
(1986) 03 DEL CK 0032
In the Delhi High Court
Case No : C.C.P. No. 1 of 1984

M/s Indo-Keniyen Industrial Enterprises APPELLANT
Vs
M/s Metal Forgings (P) Limited RESPONDENT

Date of Decision : 20-03-1986

Acts Referred:

Citation : (1986) ILR Delhi 592

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Judgement

1. This is an application under Ss. 10 and 12 of the Contempt of Courts Act (in short the "Act") for committal proceedings against the respondents. The facts germane to the decision of this petition succinctly are that at the relevant time Shri G. L. Seenik was the sole proprietor of M/s. Indo Kenyan Industrial Enterprises (hereinafter referred to as the "petitioner"). The said proprietary concern of Shri G. L. Seenik is a perpetual lessee of a plot No. B-18, Industrial Area, Phase-I, Maya Puri, New Delhi. Respondent No. 1 (hereinafter referred to as the "Company") is a private limited company and is carrying on Metal Forgings Industry. Its plants are situated on Plots No. B-1 and B-17, Mayapuri Industrial Area, New Delhi which are adjacent to each other. The aforesaid plot No. B-18 of the petitioner firm is also contiguous to the said plots. In November, 1981 the Company instituted a suit against the petitioner, described as the sole proprietary concern of Shri G. L. Seenik, for permanent injunction restraining the latter from interfering with peaceful enjoyment of premises No. B-18, which is in dispute, in any manner except by due process of law. It was averred that in 1976 Shri G. L. Seenik permitted the Company to use the front portion of Plot No. B-18 for storage of goods, etc., as it was in need of more space on account of its expanding activities. However, Shri Seenik represented that he could not enter into any regular agreement of lease because of the prohibition by his Lesser. Accordingly, the Company entered into the possession of suit premises bearing No. B-18, Industrial Area, Maya Puri, New Delhi in the year 1976 and had been in continuous possession thereof without any let or hindrance by anyone. However,

in August, 1981, the Director Investigation, Income Tax Department conducted a raid on the premises in dispute and put his seal on the godown of the Company in the plot in question pending verification of stocks, etc. The company filed a Civil Writ Petition in this court, being No. 1894 of 1981. In the course of hearing of the writ petition, a Division Bench of this court directed the Income Tax Authorities to stack the seized stocks of the Company in a corner of the godown on the plot in question till the completion of verification vide order D/- 5th November, 1981. However, on 7th November, 1981 Shri Seenik assisted by some other persons and police officials appeared at the spot and threatened to dispossess the Company forcibly. The Company Therefore prayed that the petitioner be restrained from dispossessing them except in due process of law.

2. The parties negotiated a settlement and moved an application D/- 7th November, 1981 under O. 23, R. 3 read with S. 151 of the Civil P.C. for recording the compromise. It was inter alias agreed between the parties that the Company would continue to use the front courtyard of the plot in question as shown "red" in the site plan marked "A" as before and that the Company would vacate the plot in question on the expiry of 19th November, 1983 and it gave an undertaking to the court to that effect. The court recorded a joint statement of Shri R. K. Anand, respondent 4, who was then Deputy General Manager and authorised representative of the Company, Shri Surjit Singh General Attorney of Shri G. L. Seenik and counsel for the parties who testified to the correctness of the compromise (Ex. C/1 in the suit) and agreed to abide by the same. However, the Company did not surrender vacant possession of the plot in question as stipulated in the compromise. Hence the petitioner has moved this application for committal of the respondents for Contempt of Court. Shri O. P. Bajaj, respondent 2, Mrs. Veena Bajaj, respondent 3 and Shri R. K. Anand, respondent No. 4 are Managing Director, Director and Deputy General Manager respectively of the Company. It is averred that as a part of a compromise in the aforesaid suit the Company had given an undertaking to the Court that it would surrender vacant possession of the plot in question on the expiry of 19th November, 1983, on which date the Company would remove all its stores, etc., there from but the Company failed to honour its commitment and hand over vacant possession of the plot in question to the petitioner.

3. This petition is contested by respondents on various grounds. It is stated by them at the outset that the petitioner has not come to this court with clean hands and has not stated the true facts and circumstances. They point out that the petitioner has been described as a sole proprietary concern of Shri Girdhari Lal Seenik but the fact is that even before the compromise decree referred to above Shri Seenik has entered into a partnership with Mrs. Agya Kaur wife of Shri Pritam Singh and some other persons vide partnership deed dated 10th September, 1981, copy of which is Annexure "A" to the reply. Under the partnership agreement Shri Seenik had only 10% share in the partnership business whereas Mrs. Agya Kaur and her associates owned the remaining 90% share as specified therein. However, for reasons best known to Shri Seenik this

vital fact was suppressed by him at the time of the compromise and the petitioner firm has been described as the sole proprietary concern of Shri Girdhari Lal Seenik even in this petition. Thus both Shri Seenik and his attorney Shri Surjit Singh who had sworn affidavits to this effect have indulged in palpable falsehood. Further the petition as constituted is not maintainable because M/s. Indo-Keniyani Industrial Enterprises is no longer a proprietary concern of Shri Seenik as is sought to be given out. The respondents have also moved separate applications being Cr. Ms. 183 and 184 of 1984 for prosecuting both Shri G. L. Seenik and Shri Surjit Singh for perjury under S. 193 of the Penal Code.

4. On merits the stand of the respondents is that the Company is a tenant under Shri Seenik who is a perpetual lessee of the plot in question and had been paying rent for the premises in question to the petitioner @ Rs. 2,000/- per mensem up-till 31st October, 1981. They vehemently deny having given any undertaking to the Court as such for surrendering peaceful and vacant possession of the premises in question and assert that the negotiated settlement culminated in a compromise decree only. So, the remedy of the petitioner, if any, is to execute the said decree or take any other appropriate steps under law to recover possession of the demised premises. They further assert that the compromise decree itself stipulated execution thereof in the event of default by any of the parties in complying with the same and as such the question of the Company or any other respondent committing contempt of the Court does not arise.

5. Both Shri G. L. Seenik and Shri Surjit Singh have filed rejoinder affidavits. They have not denied the factum of Shri G. L. Seenik entering into partnership with Smt. Agya Kaur and others vide partnership deed Annexure-"A". However, they assert that this circumstance is wholly irrelevant for the purpose of this petition inasmuch as Shri G. L. Seenik is still the sole perpetual lessee of the plot in question and as such he is competent to move this petition. However, they have reiterated their contention that the Company had given an undertaking through Shri R. K. Anand, respondent 4 to the Court that it would surrender peaceful and vacant possession of the plot in question on the expiry of 19th November, 1983. They deny that the Company was ever inducted as a tenant in the plot in question or that they suppressed any relevant facts from the Court when the alleged undertaking was given by the Company.

6. "Civil contempt is defined in S. 2(b) of the Act as "willful disobedience" to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court". What we are concerned in this case is whether the respondents gave any undertaking to the Court or not, if being well settled that the breach of an undertaking is liable to be visited by the same punishment as breach of an injunction. In Halsbury's Laws of England (4th Edition), Vol. 9 at p. 44 it is stated :

"An undertaking given to the Court by a person or corporation in pending proceedings, on the faith of which the Court sanctions a particular course of action or inaction, has the same force as an injunction made by the Court and a

breach of the undertaking is misconduct amounting to contempt."

7. In other words an undertaking entered into with or given to the court by a party has exactly the same force as an order made by the Court, and accordingly breach of an undertaking amounts to a contempt in the same way as a breach of an injunction. (See Saleemuddin and Others Vs. Sharafuddin and Others, and Chhaganbhai Norsinbhai Vs. Soni Chandubhai Gordhanbhai and Others,).

8. So, the first and the foremost question for determination in this case is whether any undertaking was in fact given by the Company to the Court or whether it is a case of a mere out of Court settlement culminating in a compromise decree.

9. The parties have adverted to a long catena of reported decisions on this point. However, I will refer to some of them which appear to have a direct bearing on the point in question. In Nisha Kanto Roy Chowdhury Vs. Smt. Saroj Bashini Goho, a suit was brought by the landlord against the lessee on the ground that the latter had installed certain image on the premises without the landlord's consent. The suit was compromised. Under the compromise the lessee gave an undertaking which was incorporated in the compromise as under :-

"The defendant hereby undertakes to remove the said Kali image as also all permanent brick built and other structures in and around the place where the image of Kali is situate before he gives up possession of the said shop room or at any time prior thereto on demand by the plaintiff or the owner for the time being of the said premises No. 1A Abboy Goho Road."

10. The compromise was presented to the Court and a decree was passed in terms of the same. The lessee, however, subsequently declined to remove the image on demand by the landlord and, Therefore, latter applied to commit the lessee for contempt of Court on the ground that he had broken an undertaking given to the Court. This submission was, however, repelled by a Division Bench of the Calcutta High Court who held that on the true construction of the compromise the mere use of the word "undertake" did not mean a promise to the Court. Harries C.J. speaking for the Court said that "the fact that this document was to be submitted to Court cannot, in my view, affect the construction to be given to para 6. If on a proper construction of paragraph 6 there is nothing but a promise, possibly solemn, by the defendant to the plaintiff, then it does not become anything more than such a promise when the document is put in Court and the Court passes a decree in terms of it. His Lordship further observed :

"But as I have stated the mere user of the word "undertake" does not mean a promise to a Court. It merely means a solemn promise to some one and where the word appears in an agreement between A and B, it appears to me that if A undertakes, he obviously undertakes to B, and not to a Court.

11. In Sukumar Mitra Vs. Tarasankar Ghosh, the defendant had given an

undertaking to the Court to vacate and make over peaceful and vacant possession of the upper flat in the premises in dispute to the plaintiff on or before the 2nd January, 1952. It was further stipulated that in case the defendant failed to vacate the said premises the plaintiff would be entitled to execute the decree for possession passed by the Court and the plaintiff would be further entitled to take such proceedings against the defendant as he may be advised and the defendant would not be entitled to raise any objection thereto. The joint petition of compromise being presented by both the parties, it was made a rule of the Court and the appeal before the High Court was disposed of in terms of the compromise petition. However, on failure on the part of the defendant to surrender possession of the premises the plaintiff moved the High Court for committal proceedings for contempt. The petition was dismissed. Das, J. speaking for the Court said, "In my opinion the first contention of the petitioner must be given effect to. The undertaking said to have been given to the Court in the circumstances of this case should not be regarded as an unqualified undertaking and a failure to keep to the terms thereof cannot Therefore be regarded as justifying the exercise of the discretionary powers of this Court to order committal for contempt." In taking this view his Lordship placed reliance on an earlier decision of a Division Bench of the same Court who had proceeded on the footing that in cases like the one before their Lordships where the consequences of default are provided for in the order itself, the undertaking should not be construed as being an unqualified one. His Lordship further observed that "in the present case the undertaking to the Court was not formally embodied in the order directing the compromise to be recorded, nor was it specifically set forth in the decree. It may be that the clear implication of the order was that there was an undertaking to the Court to vacate the premises on or before the 2nd January, 1952. At the same time a litigant in the position of the opposite party might have been under a bona fide misapprehension as to the effect of the order of this Court and the decree passed therein."

12. In *Badri Dass Vs. Labhu Mal*, it was held that breach of such an undertaking or promise which flows from a compromise decree does not amount to contempt of Court.

13. The question as to how any person appearing before the Court can give an undertaking came up for consideration before the Supreme Court in *Babu Ram Gupta Vs. Sudhir Bhasin and Another*, . In that case a receiver was appointed by the High Court of Allahabad to take charge of Laxmi Talkies with the consent of the counsel for both the parties and he was directed to take charge of Laxmi Talkies forthwith from the appellant Babu Ram Gupta. The Receiver was directed to submit quarterly reports to the Court regarding the running of the business of the said Cinema and the appellant was directed not to interfere with the Receiver appointed or with the business of the running of the Laxmi Talkies. The license for running the Cinema was also directed to be taken out by the Receiver in the name of Laxmi Talkies. However, the appellant who was in possession of Laxmi Talkies did not hand over its possession to the Receiver. So, action by way of

contempt of Court was sought to be taken on the ground that the appellant had committed a serious breach of the undertaking given to the court to hand over possession to the Receiver and having failed to honour the undertaking, he was liable to be hauled up for an offence under the Act. The High Court held that the conduct of the appellant was unrelenting and inexorable and he had willfully disobeyed the order of the Court passed with his consent. However, in appeal by the contemner appellant the Supreme Court noticed that there was no specific direction to the appellant to hand over possession of the property to the Receiver although impliedly this was done because the order was passed with the consent of the parties. Their Lordships observed that :

"Our attention has not been drawn by counsel for the respondent to any application or affidavit filed by the appellant which contains an undertaking given by the appellant to hand over possession to the Receiver appointed by the High court by virtue of the impugned order. It is manifest that any person appearing before the Court can give an undertaking in two ways : (1) that he files an application or an affidavit clearly setting out the undertaking given by him to Court, or (2) by a clear and express oral undertaking given by the contemner and incorporated by the Court in its order. If any of these conditions are satisfied then a willful breach of the undertaking would doubtless amount to an offence under the Act. Although the High Court observed that the consent order extracted above had been passed on the basis of various undertakings given by the contemner, we are unable to find any material on record which contains such undertakings. It seems to us that the High Court has construed the consent order itself and the directions contained therein as an implied undertaking given by the appellant. Here the High Court has undoubtedly committed an error of law. There is a clear cut distinction between a compromise arrived at between the parties or a consent order passed by the Court at the instance of the parties and a clear and categorical undertaking given by any of the parties. In the former, if there is violation of the compromise or the order no question of contempt of Court arises, but the party has a right to enforce the order or the compromise by their executing the order or getting an injunction from the Court.

14. Their Lordships further observed that "in the instant case, however, as indicated above, there is no application nor any affidavit nor any written undertaking given by the appellant that he would cooperate with the receiver or that he would hand over possession of the Cinema to the receiver. Apart from this, even the consent order does not incorporate expressly or clearly that any such undertaking had been given either by the appellant or by his lawyer before the Court that he would hand over possession of the property to the receiver. In the absence of any express undertaking given by the appellant or any undertaking incorporated in the order impugned, it will be difficult to hold that the appellant willfully disobeyed or committed breach of such an undertaking."

15. The learned counsel for the respondent has also invited my attention to the following further observations of their Lordships.

"In fact, the reason why a breach of clear undertaking given to the Court amounts to contempt of Court is that the contemner by making a false representation to the Court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the Court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practiced by the person concerned not on the Court but on one of the parties. Thus the offence committed by the person concerned is qua the party not qua the Court, and, Therefore, the very foundation for proceeding for contempt of Court is completely absent in such cases. In these circumstances, we are satisfied that unless there is an express undertaking given in writing before the Court by the contemner or incorporated by the Court in its order, there can be no question of willful disobedience of such an undertaking."

16. The crucial question which falls for determination thus is whether applying the test laid down in Babu Ram Gupta the respondent Company can be said to have given an undertaking to the Court or not ? As already stated; the parties presented a joint application under O. 23, R. 3 read with S. 151 of the Civil P.C. for certifying the compromise which had been arrived at between them. Para 2 of the said application (Ex. C-1) reads as under :-

(a) That the plaintiff shall continue to use as before front court-yard of B. 18, Industrial Area, Phase-I, Mayapuri, New Delhi, as shown "red" in the site plan marked "A" forming part of this compromise.

(b) That plaintiff agrees and gives an undertaking to the Court that the portion in occupation of the plaintiff shown "red" in the plan shall be vacated by it on the expiry of 19th November, 1983, when plaintiff shall remove all its stores, etc. there from and hand over the vacant possession thereof to defendant and its successors, etc."

17. It was further stipulated between the parties that in case the Income Tax Authorities did not clear the stores kept in the godown till the said date, viz., 19th November, 1983 the possession would be delivered to the petitioner immediately on the Income Tax Authorities vacating the same. However, the respondents further undertook to vacate and deliver possession of the remaining portion, viz., the one not occupied by the Income Tax Department on the expiry of 19th November, 1983. The said undertaking was not incorporated, either in the joint statement made by the parties in Court on 7th January, 1982 or in the order of the Court passed on the same day. However, the parties reaffirmed to be bound by the compromise Ex. C-1 and asked for dismissal of the suit as fully satisfied. Accordingly, the Court passed an order dismissing the suit. So, it has been canvassed with great favour by the learned counsel for the respondents that the undertaking, if at all, given by the Company was to the petitioner and not to the Court. Therefore, the question of contempt of Court does not at all arise, it being at best a breach of any solemn promise made to the petitioner and not to the Court.

18. It is true that every undertaking given by a party to a litigation is not an undertaking to the Court; there is a difference between an undertaking given to the other party and an undertaking given to the Court. The breach of an undertaking given to the other party will not constitute contempt of Court. However, whether a particular undertaking is an undertaking to the Court or to the opposite party must depend upon the facts and circumstances of each case and the language used. No doubt in the instant case the parties negotiated a settlement outside the Court and reported the same to the Court and the Court passed a decree in terms of the compromise. However, this would not warrant an inference that no undertaking was given to the Court. It is clearly a case falling under the first method of giving an undertaking as expounded in Babu Ram Gupta Vs. Sudhir Bhasin and Another, namely that the contemner files an application or an affidavit clearly setting out the undertaking given by him to Court. As observed by the Supreme Court in the said case, if any of the two conditions mentioned therein are satisfied then a willful breach of the undertaking would doubtless amount to an offence under the Act. This aspect of the matter was emphasised by the Supreme Court in para 10 of the judgment as under :-

"In the instant case, however, as indicated above, there is no application nor any affidavit nor any written undertaking given by the appellant that he would cooperate with the receiver or that he would hand over possession of the Cinema to the receiver In the absence of any express undertaking given by the appellant or any undertaking incorporated in the order impugned, it will be difficult to hold that the appellant willfully disobeyed or committed breach of such an undertaking."

19. The use of word or which is disjunctive is very significant to note. The instant case certainly satisfies one of the two methods of giving an undertaking and, Therefore, I am not persuaded to hold that failure/refusal on the part of the respondents to deliver vacant possession of the plot in question to the petitioner constitutes merely a breach of compromise and not of the undertaking. It would be pertinent to notice at this stage the Full Bench decision of this Court in Sardari Lal Vs. Ram Rakha, . In that case too the submission of the counsel for the contemner was that the parties had negotiated a settlement outside the Court and then came to the Court and reported that they had compromised. The Rent Control Tribunal recorded the compromise. The tenant (contemner) made a statement to the Court that he would be withdrawing his appeal and that he would surrender vacant possession of the premises in question within 15 days of the judgment of the High Court. He also promised to pay the arrears of rent, etc., and affirmed that in the event of failure to pay the arrears of rent by the stipulated date he would be liable to be evicted forthwith. The counsel for the tenant (contemner) urged that there was no user of the word "undertaking" in the statement of the tenant and, Therefore, the promise simply meant a solemn promise to someone else and not to the Court. It was further urged that the court had no part to play but only to record the agreement between the parties

as the appeal was being withdrawn. According to him an order had no greater sanctity than an agreement simpliciter. Reliance was inter alia placed by the tenant on Babu Ram Gupta (supra). However, their Lordships repelled the contention observing that the Court was an active participant to the terms of the compromise and its validity in a case for eviction on permissible grounds and material. Their Lordships observed that :

"the fact that the undertaking does not expressly mention that it was given to the Courts is a matter of no consequence as on the interpretation of the terms of the statement and a long practice understood by the counsel and Judges of this Court and the Courts subordinate to it, it is clear to us that the undertaking must have been given to the Court. An undertaking recorded in Court has come to acquire a technical meaning it is always an undertaking to the Court. Stay orders or injunctions prayed for are not granted when undertakings are given in Court by the parties or their counsel."

19A. Their Lordships further observed that :

"thus the expression a party "undertaking" or "gives a solemn promise" used in the statements of the parties or their counsel or in the orders and decrees of the Court, unless the context otherwise suggests, mean an implied undertaking to the Court. The undertaking is always understood to be an undertaking to the Court, which undertaking could be enforced by committal proceedings".

20. The instant case in my view stands on a much better footing in that the respondent Company gave clear undertaking to the Court in the joint compromise petition made to the Court. The mere fact that it was not specifically incorporated either in the joint statement made by the parties in Court or in the order of the Court itself would hardly detract from the solemn undertaking. The vital fact is that both the parties expressly undertook to abide by the terms of the compromise which inter alia embodied the undertaking given to the Court with regard to the delivery of peaceful and vacant possession of the plot in question to the petitioner. So, by no stretch of reasoning the said undertaking can be said to have been washed away simply because it was not reiterated in terms in Court. Hence, I hold that the instant is not merely a case of breach of compromise but manifestly a case of breach of an undertaking given to the Court.

21. The question may arise whether breach of the undertaking which is tantamount to disobedience of an order of Court is willful or not. The ordinary meaning of "willful" as defined in the Concise Oxford Dictionary, is that "for which compulsion or ignorance or accident cannot be pleaded as an excuse, intentional, deliberate". As tersely said by Bramwell, L.J. in *Lewis v. Great Western Railway Company*, (1877) 3 QBD 195 "Willful misconduct" means misconduct to which the will is a party, something opposed to accident or negligence;".

22. In *Heatons Transport (St Helens) Ltd. v. Transport and General Workers Union* (1972) 3 All ER 101 the House of Lords expressed the view that to prove

willful disobedience - it is not necessary to show that breach was contumacious and it would be sufficient to show that disobedience was not casual or accidental and unintentional. The same view has been expressed by a Division Bench of this Court in *Kuldip Rastogi and Another Vs. Vishva Nath Khanna, , T. P. S. Chawla, J.*, who spoke for the Court on a review of several English decisions including the observations of Bramwell, L.J. (*supra*) held that :

"this accords completely with the quotation from Bramwell, C.J., with which I started. It follows that "willful" has the same meaning in the law of contempt as in other branches of the law. I can see no reason why in the matter of contempt it should have some special or peculiar meaning, Bowen, L.J., said in *re Young and Harston's Contract* (1885) 31 Ch D 168, that it "is not a term of art; "and, the ordinary meaning of willful," as defined in Concise Oxford Dictionary, is that for which compulsion or ignorance or accident cannot be pleaded as an excuse, intentional, deliberate"

23. His Lordship also noticed various Indian decisions in which the word "contumacious" had been used in describing contempt and pointed out that almost invariably it was used disjunctively with "willful" or "deliberate". Observed he :

"that, in itself, indicates that "contumacious" is used as a synonym, and for the purpose of adding something more to the meaning of "willful" that it otherwise bears".

24. Obviously the breach of undertaking on the part of the respondent is deliberate and intentional. By no stretch of reasoning it can be said to be accidental or unintended. Indeed the respondents have tried to justify breach of the undertaking by taking shelter under the plea that there was only a compromise between the parties and no undertaking was given to the Court as such. There seems to be no intention to purge the contempt. They have not expressed any contrition or repentance either; rather their attitude is inexorable. Hence, I am fully satisfied that respondents 1, 2 and 4 whom rule nisi was issued are guilty of contempt.

25. Before concluding, however, I may deal with some other points raised by the respondents. Their first contention is that the compromise itself provides for alternative remedy to which the recourse can well be had by the petitioner. My attention in this context has been invited to Cls. (d) and (f) of the compromise Ex. C-1. Under Clause (d) the petitioner had agreed not to charge anything in the form of license fee or otherwise from the respondent company during the period of about two years expiring on 19th November, 1983 on or after which date the respondents were to deliver peaceful and vacant possession of the plot in question to the petitioner. Further it was agreed between the parties that in the event of failure on the part of the respondents to deliver back the possession as stipulated the respondents would be liable to pay damages w.e.f. the date of the compromise. Further it was provided in Clause (f) that the compromise would

have the force of a decree and either party would be at liberty to execute the same in case their rights were infringed. Thus the precise contention put forth on behalf of the respondents is that the petitioner can avail of these remedies and proceed against the respondents to enforce his rights under the compromise. Hence, according to the learned counsel for the respondents the question of awarding any punishment for the alleged contempt of Court does not arise when alternative remedy is available. However, this argument too is devoid of any merit. It is for the simple reason that the contempt of Court envisages affront to the dignity of the Court and the mere fact that the aggrieved party can resort to other remedies to enforce its rights would be no ground to absolve the erring party from punishment for contempt of Court.

26. As observed by the House of Lords in *Heatons Transport (St Helens) Ltd. 1972 (3) All ER 101 (supra)* "it is also the reasonable view, because the party in whose favor an order has been made is entitled to have it enforced, and also the effective administration of justice normally requires some penalty for disobedience to an order of a Court if the disobedience is more than casual or accidental and unintentional". In the *The Aligarh Municipal Board and Others Vs. Ekka Tonga Mazdoor Union and Others*, , it was held by the Supreme Court that "contempt proceeding against a person who has failed to comply with the Court's order serves a dual purpose : (1) Vindication of the public interest by punishment of contemptuous conduct and (2) coercion to compel the contemner to do what the law requires of him. The sentence imposed should effectuate both these purposes. To employ a subterfuge to avoid compliance of a Court's order about which there could be no reasonable doubt may in certain circumstances aggravate the contempt."

27. It is thus well settled that the Court's jurisdiction in respect of civil contempt is primarily remedial, the basic object being to coerce the offender into obeying Court's judgment or order. Committal is granted mainly for the purpose of enforcing judgment in civil disputes. As has been said "Civil contempt of Court exists, Therefore, to provide the ultimate sanction against one who refuses to comply with the order of a properly constituted Court." (Miller - Contempt of Court p. 2). The instant case clearly illustrates that the respondents are impeding the course of justice by adopting defiant attitude in not surrendering peaceful and vacant possession of the plot despite the undertaking given to the Court. It is not merely a case of error of judgment or bona fide belief in the correctness of their cause.

28. That apart the so-called alternative remedies contemplated in the compromise are absolutely illusory and totally inefficacious. Stipulation for payment of damages is designed to compensate the petitioner for the loss suffered by him if the respondents persist in intransigence and contumacy. The quantum of damages has not been specified. As for clause (f) suffice it to it says that the suit of the respondent having been dismissed it is not comprehensible where is the decree which may be executed by the petitioner. So the only course

open to the petitioner is to embark upon an endless voyage of fresh litigation by instituting a suit for possession and damages against the respondents. The alternative remedies are thus a mere moonshine. Indeed clause (d) itself provides that the remedy by way of damages will be in addition to any other action which may be available at law. Hence nothing turns on these clauses.

29. Lastly the learned counsel for the respondents has made a valiant attempt to urge that the petitioner has not come with clean hands. He has pointed out that even though the firm M/s. Indo-Keniyani Industrial Enterprises was originally a sole proprietary concern of Shri G. L. Seenik, it had ceased to be so even before the institution of the suit for permanent injunction by the Company would be manifest from the partnership deed dt. 10th September, 1981 (Annexure "A" to the reply affidavit of the respondents). However, for reasons best known to Shri Seenik, he suppressed this vital fact from the Company as also from the Court when a compromise was arrived at between the parties and the same was presented to the Court for necessary orders. Hence the compromise effected with M/s. Indo-Keniyani Industrial Enterprises as a sole proprietary concern of Shri G. L. Seenik which had ceased to be so has no legal foundation. In other words, the compromise was vitiated by a patent illegality and as a necessary corollary thereof the order of the Court putting its seal of approval on the same was devoid of any legal sanctity. In the alternative he has urged that M/s. Indo-Keniyani Industrial Enterprises has no locus standi to move this petition for contempt of Court as sole proprietary concern of Shri G. L. Seenik.

30. On a consideration of the matter, however, I do not find any substance in this contention. No doubt Shri Seenik who was at one time the sole proprietor of the concern M/s. Indo-Keniyani Industrial Enterprises entered into partnership with Smt. Agya Kaur and others vide deed of partnership dated 10th September, 1981 and this fact is not denied by the petitioner. It is also true that the second party viz. Smt. Agya Kaur etc. invested a sum of Rs. 1,95,500/- in the partnership business in consideration of G. L. Seenik making available the premises bearing No. B-18, Industrial Area, Maya Puri, for partnership business. It is, however, not clear from partnership agreement whether the said premises have become an asset of the partnership firm or not. It is further contended by the respondents that Shri G. L. Seenik even applied to the Delhi Development Authority for inclusion of the names of his partners as co-lessees of plot No. B-18. There is no specific denial of this averment but both the petitioner and his attorney Shri Surjit Singh assert that the former is still the sole lessee of the plot in question, meaning thereby that the said application has not been allowed by the Lesser i.e. Delhi Development Authority. If that be so, Shri G. L. Seenik still continues to be the sole lessee of the plot irrespective of whether it is a part of partnership assets or not because there could be no transfer in whole or part of the leasehold rights in favor of anyone without the concurrence of the Lesser. Needless to say that a lease in the name of a sole proprietary concern is in law lease in favor of the sole proprietor himself as the firm has no independent existence as a legal entity.

31. Assuming, arguendo, however, that the plot in question is a partnership asset. Shri G. L. Seenik has still a share in it, so, he will have locus standi to move this petition. True that the petitioner has been described to be a sole proprietary concern of Shri G. L. Seenik but then it is at the worst a case of misdescription and nothing more. As stated in Halsbury's Laws of England Vol. IX (4th Edition) at para 57 :

"A person not a party to a cause or matter, who obtains an order or in whose favor an order is made, is entitled to enforce obedience to it by the same process as if he were a party; and a person not a party against whom any judgment or order may be enforced is liable to the same process for enforcing obedience to it as if he were a party".

32. So, if a stranger to the litigation can seek enforcement of an order by complaining of civil contempt there is no reason by Shri G. L. Seenik who still has an interest in the plot in question cannot do so. In my view, he has not lost locus standi to move this application. Even otherwise, the only function of a party in contempt proceedings is to alert the court about contempt. He has no separate and greater rights, for it is then for the Court to proceed further and punish the contemner, if it is so satisfied. Hence, this objection is not at all tenable.

33. As for the contention of the respondents that the original compromise as also the order of the Court based upon it is vitiated and rendered illegal on account of suppression of factum of partnership by the petitioner, suffice it to say, that it is totally irrelevant so far contempt proceedings are concerned. It is open to the respondents to challenge the original order on this ground and seek appropriate relief from the concerned court, if so, advised. Surely this Court cannot go into this question and cannot ignore the fact of the respondents committing breach of the undertaking given to the Court. As observed by Tek Chand, J. in Narain Singh Vs. S. Hardayal Singh Harika, Executive Officer, Municipal Committee, Patiala, :

"So long as the injunction order has not been vacated or modified by the Court granting it, or has not been reversed on appeal, no matter how unreasonable and unjust the injunction may be, the order must be obeyed. Violation of the order of injunction cannot be excused on the ground that though the Court acted within its jurisdiction but the order that it passed was erroneous.

The order granting injunction might have been erroneous, or granted improvidently, or obtained irregularly, that will not excuse the person violating it. The only questions open for consideration in proceedings for contempt for violating an injunction are, whether the Court had jurisdiction to award the injunction, and whether it had in fact been violated. Further, inquiry as to its advisability or legality is not called for. The Court, in contempt proceedings, will not inquire into the merits of the case in which the injunction was issued.

That is the function of the Court granting the injunction and if that order is challenged in appeal, then of the Court of appeal. If the question has been determined wrongly by the trial Court, it can be re-examined only on appeal. So

long as the Court has an authority to determine the issue, its order has to be obeyed, no matter how clearly it may be erroneous."

34. This passage was quoted with the approval by a Division Bench of High Court of Andhra Pradesh in *Kruthiventi Kutumba Rao Vs. Muthi Venkata Subba Rao and Others*, . The Bench observed :

"So long as there is an order by the Court which requires compliance not only, parties but even third parties who are not parties to the suit and who have notice of the same will be liable for contempt for the disobedience of such orders or for obstructing the execution of the same. Whether the order is valid or irregular unless it is vacated, it has got to be obeyed."

35. Their Lordships extracted the following passage from the book "Contempt of Court" by Oswald (3rd Edition) at page 107 :

"An order irregularly obtained cannot be treated as a nullity, but must be implicitly obeyed, until by a proper application it is discharged, and the case is the same where the order is alleged to have been improvidently made."

36. Reference in this context be also made to *Shri Subodh Gopal Bose Vs. Dalmia Jain and . Co. Ltd. and Others*, where it was held that :

"right or wrong, the injunction order binds him, and he disregards it at his peril".

37. Hence, this contention too is devoid of any merit; the present being at best a case of misdescription of the petitioner firm, it has locus standi to move this petition.

38. Lastly I need hardly say that not only the respondent Company but also respondent 2 who being its Managing Director was in-charge of and responsible to the Company for the conduct of the business of the Company at the time the contempt was committed and respondent No. 4 who was its Manager and authorised representative at the relevant time are liable for contempt of Court. I was informed that respondent 4 has since left the services of respondent No. 1 but that is hardly relevant because it was he, who gave the undertaking on behalf of the Company and he was very much in service till this application was made. Subsequent resignation is hardly of any consequence.

39. To sum up Therefore, I find that respondents Nos. 1, 3 and 4 are guilty of contempt of Court and they deserve severe punishment. As stated above, they have not expressed any repentance or contrition, much less willingness to purge the contempt. Hence, I impose a fine of Rs. 2000/- each on all these respondents and I also direct that respondents 2 and 4 be committed to civil prison for three months each. In case, however, the respondents 2 and 4 purge the contempt and surrender peaceful and vacant possession of the plot in question within one month from today the sentence of imprisonment shall stand remitted and they will not be sent to civil prison; however, the sentence of fine shall stand.

40. Order accordingly.