was no special provision prescribing a period of limitation either for taking action for contempt or for recovery of fine imposed for proved act of contempt of Court. Elaborating the above submission, the learned Counsel stated as follows:- Entry 14 of List III of the 7th Schedule to the Constitution is "Contempt of Court but not including contempt of Supreme Court". Therefore, it is competent for the Parliament as also the State Legislature to make law on the topic of contempt of Court including that of the High Court. Therefore, it was competent for the Parliament to regulate the contempt of Court proceedings before the High Court. The 1971 Act was enacted for that purpose. The power to make a law laying down a procedure for taking action for contempt of Court and to regulate the imposition of penalty for contempt of Court includes the power to prescribe a period of limitation also. It is in exercise of that legislative power the Parliament has incorporated Section 20 into the Act and therefore it applies to all proceedings of contempt of Court including those of the High Court and the Supreme Court, whether taken suo moto or otherwise. In support of the above submission, the learned Counsel relied on the Judgment of the Supreme Court in *Baradakanta Mishra Vs. Justice Gatikrushna Misra*, Chief Justice of the Orissa High Court, and *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra*, Relevant portion of the Judgment in *Mishra's* case on which the learned Counsel relied reads:-

"7. Before we examine the language of Section 19, Sub-section (1) in order to arrive at its true interpretation, we may first look at Sections 15, 17 and 20. Sub-section (1) of Section 15 provides that in a case of criminal contempt other than contempt in the face of the Court, the Supreme Court or the High Court may take action on its own motion or on a motion made by the Advocate General or any other person with the consent in writing of the Advocate General and Sub-section (2) of that Section says that in case of criminal contempt of any subordinate Court, the High Court may take action on a reference made to it by the subordinate Court, or on a motion made by the Advocate General or in relation to Union Territories, by such law Officer as the Central Government may specify in this behalf. Section 17 lays down the procedure to be followed by the Court when it decides to take action and initiates a proceeding for contempt u/s 15. Sub-section (1) of that Section provides that notice of every proceeding u/s 15 shall be served personally on the person charged and according to Sub-section (2), such notice shall be accompanied, in case of a proceeding commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded, and in case of a proceeding commenced on a reference by a subordinate Court, by a copy of the reference. Section 20

prescribes a period of limitation by saying that no Court shall initiate any proceeding for contempt either on its own motion or otherwise after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

xxx xxx xxx It is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. That is why the terminus a quo for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not therefore, fall within the opening words of Section 19, Sub-section (1) and no appeal would lie against it as of right under that provision."

In the above case the only question for consideration was whether an appeal lay to the Supreme Court against an order of the High Court refusing to take action for contempt. The Supreme Court interpreting Section 19 of the Act held that under that provision appeal lies, only when the High Court exercises jurisdiction to punish and not when it rejects a motion or reference for taking action against any person, and therefore such a decision was not appealable. In the paragraph on which the learned Counsel relied, the Supreme court has referred to the several provisions of the Act including Section 20. But the question which arises for consideration in this case did not arise for consideration. In the case of Vinaya Chandra the High Court had initiated action for contempt of Court against a Member of Board of Revenue, U.P. on a petition presented by Vinaya Chandra, an Advocate, in view of the allegations made in the petition. A preliminary objection was raised by the appellant that without reference from a subordinate Court or a motion by the Advocate General the High Court had no jurisdiction to initiate action u/s 15 of the Act. The preliminary objection was overruled by the High Court. On appeal the Supreme court upheld the jurisdiction of the High Court to take suo motu action, on the basis of information contained in a petition presented before it. Relevant portion of the Judgment on which the learned Counsel for respondent-1 relied reads:-

"12. Before dealing with this contention, it is necessary to have a look at the relevant provisions of the Constitution and the Act.

13. Article 215 of the Constitution provides:

"Every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself."

Entry 14 of List III of the Seventh Schedule is to this effect: "Contempt of Court, but not including contempt of the Supreme Court". A provision analogous to

Article 215 is Article 129 which preserves to the Supreme Court all the powers of a Court of Record including the power to punish for contempt of itself. Entry 77 of List I of the Seventh Schedule is relatable to Article 129.

14. Articles 129 and 215 preserve all the powers of the Supreme Court and the High Court, respectively, as a Court of Record which include the power to punish the contempt of itself. As pointed out by this Court in *Mohd. Ikram Hussain Vs. State of U.P. and Others*, , there are no curbs on the power of the High Court to punish for contempt of itself except those contained in the Contempt of Courts Act. Articles 129 and 215 do not define as to what constitutes contempt of Court. Parliament has, by virtue of the aforesaid Entries in List I and List III of the Seventh Schedule, power to define and limit the powers of the Courts in punishing contempt of Court and to regulate their procedure in relation thereto. Indeed, this is what is stated in the preamble of the Act of 1971.

15. Section 2(c) of the Act defines "criminal contempt". Section 9 emphasises that "nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of Court which would not be so punishable apart from this Act". Section 10 runs as under:

"Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself."

Then, there is a proviso which is not materia for our purpose. The provision in Section 10 is but a replica of Section 3 of the 1952 Act. The phrase "Courts subordinate to it" used in Section 10 is wide enough to include all Courts which are judicially subordinate to the High Court, even though administrative control over them under Article 235 of the Constitution does not vest in the High Court. Under Article 227 of the Constitution the High Court has the power of superintendence over all Courts and Tribunal throughout the territories in relation to which it exercises jurisdiction. The Court of Revenue Board, therefore, in the instant case, is a Court "subordinate to the High Court" within the contemplation of Section 10 of the Act.

16. Section 14 provides for the procedure where contempt is committed in the face of the Supreme Court or a High Court. Section 15 is very material for our purpose. It provides in regard to cognizance of "criminal contempt" in cases other than those falling u/s 14. The material portion of Section 15 read thus:

"(1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by -

(a) the Advocate-General, or

(b) any other person, with the consent in writing of the Advocate-General.

(2) In the case of any criminal contempt of a subordinate Court, the High Court may take action on a reference made to it by the subordinate Court or on a motion made by the Advocate-General or, in relation to a Union Territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf...

The operation of Sub-section (1) appears to be confined to cases of "criminal contempt" of the Supreme Court or the High Court, itself. Criminal contempt of a subordinate Court is dealt with in Sub-section (2).

17. A comparison between the two sub-sections would show that whereas in Sub-section (1) one of the three alternative modes for taking cognizance, mentioned is "on its own motion", no such mode is expressly provided in Sub-section (2). The only two modes of taking cognizance by the High Court mentioned in Sub-section (2) are: (i) On a reference made to it by a subordinate Court; or (ii) on a motion made by the Advocate-General, or in relation to a Union Territory by the notified Law Officer. Does the omission in Section 15(2) of the mode of taking suo motu cognizance indicate a legislative intention to debar the High Court from taking cognizance in that mode of any criminal contempt of a subordinate Court? If this question is answered in the affirmative, then, such a construction of Sub-section (2) will be inconsistent with Section 10 which makes the powers of the High court to punish for contempt of a subordinate Court, co-extensive and congruent with its power to punish for its own contempt, not only in regard to quantum or pre-requisite for punishment, but also in the matter of procedure and practice. Such a construction which will bring Section 15(2) in conflict with Section 10, has to be avoided, and the other interpretation which will be in harmony with Section 10 is to be accepted. Harmoniously construed, Sub-section (2) of Section 5 does not deprive the High Court of the power of taking cognizance of criminal contempt of a subordinate Court, on its own motion, also. If the intention of the Legislature was to take away the power of the High Court to take suo motu cognizance of such contempt, there was no difficulty in saying so in unequivocal language, or by wording the sub-section in a negative form. We have, therefore, no hesitation in holding in agreement with the High court, that Sub-section (2) of Section 15, properly construed, does not restrict the power of the High Court to take cognizance of and punish contempt of a subordinate Court, on its own motion."

Thus, It may be seen in the said case also, the precise question which arises for consideration in this case did not arise for consideration. We are also unable to agree with the submission that the ratio in Kapur's case is not apposite to the point arising for consideration. Though In 1952 Act no period of limitation was fixed for the recovery of fine imposed for a proved act of contempt of Court, by the force of Section 25 of the General Clauses Act, the period of Limitation for recovery of fines prescribed u/s 70 of the Penal Code was made applicable. Even so the Supreme Court held that provision could not be pressed into service, when the fine was imposed by the High Court in exercise of its power under Article

215. On the same principle a period of limitation prescribed for initiating action for contempt of Court cannot be pleaded as a bar for the exercise of power of the High Courts for punishing contempt of itself, which is conferred on them under Article 215 of the Constitution. Such a bar can only be pleaded in cases in which action initiated is for contempt of subordinate Courts and Tribunals. In our opinion the ratio of the decision in Kapur's case impels us to answer the question of law arising for consideration in this case in the negative and in both the above cases on which the learned Counsel relied there is no consideration or even reference to Kapur's case.

9. Learned Counsel for the 1st respondent relied on the Judgment of the Rajasthan High Court in *STATE OF RAJASTHAN v. JAMNA DAS GANGADAS & CO.* AIR 1984 Cri.L.J.605 in which the said High Court held that the High Court cannot exercise its power under Article 215, after the expiry of one year in view of Section 20 of the Act. This decision does support his contention Relevant portion of the Judgment reads:-

"The power to punish for contempt under Article 215 of the Constitution is not taken away, but that power is required to be exercised within the time prescribed u/s 20 of the Act and as such even if, the applications are considered to be under Article 215 of the Constitution, still, for the purpose of limitation, they will be governed by Section 20 of the Act and in this view of the matter also, the applications for taking action of the contempt were barred by limitation."

Sri R.N. Narasimha Murthy, learned Counsel for the Complainant and the learned Advocate General submitted that the view taken was plainly contrary to the ratio of the decision of the Supreme Court in Kapur's case, and pointed out that after extracting the relevant portion of the Judgment of the Supreme Court at para-10, the learned Judges merely proceeded to state thus: "This decision too is of no avail to the learned Government Advocate while examining the question of limitation." With great respect to the learned Judges, we are of the view that the ratio of the decision in Kapur's case, had a direct bearing on the question, and could not have been explained away in the manner it has been done.

10. Learned Counsel for the 1st respondent next relied on the decision of the Gujarat High Court in *Dineshbhai A. Parikh Vs. Kripalu Co-operative Housing Society, Nagarvel, Ahmedabad and Others*, in which the view taken is that, Section 20 was a condition precedent for the exercise of power. Relevant portion of the Judgment reads:-

"Secondly, as we shall presently show, what Section 20 of the Contempt of Courts Act, 1971 provides is not the period of limitation as it is ordinarily understood. But it is a condition precedent to the exercise of Court's power under that Act. It is wrong to say that it is a period of limitation in the context of which Section 5 of the Limitation Act, 1963 can be attracted or can be resorted to.

11. Now, let us turn to Section 20 of the Contempt of Courts Act, 1971. It does

not refer to the institution of any proceedings for contempt. The very fact that it does not refer to the institution of any proceedings goes to suggest that no application or petition can be instituted in the true sense of the term for the purpose of taking action under the Contempt of Courts Act, 1971. What Section 20 contemplates is initiation of proceedings for contempt. Such initiation may be on its own motion by the Court or may be otherwise, that is to say on the information supplied by someone, in case of civil contempt; in the case of criminal contempt on the motion of the Advocate General or on the motion of someone else with the consent of the Advocate General in writing Court can initiate proceedings. Initiation of proceedings, for civil contempt as well as for criminal contempt can be done by a Court on its own motion in addition to what we have stated earlier. When the Court takes action or takes the first step in that direction, it does not institute proceedings. Proceedings are instituted by a litigant and not by the Court. A Court merely initiates proceedings. We, therefore, find that Section 20 is such that it does not contemplate institution of a petition or an application by a private individual for taking action under the Contempt of Courts Act, 1971. It merely contemplates initiation of proceedings by a Court on its own motion or otherwise. The fetter which Section 20 places on the jurisdiction of the Court is that the Court shall not initiate any proceedings for contempt either on its own motion or otherwise after the expiration of a period of one year from the date on which contempt is alleged to have been committed. Since there is no application or petition before the Court in such proceedings, the question of condoning delay does not arise. Delay can be condoned in a case where a person who has a right to institute action has approached the Court after the expiry of the period of limitation. Section 20 does not contemplate such situation when the Court initiates contempt proceedings on its own motion, the question of condoning delay does not arise. To illustrate, if the Court initiates proceedings after the expiry of the one year from the date on which the alleged contempt was committed, who has to pray for condoning delay? Who has to bring on record the circumstances under which delay was caused in initiating the proceedings or in other words, does the Court condone delay caused by it in initiating proceedings against the alleged contemner under the Contempt of Courts Act, 1971? To say that the Court can condone its own delay is something which is beyond our comprehension so far as Section 20 is concerned. If the Court has to condone its own delay, after trotting out reasons, the Court shall be the prosecutor and the Judge in its own cause. That is not what Section 20 of the Contempt of Courts Act contemplates."

The view supports the contention of the first respondent, that after the expiry of the period of one year as indicated in Section 20, there is no jurisdiction to take action for contempt of Court. In this case, neither there is any reference to Article 215, nor to the decision of the Supreme Court in Kapur's case. It is no doubt true that in the above decision the learned Judges held, that the period of one year prescribed in Section 20 for taking action for contempt is not a period of limitation in the context of Section 5 of the Limitation Act, but was a condition

precedent for the exercise of power, or in other words a limitation on the exercise of power. It is so, is not controverted by the learned Counsel for the complainant and the learned Advocate General, but their submission was that it would apply to the jurisdiction of the High Court to punish for contempt of subordinate Courts, which is conferred by the provision of the Act, and not to the jurisdiction of the High Court to punish for contempt of itself, conferred under Article 215 of the Constitution.

11. In finding out the answer to the question arising for consideration, the first aspect to be borne in mind is that the source of power of the High Courts to punish for contempt of itself, as distinct from the power to punish for contempt of subordinate Courts which is derived from the provisions of the Contempt of Courts Act, is derived from Article 215 of the Constitution, and it is not hedged in by any limitation prescribed under any of the provisions of the Constitution. Secondly, the power of the Legislature to make law regulating the proceedings of contempt of Court, it must be remembered, is subject to the provisions of the Constitution. As rightly pointed out by the learned Counsel for the 1st respondent and the learned Advocate General, there is a clear difference between regulating the contempt of Court proceedings such as manner of framing charge, procedure for trial and specifying the maximum quantum of penalty to be imposed and prescribing a period after which the power under Article 215 cannot be exercised. Whereas the former is regulatory in character, a provision fixing the period of limitation for taking action for contempt of itself on the High Courts amounts to imposition of limitation on the power of the High Court itself. In fact, Section 20, if interpreted as contended by the learned Counsel for the 1st respondent, it would have the effect of ousting the Jurisdiction of the High Courts conferred on them by the Constitution or creating a bar for the exercise of jurisdiction conferred under a provision of the Constitution after expiry of one year though no such bar is incorporated in any of the provisions of the Constitution. The question therefore is, can a bar created by an act of Legislature be interpreted as operating on a jurisdiction conferred on the High Court by the provisions of the Constitution? This question is also not res-integra.

12. The question has been considered by the Supreme Court in respect of the jurisdiction conferred on the High Court under Articles 226 and 227 of the Constitution. In re In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , the Supreme Court held that the power conferred under Article 226 cannot be taken away or curtailed by any legislation other than amendment to the Constitution. The Court said thus:-

"35. Re: Question 4:- This question raises the constitutional validity of Clause 33 of the said Bill. That clause, which has hereinbefore been set out in full, provides that notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force no Court shall grant any temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under the provisions of the Bill when it becomes an Act. Article

226 of the Constitution confers extensive jurisdiction and power on the High Courts in the States. This jurisdiction and power extend throughout the territories in relation to which the High Court exercises jurisdiction. It can issue to any person or authority, including in appropriate cases any Government, within those territories, directions, order or writs of the nature mentioned therein for the enforcement of the fundamental rights or for any other purpose. No enactment of a State Legislature can, as long as that Article stands, take away or abridge the jurisdiction and power conferred on the High Court by that Article. The question is whether Clause 33 does so. The doubts which have arisen with regard to Clause 33 are thus formulated in the order of reference:

"AND WHEREAS Clause 33 of the said Bill provides that, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, no Court can grant any temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under the Act;

AND WHEREAS a doubt has arisen whether the provisions of the said Clause 33 in so far as they relate to the jurisdiction of the High Courts, would offend Article 226 of the Constitution."

The State of Kerala in their statement of case disowns in the following words all intentions in that behalf:

"52. Kerala State asks this Honourable Court to answer the fourth question in the negative, on the ground that the power given to High Courts by Article 226 remains unaffected by the said Clause 33.

53. Kerala State contends that the argument that Clause 33 affects Article 226 is without foundation.

54. The Constitution is the paramount law of the land, and nothing short of a constitutional amendment as provided for under the Constitution can affect any of the provisions of the Constitution, including Article 226. The power conferred upon High Courts under Article 226 of the Constitution is an overriding power entitling them, under certain conditions and circumstances, to issue Writs, orders and directions to subordinate Courts, Tribunals and authorities notwithstanding any Rule or Law to the contrary."

Learned Counsel for the State of Kerala submits that Clause 33 must be read subject to Articles 226 and 32 of the Constitution. He relies on the well known principle of construction that if a provision in a statute is capable of two interpretations then that interpretation should be adopted which will make the provision valid rather than the one which will make it invalid. He relies on the words "other law for the time being in force" as positively indicating that the clause has not the Constitution in contemplation, for it will be inapt to speak of the Constitution as a "law for the time being in force." He relies on the meaning of the word "law" appearing in Articles 2, 4, 32(3) and 367(1) of the Constitution

where it must mean law enacted by a legislature. He also relies on the definition of "Indian Law" in Section 3(29) of the General Clauses Act and submits that the word "law" in Clause 33 must mean a law of the same kind as the CPC of 1908, that is to say, a law made by an appropriate Legislature in exercise of its legislative function and cannot refer to the Constitution. We find ourselves in agreement with this contention of learned Counsel for the State of Kerala. We are not aware of any difficulty - and none has been shown to us - in construing Clause 33 as a provision subject to the over-riding provisions of Article 226 of the Constitution and our answer to question No. 4 must be in the negative."

13. In the case of State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc., the Supreme Court considered the question with reference to the jurisdiction of the High Court under Article 226 and said thus:-

"14. Mr. Bindra submitted that Section 12 of the Abolition Act makes the decision of the Tribunal final and conclusive and the High Court had no jurisdiction to interfere with this decision, particularly in respect of solatium of 15 per centum and non-irrigational bunds, tanks and wells. We are unable to accept this contention. Article 227 of the Constitution gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate Tribunals within the limits of their authority and to seeing that they obey the law. It was the duty of the Revenue Tribunals to award compensation to the Taluqdars in accordance with the provisions of Sections 7 and 14 of the Act. The High Court had jurisdiction to revise the decision of the Tribunal where the Tribunal on a misreading of the provisions of Sections 7 and 14 declined to do what was by those provisions of law incumbent on it to do. Tested in this light it does not appear that the High Court exceeded its jurisdiction under Article 227 in revising the decision of the Tribunal in respect of the solatium and irrigational bunds, tanks and wells. Numerous cases were pending before the Revenue Tribunal in respect of compensation payable to the Taluqdars under the Bombay Taluqdari Tenure Abolition Act. To prevent miscarriage of justice it was necessary for the High Court to lay down general principles on which compensation should be assessed so that the Tribunal may act within the limits of their authority. On finding that the Tribunal had misconceived its duties under Sections 7 and 14, the High Court could not only set aside its decision, but also direct it to make further inquiries after taking evidence. As pointed out in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, the High Court in the exercise of its supervisory jurisdiction under Article 227 cannot only annul the decision of the Tribunal but can also issue further direction in the matter."

From the above decision it is clear that even if a provision in any statute were to state that decisions rendered by an authority or forum functioning under that Act is final, it cannot affect or override the power of judicial review conferred on the High Court under Article 227 or 226 of the Constitution.

14. Even earlier, in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, which is referred to in the above Judgment, the Supreme Court had clearly laid down that if there were to be any limitation on the jurisdiction of the High Courts conferred by the Constitution, under Article 226 it could be only by a provision of the Constitution itself. Relevant portion of the Judgment reads:-

"(6) The first question that arises for decision in this appeal is whether High Courts have jurisdiction under Article 226 to issue Writs against decisions of Election Tribunals. That Article confers on High Courts power to issue appropriate Writs to any person or authority within their territorial jurisdiction, in terms absolute and unqualified, and Election Tribunals functioning within the territorial jurisdiction of the High Courts would fall within the sweep of that power. If we are to recognise or admit any limitation on this power, that must be founded on some provision in the Constitution itself."

From the above decision, it follows no limitation on the exercise of power under Article 215 can be countenanced unless it is founded on a provision of the Constitution itself.

15. In the light of the ratio of the decision of the Supreme Court in Kerala Education Bill, Hari Vishnu Kamat and Vakhatsinghji and in particular the ratio in Kapur's case Section 20 should be construed as not operating on or affecting the exercise of the power of the High Courts under Article 215. It is a well settled rule of construction that when two interpretations of a statutory provision are plausible, one coming into conflict with the provisions of the Constitution and the other not, the latter has to be preferred. This principle has been laid down by the Supreme Court In the case of State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, . The facts of that case were:- An Additional Collector had made an order of assessment under the provisions of the U.P. Agricultural Income Tax Act, 1948. It was set aside by a Single Judge of the Allahabad High Court in a petition under Article 226 on the ground that the Additional Collector had no jurisdiction. All the assessments made by the Additional Collectors were validated by an Amending Act. Section 11 of that Amendment gave a right to apply for review before the higher authority or Court by whose order the assessment made by Additional Collectors were set aside. That Section reads:

"Section 11. Review of Proceeding:- Where before the commencement of this Act any Court or authority had, in any proceedings under the Principal Act, set aside any assessment made by an Additional Collector or Additional Assistant Collector incharge of a sub-division merely on the ground that the Assessing Authority had no jurisdiction to make an assessment, any party to the proceedings may, at any time within ninety days from the date of commencement of this Act apply to the Court or authority for a review of the proceedings in the light of the provisions of this Act, and the Court or authority to which the application is made shall review the proceedings accordingly and make such order, if any, varying or revising the order previously made, as may be necessary to give effect to the provisions of the Principal Act as amended by Sections 2 and 8 of this Act."

Relying on the above provision, application for review was made before the Single Judge. He dismissed the petition holding Section 11 applied only to order made by the authorities or forums under the Act and not to an order made under Article 226. An appeal against that order was dismissed by a Division Bench. The matter was taken to the Supreme Court.

16. The crucial question for consideration was, whether Section 11 of the U.P. Act; a provision in an Act of Legislature; could be invoked in respect of an order made by the High Court under Article 226 also or it should be construed as applicable to the orders made by the authorities or forums under the Act. The Supreme Court answered the question thus:

"(10) There is another insurmountable difficulty in accepting the construction suggested by learned Counsel, Under the second part of the Section a party to the earlier proceedings may within the prescribed time apply to the Court or authority for a review of the proceedings in the light of the provisions of the Act, and the Court or authority to which the application is made shall review the proceedings accordingly, and make such order, if any, varying or revising the order previously made as may be necessary to give effect to the Principal Act, as amended by Section 2 of the Act. Should it be held that this Section applies to an order made by a High Court under Article 226 of the Constitution, the statutory mandatory injunction issued under the second part of the Section to the High Court to make an order in a particular way would be constitutionally void. Under the Constitution the Legislature of a State derives its authority to make laws under Article 245 of the Constitution, which reads:

"(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State."

Article 245 is, therefore, subject to Article 226 of the Constitution. It follows that no law made by the Legislature of a State can be in derogation of the powers of the High Court under Article 226 of the Constitution. It is well settled that Article 226 confers a discretionary power on the High Courts to make or issue appropriate orders and Writs for the enforcement of any of the rights conferred by Part III of the Constitution or for any other purpose. While Article 226 confers a discretionary power on the High Court, the second part of Section 11 of the Act enjoins on the High Court to make an order in a particular way. We should not give such a construction to the Section as would bring it into conflict with Article 226 of the Constitution and which would have the effect of invalidating it to that extent. On the other hand, the construction adopted by us would be consistent with the second part of the Section, for, if the first part is confined only to an order made by any Court or authority, other than the High Court in exercise of its jurisdiction under Article 226 of the Constitution, both the parts fall in a piece and we would not only be giving a natural meaning to the express words used in the Section but we would also be saving the Section from the vice of constitutional invalidity."

In our opinion the ratio of the above decision, which is similar to the ratio in Kapur's case, governs the question arising for consideration here. Just as Section 11 of the U.P. Act could not be understood as a statutory mandatory injunction to the High Court to pass an order in a particular way as it would come into conflict with Article 226, Section 20 of the Contempt of Courts Act cannot be construed as a prohibitory injunction to the High Court not to exercise its power under Article 215 if an year had elapsed from the date on which a Writ was required to be complied with, or an alleged act of contempt of High Court was committed. Therefore, in our opinion, Section 20 should be confined to the jurisdiction of the High Court to take action for contempt of subordinate Courts, which power is derived from the Act itself and if so construed it would be saved from the vice of coming into conflict with Article 215.

17. A similar question had arisen in MEDHI ALI v. UNION OF INDIA 1972(1) Mys.L.J. 339 in which a Division Bench of this Court was called upon to consider as to whether Section 123 of the Evidence Act could be pressed into service, for withholding certain records from the High Court in a proceeding under Article 226, which would come in the way of effective exercise of power of judicial review. That was a Writ Petition under Article 226 in which the grievance of the petitioner therein was that there was no just and fair consideration of his case for promotion to the Indian Administrative Service. The Union Public Service Commission relying on Section 123 of the Evidence Act, declined to give permission for producing the relevant records. The Court therefore was called upon to consider the validity of the said stand taken by the Union Public Service Commission. The Division Bench relying on the ratio of the decisions of the Supreme Court in Hari Vishnu Kamath, Kerala Education Bill and Vijay Anand held that Section 123 of the Evidence Act might be pressed into service in a civil suit before a Civil Court, whose jurisdiction and powers are derived from an Act of Legislature, but the provisions has to yield to the constitutional Jurisdiction of the High Court under Article 226. The relevant portion of the Judgment reads:-

"5. The Counsel for the Central Government brought to the Court the papers sent to him by the Union Public Service Commission in a sealed cover and produced before us an affidavit by the present Chairman of the Union Public Service Commission claiming privilege u/s 123 of the Indian Evidence Act. In the said affidavit, after referring to the order of this Court directing production of documents and after stating that he has carefully read and considered each of the documents, he states:

"These are unpublished official records relating to the affairs of the State and their disclosure will cause injury to public interest and will materially affect the freedom and candour of expression of opinion in the determination and execution of public policy. I do not, therefore, give permission to any one u/s 123 of the Indian Evidence Act, 1872, to produce the said documents or to give any evidence derived therefrom.

We therefore heard preliminary arguments on the sustainability of the claim so

made in the affidavit of the Chairman of the Union Public Service Commission.

6. The first sentence in the extract from the affidavit given above obviously invokes the principle stated in identical terms in the Judgment of the Supreme Court in the case of *The State of Punjab Vs. Sodhi Sukhdev Singh*, . Argument addressed in support of the claim of privilege also sought to draw sustenance from the said Judgment.

7. The said decision was given in an appeal arising out of an ordinary suit. A District and Sessions Judge in the erstwhile State of Pepsu was removed from service by an order of the President of India who was then in charge of the administration of the State. He made certain representations which were considered by the Council of Ministers of the said State because, in the meantime, the President's Rule had come to an end. The Council expressed its view in the form of a resolution; but before taking any action it invited the advice of the Public Service Commission on receiving which the Council again considered the said representations and its final opinion on the merits of the representations was recorded in the minutes of the proceedings of the Council. The Officer removed from service then filed a suit for a declaration that his removal was illegal, void and inoperative and for recovery of arrears of salary. In the said suit he made an application for production of certain documents including the views expressed by the Public Service Commission to the Council of Ministers. The Chief Secretary of the State of Pepsu filed an affidavit claiming privilege u/s 123 of the Evidence Act. The trial Court accepted the claim of privilege. A revision petition presented against the said order of the trial Court was heard by a Division Bench of the High Court of Punjab which, after hearing the parties, reversed the order under revision in respect of four documents, one of which contained the opinion of the Public Service Commission. The State Government of Punjab then appealed to the Supreme Court. The Supreme Court set aside the order of the High Court and restored that of the trial Court.

8. The matter was examined exclusively on the language and effect of Sections 123 and 123 of the Evidence Act. In paragraph 15 of the Judgment, their Lordships stated that having regard to notions about governmental functions and duties at the time the Evidence Act was promulgated, affairs of State would have meant matters of political or administrative character relating, for instance, to national defence, public peace and security and also good neighbourly relations and that a document would be one which relates to affairs of State, if the disclosure of the contents thereof might adversely affect national defence, public security and good neighbourly relations. They proceed to state further:

"There may be another class of documents which could claim the said privilege not by reason of their contents as such but by reason of the fact that, if the said documents were disclosed, they would materially affect the freedom and candour of expression of opinion in the determination and execution of public policies. In this class may legitimately be included notes and minutes made by the respective Officers on the relevant files, opinions expressed, or reports made,

and gist of official decisions reached in the course of the determination of the said questions of policy. In the efficient administration of public affairs Government may reasonably, treat such a class of documents as confidential and urge that its disclosure should be prevented on the ground of possible injury to public interest, In other words, if the proper functioning of the public service would be impaired by the disclosure of any document or class of documents, such document or such class of documents may also claim the status of documents relating to public affairs."

9. After discussing various ruling and the arguments addressed at the Bar, the conclusion is stated in paragraphs 25 and 26 as follows:

"(25) Thus our conclusion is that reading Sections 123 and 162 together, the Court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question. That is a matter for the authority concerned to decide; but the Court is competent, and indeed is bound, to hold a preliminary enquiry and determine the validity of the objections to its production, and that necessarily involves an enquiry into the question as to whether the evidence relates to an affair of State u/s 123 or not.

(26) In this enquiry the Court has to determine the character or class of the document. If it comes to the conclusion that the document does not relate to affairs of State, then it should reject the claim for privilege and direct its production. If it comes to the conclusion that the document relates to the affairs of State it should leave it to the head of the department to decide whether he should permit its production or not..."

10. The case of Amar Chand Butail Vs. Union of India (UOI) and Others, in which the Supreme Court reiterated the same view and applied the same to the facts of the said case was also a case arising out of a civil suit.

11. If the matter had to be examined exclusively in the light of the provisions of the Evidence Act, particularly Sections 123 and 162 thereof, any further argument on this matter would not have been possible. The question arises whether the same principles, without any modification whatever apply to proceedings under Article 226 of the Constitution or govern and control the exercise of jurisdiction by the High Courts under the said Article.

12. On the said question, there is a clear enunciation of the principle by the Supreme Court in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, of the Judgment therein, it is stated:-

"The first question that arises for decision in this appeal is whether High Courts have jurisdiction under Article 226 to issue Writs against decisions of Election tribunals. That article confers on High Courts power to issue appropriate Writs to any person or authority within their territorial jurisdiction, in terms absolute and unqualified, and Election Tribunals functioning within the territorial jurisdiction of the High Courts would fall within the sweep of that power. If we are to recognise

or admit any limitation on this power, that must be founded on some provision in the Constitution itself."

13. Later, in the case *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, dealing with clause (33) of the said Bill, this is what the Supreme Court stated in paragraph 35 of the Judgment at pages 986 and 987 of the Report:

"This question raises the constitutional validity of Clause 33 of the said Bill. That clause, which has hereinbefore been set out in full, provides that notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, no Court shall grant any temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under the provisions of the Bill when it becomes an Act. Article 226 of the Constitution confers extensive jurisdiction and power on the High Courts in the States. This jurisdiction and power extend throughout the territories in relation to which the High Court exercises jurisdiction. It can issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or Writs of the nature mentioned therein for the enforcement of the fundamental rights or for any other purpose. No enactment of a State Legislature can, as long as that article stands, take away or abridge that jurisdiction and power conferred on the High Court by that article.

14. The underlying principle is further elucidated in the case of *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, as follows:-

"Under the Constitution the Legislature of a State derives its authority to make laws under Article 245 of the Constitution, which reads:-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State."

Article 245 is therefore subject to Article 226 of the Constitution. It follows that no law made by the Legislature of a State can be in derogation of the powers of the High Court under Article 226 of the Constitution."

15. The effect of these rulings is that the legislative power of either the State Legislature or of Parliament cannot be exercised in such a way as to deprive the High Courts of the power conferred upon them under Article 226 of the Constitution or to impede or obstruct the exercise of such power by the High Court.

xxx xxx xxx 17. So far as the nature and amplitude of the power of High Courts under Article 226 of the Constitution is concerned, nothing more need be stated than what is found stated in the ruling of the Supreme Court already cited, giving effect to the absolute and unqualified terms in which the Article itself confers that power. It is also pointed out that the only limitation on that power must be such as is founded on some provision of the Constitution itself. Conferment of the

power itself carries with it conferment of all powers ancillary and incidental thereto, which are necessary for the effective exercise of the said power. If therefore there is anything in any statute other than the Constitution itself which makes the exercise of the main power less effective than it should be or altogether ineffective then such provision must necessarily yield place to Article 226 and make the way clear for its effective exercise."

In our opinion the same principle applies to the jurisdiction and powers of the High Court, conferred under Article 215 of the Constitution. Therefore, if there: were to be any provision in any statute other than the Constitution, which makes the exercise of the power conferred by Article 215 of the Constitution less effective or altogether ineffective; then such a provision must yield place to Article 215, and make way for its effective exercise, and as Section 20 of the Act does make the exercise of power of the High Court under Article 215 altogether ineffective, after the expiry of the period of one year specified therein, it must yield to Article 215 and make way for the effective exercise of power under Article 215.

18. In our opinion, the power to punish for contempt of itself having been conferred on the High Court under Article 215 without any limitation, the question whether in a given case, having due regard to the nature of contempt committed, the High Court should decline to exercise the jurisdiction on the ground that the matter had become stale, or on grounds of delay is an aspect which the Court should decide, just as even in the absence of any period of limitation for filing a Writ Petition the High Court declines to exercise jurisdiction under Article 226 on grounds of delay and laches.

19. An analogous question was considered by a Division Bench of this Court in S.N. Nagaraja Rao Vs. Chikkachennappa and Others, namely, as to whether Section 15(1) of the Act which requires the taking of the consent of the Advocate General to file a complaint before the High Court under the Act bars the jurisdiction of the High Court to entertain a complaint alleging contempt of High Court, presented without securing the consent of the Advocate General, The question was answered in the negative. The relevant portion of the Judgment reads:

"8. In our view, the language of Section 15(1) of the Act does not compel the taking of such a view. Even after the enactment of the Act, the power of the High Court to punish for contempt of itself, continues to be derived from and traceable only to Article 215, and therefore a provision in an enactment made by the Legislature to regulate contempt actions cannot be construed as to affect the consent of the power given to the High Court under the Constitution. On this aspect of the matter also we have the ratio emerging directly from the decision of the Supreme Court in the case of R.L. Kapur.

xxx xxx xxx From the above observations, it is clear that power of the High Court to punish for contempt of itself derived from Article 215 stands on a different

footing than its power to punish for contempt of subordinate Courts which is derived by the provisions of the Act.

Therefore Section 15(1) providing for the consent of the Advocate General cannot be construed as mandatory as the power of the High court to punish for criminal contempt of itself is conferred on it by Article 215 without any such restriction."

The same reasoning in our opinion applies to the question arising for consideration in this case. Hence the period of limitation u/s 20 of the Act applies to proceedings for contempt of subordinate Courts in which the High Court exercises power given to it under the Contempt of Courts Act and would not apply to the exercise of the jurisdiction by the High Courts under Article 215 of the Constitution.

20. Learned Counsel for the 1st respondent relied on a Division Bench decision of this Court in VENKATA-RAMANAPPA v. NAIKAR D.K. 1978(1) KarLJ 65 in which a complaint was dismissed on the ground that it was barred by Section 20 of the Act. It is true that the petition was dismissed as time barred relying on Section 20 of the Act. But a contention relying on Article 215 of the Constitution to the effect that Section 20 is inapplicable to the exercise of the jurisdiction of the High Court under Article 215, as raised in this proceeding, was neither raised nor considered and the decision of the Supreme Court in Kapur's case was not brought to the notice of the Court.

21. Learned Counsel for the complainant and the learned Advocate General also relied on the Judgment of the Delhi High Court in CENTRAL BANK OF INDIA v. CURRENT TRANSPORT AND FINANCE PRIVATE LTD. 1977 Cri.L.J. NOC 266 (Delhi) in which the Delhi High Court held that Section 20 is inapplicable to the exercise of jurisdiction under Article 215, with which we respectfully agree.

22. Apart from the reasons based on Article 215, there are also other weighty reasons for the rejection of the preliminary objection. In our opinion, the acceptance of contention of the learned Counsel would lead to disastrous results, in that the result would be that the Writs issued by the High Courts under Article 226 of the Constitution, if for any reason are not implemented within a period of one year from the date on which they were required to be implemented the Writs would become futile and will be on paper. It is a matter of common knowledge, that in many cases parties who have secured Writs in their favour wait, patiently for their implementation and once the period of one year is over all such Writs would become futile and the party will be at the mercy of the authorities, as lodging of complaint to the High Court under Article 215 which is the only coercive method available for securing obedience or implementation of the Writs would not be available. We asked the learned Counsel for the 1st respondent to state as to what should happen to the Writs issued, in such an event. He had no answer, except stating that perhaps the only remedy is to apply for reissue of the Writ. We fail to see how if a Writ Petition has already been allowed, another Writ

Petition is necessary, or can be filed seeking reissue of the Writ. We are clearly of the view that no such situation is envisaged by the Constitution. Once a Writ is issued by the High Court it must run, not run away after one year. Writs are meant to be obeyed. If not the disobeyer should face the proceedings under Article 215. Therefore, we are of the view that the preliminary objection is liable to be rejected also for the reason that its acceptance would lead to the rendering of the Writs issued under Article 226 ineffective and futile after the expiry of one year.

23. In the result, we answer the question set out in the first paragraph of this order as follows:-

The period of limitation of one year for initiating proceedings for contempt of Court from the date on which the contempt is alleged to have been committed prescribed u/s 20 of the Contempt of Courts Act, 1971, does not apply to the exercise of power conferred on this Court under Article 215 of the Constitution of India, to punish for contempt of itself.

24. The learned Counsel for the complainant and the learned Advocate General also made an alternative submission to the effect that even assuming that Section 20 applies to the exercise of jurisdiction under Article 215, the action would be barred only in cases in which by the Writ issued the respondent concerned was prohibited from doing an act, like not to demolish a building or not to participate in a meeting and the like, in which cases if the order is contravened disobedience is complete and action would be barred after expiry of one year from the date of disobedience and that similar would be the position in a case in which the action for contempt is based upon any statement published, is initiated after the expiry of one year from the date of publication. But the case would be entirely different where there is a positive direction to do a particular act or to continue to do a particular act in which event, non-compliance with the order means a continuing disobedience and to such a case even if Section 20 is applicable, the cause of action being a continuing one, it does not get barred by time at all. They maintained that the present case was one such. They pointed out that the direction issued to the first respondent was to pay a monthly rent of Rs. 25,000-00 from the date of the lease for the past period and to continue to pay the rent at the same rate in future also and therefore the disobedience of the Writ issued by this Court by the first respondent is continuous and therefore cause of action can be said to arise every moment after the expiry of three months given by this Court to the first respondent to comply with the order.

25. The learned Counsel for the respondent submitted that on the basis of the allegations made in the complaint, contempt was committed immediately on the expiry of three months time given to pay the arrears and therefore as the complaint was presented on 6-2-1989 it was barred by time, if Section 20 is applicable.

26. In our opinion, the alternative contention advanced by the learned Counsel is

unexceptionable. The wording of the Writ is very clear. The first respondent was directed to pay monthly rental of Rs. 25,000-00 from the date of lease till the expiry of the lease, i.e., for the whole period of the lease. He was given three months' time to pay the arrears and he was directed to pay rental at the rate of Rs. 25,000-00 per month after the issue of the Writ. As regards the arrears directed to be paid, the disobedience of the first respondent to the Writ issued started after the expiry of three months and would be continuing disobedience till the order is complied with. Similarly, as regards the direction to pay the monthly rent, the first respondent's disobedience to the Writ is a continuing one until he pays the rent at the rate of Rs. 25,000-00 per month. In fact the first-respondent made an application for modification of the Order dated 8-5-1986 as late as in June 1989 and the application was rejected by us on 27-6-1989. It is not disputed that against the said Order, the first respondent had filed a SLP before the Supreme Court and it was also rejected. For these reasons, in addition to the negating of the preliminary objection raised by the first-respondent, we hold that the cause of action for taking action for contempt against the first respondent is a continuing cause of action and therefore there is no question of its becoming barred by time even if Section 20 is applicable, which of course, as held by us, is not applicable.

27. In the result, we overrule the preliminary objections raised by the first respondent and hold that the complaint is not barred by time and it should be posted for taking further proceedings.