

(1994) 04 SHI CK 0030
In the High Court Of Himachal Pradesh
Case No : Ex.P. No. 24 of 1989

Punjab National Bank

APPELLANT

Vs

Mahitt India Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (1995) 1 ShimLC 252

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : R.L. Sood, for the Appellant; S.S. Kanwar and M.P. Rustogi and Party-In-Person for J.D. No. 3, for the Respondent

Judgement

Kamlesh Sharma, J.—Notice to show-cause was given to J.D. Nos. 2 and 3 on 3-5-1993 for not abiding by the undertakings given by them on 24-8-1992, which were accepted by this Court by the order of the same day. The order dated 24-8-1992 is:

Accepting the undertakings given by judgment debtor Nos. 2 and 3 in their statements recorded Separately, it is ordered that arrears of Rs. 70,000 plus instalments of Rs. 10,000 per month from September will be paid by judgment debtor No. 3 by or before 31st December, 1992. An amount of Rs. 3,00,000 will also be deposited in lump sum on or before 30th April, 1993 by judgment debtor Nos. 2 and 3.

Further order on OMP Nos. 221 and 319 of 1992 and the notice of contempt issued to judgment debtor 3 will be passed on the next date of hearing. Mr. Sood, learned Counsel for the decree holder bank, states that the decree holder bank may be associated if the property at Rewari (Haryana) is sold by judgment debtors and Smt. Kanta Devi wife of judgment debtor No. 2. This submission will be considered on the next date of hearing it is also made clear that order of monthly instalments of Rs. 10,000 was passed by way of interim arrangement.

List on 31st December, 1992.

2. The undertaking given by J.D. No. 2, Rameshwar Dass was:

I am chairman of judgment debtor No. 1 company. It is correct that for the loan amount for which decree was passed against all of us, my house No. 2536 situated in Basti Kunj Gali Champa Niketan Rewari, Jiwali Bazar, Rewari was mortgaged with the decree holder Bank and I had transferred it to my wife Smt. Kanta Devi during the pendency of this litigation. I am ready and willing to liquidate the decretal amount and either get this property retransferred in my name or persuade my wife Smt. Kanta Devi to sell it and pay the decretal amount. I and my son judgment debtor No. 3 Sh. M.P. Rustogi who is present in the Court today will file affidavit(s) stating how we propose to liquidate the decretal amount, within a period of four months. I undertake to deposit three lacs rupees (Rs. 3,00,000) up to 30th April, 1993. I understand that if I do not abide by this undertaking, contempt proceedings can be started against me.

Similarly, the undertaking given by J.D. No. 3, M.P. Rustogi was:

I could not abide by the undertaking given by me which was accepted on 6-8-1991 for the reasons stated in my application filed in the Registry today. Admittedly, I was to pay Rs. 1,30,000 till August, 1992 out of which I have only paid Rs. 60,000 till today. The remaining amount of Rs. 70,000 I shall clear by or before 31st December, 1992. In addition, I undertake to go on paying monthly instalments of Rs. 10,000 regularly. I have heard the undertaking given by judgment debtor No. 2 and I also undertake to ensure the fulfilment of the undertaking by judgment debtor No. 2. I understand that if I do not abide by this undertaking, contempt proceedings can be taken against me.

As mentioned in the order dated 24-8-1992, J.D. No. 3 was already facing notice to show-cause why contempt proceedings be not started against him for disobeying the order dated 6-8-1991. This order is:

Affidavits as well as undertakings on behalf of J.D. Nos. 2 and 3 are filed. Sh. Bhupender Gupta, learned Counsel for judgment debtor Nos. 1 and 3, states on instructions received from Sh. M.P. Rustogi, J.D. No. 3, that an amount of Rs. 10,000 was deposited on 17th July, 1991 with the Plaintiff-Bank. As per the undertakings, the judgment debtors will go on depositing Rs. 10,000 by or before 10 of each month subject to any further order made in this regard.

The undertaking of M.P. Rustogi, by way of his affidavit dated 30-7-1991 is on the file of OMP No. 513 of 1989 in the Execution Petition.

3. The background in which J.D. Nos. 2 and 3 gave the undertakings on 24-8-1992 is recapitulated to find out whether they had given the undertakings in good faith or just to gain time or to hoodwink the Court. In Civil Suit No. 27 of 1985, ex parte preliminary decree was passed against the J.Ds. as far back as on 16-3-1987 in the following terms:

It is ordered that for the reasons given in the judgment dated 16-3-1987 an ex parte preliminary decree is granted in favour of the Plaintiff for recovery of Rs. 2,88,159.87 Paise with proportionate costs and future interest at the rate of 13.5% with quarterly rests against the Defendants who will be liable to pay the same jointly and severally. The Defendants are directed to pay into the Court the aforesaid amount within the next four months failing which the Plaintiff-Bank will be entitled to apply for a final decree for the sale of the mortgaged property. It is further ordered that in case the proceedings of the sale of the mortgaged property are found insufficient to satisfy the final decree the Plaintiff will be entitled to recover the balance amount from other properties of the Defendants. It is further ordered and decreed that Defendants shall also pay the proportionate costs of this suit amounting to Rs. 6419.60 paise to the Plaintiff.

4. On their failure to deposit the amount of preliminary decree, final decree was passed on 18-7-1988 for which execution is sought in Execution Petition No. 24 of 1989. Though the judgment debtors were served in April, 1989, yet, they filed proper affidavits disclosing their assets up to August, 1990 after taking a number of adjournments. Thereafter, the Decree-holder Bank filed OMPs No. 430 of 1990 and 449 of 1990 for attachment of the movable assets of J.D. Nos. 1, 3 and 4 as disclosed in the affidavits of J.Ds and also for detaining the J.Ds in Civil prison. Again, a number of adjournments were taken for filing reply to these applications on the ground of illness of J.D. No. 3. Ultimately, Sh. K.D. Sood learned Counsel appearing for the J.Ds sought permission to withdraw from the case which was granted on the ground that the J.Ds. had engaged another counsel, Sh. M.G. Chitkara. On 13-3-1991, Sh. J.K. Verma appeared vice Sh. M.G Chitkara and stated at the bar that the J.Ds. were ready and willing to pay the decretal amount if they were allowed to do so by way of instalments. To test the bona fide of this statement made on behalf of the J.Ds., they were asked to deposit an amount of Rs. 20,000 by April 15, 1991 which they did by tendering the said amount in the Court on 24-4-1991. In view of this, J.D. No 3 was given an opportunity to file an undertaking how he will pay the balance decretal amount. Again J.D. No. 3 took a number of adjournments to comply with the order and on 16-7-1991 another opportunity was granted on the assurance of his the then counsel that he will deposit another sum of Rs. 10,000 and that J.D. Nos. 2 and 3 will file their undertakings within a period of two weeks. This order was complied with and accepting the undertakings of J.Ds., order dated 6-8-1991 was passed.

5. The judgment debtors filed OMP No. 257 of 1991 praying that the Decree-holder Bank may be directed to give them the present market value of hypothecated goods and adjust the same towards the decretal amount. After exchanging reply(s) and rejoinder(s) to all the pending applications, these were decided by a detailed order on 20-4-1992. OMP No. 257 of 1991 was rejected holding that the hypothecated/pledged goods had since been stolen for which the Decree holder Bank as well as the judgment debtors had filed separate F.I. Rs., as such, no relief could be given to the J.Ds. OMP No. 430 of 1990 of the Decree holder Bank for attaching and selling the movable properties of J.D. Nos. 1 and 3

was also rejected in view of the order dated 6-8-1991 whereby the undertaking of J.D. No. 3 was accepted that he will deposit an amount of Rs. 10,000 per month by or before 10th of each month from July, 1991.

6. OMP No. 449 of 1990 for detaining the judgment debtors in Civil prison as well as OMP No. 512 of 1990 for issuing precept to the Court of Senior Sub Judge, Rewari in respect of the property of J.D. No. 2 mortgaged with the Decree-holder Bank were also rejected for the reasons stated in the order. However, the decree-holder Bank moved application No. 221 of 1992 for recalling the order dated 20-4-1992 in respect of attachment of movable properties of the judgment debtors and for initiating contempt proceedings against them for not depositing the instalments of Rs. 10,000 per month as per their undertaking. After considering the reply to this application, this Court found that prima facie judgment debtor No. 3 had wilfully disobeyed the order dated 6-8-1991, therefore, notice to show-cause why proceedings under the Contempt of Courts Act be not started was issued to him on 30-7-1992 and judgment debtor Nos. 2 and 3 were asked to remain present in the Court on the next date of hearing, that is, 24-8-1992 when they gave further undertakings and order was passed by accepting those undertakings as noticed above.

7. On 24-8-1992, OMP No 386 of 1992 was also filed by J.D. No. 3 explaining the circumstances under which he could not deposit the instalment of Rs. 10,000 per month after August, 1991, as per the order dated 6-8-1991 and prayed that notice to show-cause for initiating contempt proceedings issued on 30-7-1992 may be discharged. Orders on this application were postponed as in the meantime J.D. No. 3 as well as J.D. No 2 had given fresh undertakings on 24-8-1992 itself. Thereafter, when the case was listed on 1-1-1993, it was brought to the notice of the Court that J.D. No. 3 had filed his affidavit dated 29-12-1992 bringing on record the fact that he had paid an amount of Rs. 1,00,000 as per his undertaking and cleared the arrears up to 31st December, 1992 in respect of payment of monthly instalments of Rs. 10,000 in compliance to the order dated 24-8-1992.

8. On 26-4-1993, another affidavit dated 28-3-1993 was filed by J.D. No. 3 alongwith proposed schedule of repayment wherein it was admitted that the decretal amount due and payable by the judgment debtors was Rs. 6,31,665.10 as on 1-4-1992 which they proposed to liquidate by December, 1999. It was stated in the affidavit that if this proposal was acceptable to the Decree-holder Bank, J.D. No. 3 will file undertaking to abide by the schedule of repayment.

9. Instead of abiding by his undertaking, J.D. No. 2 moved OMP No. 149 of 1993 (dated 27-1-1993) on 26-4-1993 praying that the order dated 24-8-1992 be recalled and he be exonerated of the consequences of his undertaking given by way of his statement made in the Court. In para 3 of this application it is stated that, "... the judgment debtor No. 2-applicant made his earnest efforts to persuade his wife for the sale of the said house but there are so many legal complications coming in the way and it shall not be possible for the judgment

debtor No. 2 to get the property re-transferred in his name and thereafter to sell the same to enable him to deposit a sum of Rs. 30,000 (sic.) as stipulated". He has also stated that this is the only house in which he has been residing alongwith his wife and if it is sold he will become roofless as in view of his age and health he is not in a position to live at Solan which is at a high altitude.

10. Both OMPs No. 386 of 1992 and 149 of 1993 were rejected on 3-5-1993 and notice to show-cause was issued to judgment debtor Nos. 2 and 3, which was served upon them on 16-5-1993 but they did not file reply and the case was adjourned on 1-6-1993, 28-6-1993 and 19-7-1993 when Sh. Bhupender Gupta, Advocate, representing the judgment debtors was permitted to withdraw and J.D. No. 3 who was present in person was granted one week's time to engage another counsel. Next date of hearing was fixed on 26-7-1993 but the matter could not be taken up by the Court. Thereafter, the case was listed 11-8-1993 when fresh notices were sent to the judgment debtors returnable on 26-9-1993 by ordinary course as well as by Registered post as neither they were present in person nor represented by any counsel. In the meantime, Sh. S.S. Kanwar, Advocate, filed power of attorney on behalf of the judgment debtors but did not appear when the case was listed on 27-9-1993. The case was adjourned to 29-9-1993 when OMP No. 319 of 1992 filed by the Decree-holder Bank was allowed and precept was issued to the Senior Sub-Judge, Rewari for sale of the mortgaged property bearing House No. 2536 situate in Basti Kunj Gali Champa Niketan Jiwali Bazar, Rewari, as the judgment debtors had failed to file reply to this application. They had also not filed reply to the notice to show-cause and on the request of their learned Counsel, Sh. S.S. Kanwar, last opportunity of three weeks was granted to file the reply-affidavit(s). Instead of filing reply, OMP No. 597 of 1993, for recalling the order dated 29-7-1993 passed in OMP No. 319 of 1992, and OMP No. 598 of 1993, for stay of further proceedings in the notice to show-cause for initiating contempt proceedings against J.D. Nos. 2 and 3, were filed on the ground that they had challenged the orders dated 24-8-1992 and 3-5-1993 by filing Letters Patent Appeal which was pending consideration and in case reply to show-cause is filed, their case in the Letters Patent Appeal will be adversely affected. These applications were considered and rejected on 2-12-1993. J.D. Nos. 2 and 3 were further granted an opportunity to file reply(s) to show-cause notice within a period of ten days. It was noticed in the order that an amount of Rs. 4,50,236 was due and payable by the judgment debtors as on 20-5-1993 after adjusting all the payments made by them, as stated by the learned Counsel for the Decree-holder Bank. However, another statement of account has also been placed on record duly supported by the affidavit of the Manager of the Decree-holder Bank wherein it is stated that an amount of Rs. 4,26,862 was due and payable as on 31-12-1993 after adjusting all the payments made by the judgment debtors, last of which was of Rs. 50,000 made on 7-7-1993.

11. The reply of J.D. Nos. 2 and 3 were considered on 31-12-1993 but order on notice to show cause was postponed in view of their apology and they were

afforded an opportunity to purge themselves of the contempt by making the payments in accordance with their undertakings dated 24-8-1992 on or before 31-3-1994. Thereafter, the matter was listed on 29-3-1994 when it was brought to the notice of the Court that no amount had been paid by the judgment debtors. Their learned Counsel, Sh. S.S. Kanwar, insisted that their OMP No. 18 of 1994 may be considered wherein they had prayed that the Decree-holder Bank may be restrained from creating unnecessary and uncalled for obstacles in the running of their business. The allegations made in the application are that the Decree-holder Bank had written a letter dated 22-12-1992 to the Manager, State Bank of India, Solan, to stop the operation of the account of judgment debtors with it and the State Bank of India, Solan, has given notice to them in this regard. Before deciding this application, the Court proceeded to hear the matter of contempt on 5-4-1994 but did not pass the order till today on the oral request of Sh. S.S. Kanwar that the order may be passed in the presence of J.D. No. 3 who will be produced by him within a couple of days.

12. Sh. S.S. Kanwar, learned Counsel for the judgment debtors, has referred to the reply to the show-cause filed on behalf of J.D. Nos. 2 and 3 wherein they had reiterated that due to "unpredictable difficulties and financial stringencies" they could not abide by their undertakings. They have also tried to take up the matter of granting them compensation for the pledged goods which stood finally decided on 20-4-1992 in OMP No. 257 of 1991 and which order has not been challenged by the judgment debtors. In respect of the undertaking of J.D. No. 2 that he will either get the property at Rewari re-transferred in his name or persuade his wife to sell it and pay the decretal amount, it is stated that," the Respondents can persuade Smt. Kanta Devi to mortgage this house in favour of the Decree-holder Bank provided the Bank does not put this house to sale immediately. The Decree-holder Bank will also have to give some reasonable time to the Respondents to repay the decretal debt. If they failed to do so, then house may be put to sale in the execution of this decree". In view of these facts, they have prayed that contempt proceedings against them be dropped and they be absolved of their undertakings.

13. Today, when this order was being dictated in the presence of J.D. No. 3, his counsel, Sh. S.S. Kanwar is permitted to file an application in the Court for bringing on record some additional material and subsequent events as prayed by the judgment debtors. Alongwith this application, balance sheets of J.D. No. 1 company for the years 1991-92 and 1992-93 have been brought on record showing that it has been running in losses for the reasons beyond the control of the judgment debtors, such as, their only customer M/s. Mohan Meakins Ltd. did not place orders in July, 1993 for Beer Cartons which are manufactured by them, and due to strike of truck operators in August, 1993 they could not transport raw material or finished goods and increase of excise duty in the latest central budget. They have assured by way of this application that they will deposit the amount as undertaken by them "as soon as they started earning profits".

14. Sh. S.S. Kanwar, learned Counsel for the judgment debtors, has also cited two Supreme Court judgments passed in *Debabrata Bandopadhyay and Others Vs. The State of West Bengal and Another*, and in *Jolly George Varghese and Another Vs. The Bank of Cochin*, to urge that in the matter of Contempt of Court, the Court must act with great circumspection and give all allowances for the difficulties arising in the way of judgment debtors in complying with the orders of the Court which might have been passed by accepting the undertakings. He has also referred to two judgments of Delhi High Court in *Nand Kishore Chela Mal Vs. Commissioner of the Municipal Corporation of Delhi and Others*, and *R.L. Gupta v. H.L. Sehgal* AIR 1969 Delhi 169, wherein the principles laid down in the judgment of the Supreme Court have been reiterated. No doubt, the guiding principles laid down in these judgments should be kept in view while deciding the matter in respect of Contempt of Court for disobedience of its order as well as for not abiding by the undertakings given by a party and also that before punishing a party for contempt, the Court is required to satisfy itself that the conduct of the party is contumacious, unexplainable and the lapse on its part is deliberate and in defiance of the authority of the Court.

15. Applying these principles to the facts and circumstances of the present case, this Court has no hesitation to hold that judgment debtor Nos. 2 and 3 have wilfully disobeyed the order dated 24-8-1992 and breached the undertakings given by them by way of statements on oath made in the Court. On 24-8-1992 J.D. No. 3, M.P. Rustogi, was already facing notice to show-cause for committing contempt by not abiding by his earlier undertaking to pay monthly instalment of Rs. 10,000 as ordered on 6-8-1991. In view of his undertaking and order dated 6-8-1991, this Court had rejected OMP No. 430 of 1990 for attachment and sale of movable property of judgment debtors and OMP No. 4(SIC)9 of 1990 for putting them in civil prison to enable the judgment debtors to run their unit and pay the decretal amount out of its earnings. While giving undertaking on 24-8-1992, J.D. No. 3 M.P. Rustogi not only undertook to clear the arrears in respect of instalment of Rs. 10,000 per month as per his earlier undertaking but also reiterated that he will continue to pay monthly instalments of Rs. 10,000 in future as well but after clearing the arrears and payments upto December, 1992 he stopped paying. He did not come forward to seek extension of time for depositing the instalments in view of the alleged financial stringencies till the filing of reply to the show-cause notice on 6-12-1993. He has paid Rs. 50,000 on 7-7-1993 during the pendency of the contempt proceedings. From these facts, it is more than clear that J.D. No. 3 does not consider himself bound by the orders of this Court and undertakings given to it voluntarily. He thinks that he has a right to run his business and pay the decretal amount whenever it is convenient to him as stated in OMP No. 108 of 1994 that, "they would deposit the amount of instalments as well as the amount agreed as soon as they start earning profits". Had the financial difficulties been real, he would have placed these before the Court at his earliest duly supported by documentary evidence and would not have kept silent for a period of one year till he was forced to speak in reply to

notice to show-cause. The averments with regard to financial difficulties are not only vague but an excuse for not complying with the order dated 24-8-1992.

16. The background in which the order dated 24-8-1992 was passed and thereafter contempt proceedings were started on 3-5-1993 establish the contumacious conduct of J.D. No. 3 and his deliberate act to disobey the order and not to abide by his undertaking in defiance of the authority of the Court. In fact, he has been taking the Court for a ride, that he will give undertaking after undertaking to get a favourable order from the Court and thereafter not abide by it, with impunity either by tendering apology or by making grievance of his business difficulties and financial stringencies. He had himself proposed the repayment schedule by his affidavit dated 28-3-1993 according to which he volunteered to pay Rs. 15,000 per month during the period April, 1992 to 31-3-1993 and thereafter Rs. 10,000 per month. While making this proposal he must have considered the earnings of his unit and other resources to make the payment. Therefore, in view of the totality of facts and circumstances on record, his explanation that he could not abide by his undertaking(s) due to business difficulties and financial stringencies is not genuine. Rather, it is clear that he has no intention to pay despite resources available to him and believes that he can postpone the payment of decretal amount by giving undertakings and promises which he has not to comply with. He has been shown great indulgence by this Court by granting him more than three years time to give him an opportunity to rehabilitate the Unit and also make the payment of decretal amount. But he has scant regard for the orders of the Court and his conduct amounts to abuse of the process of the Court. His request for pardon and further promise to make payments are as shallow as his earlier undertakings. Hence this Court has no doubt that judgment debtor No. 3 is guilty of committing civil contempt of this Court for wilful disobedience of the order dated 24-8-1992 and also wilful breach of his undertakings dated 6-8-1991 and 24-8-1992 and he is liable to be punished u/s 12 of the Contempt of Courts Act. Accordingly, he is ordered to be detained in civil prison for a term of one month and also to pay a fine of Rs. 2,000.

17. So far judgment debtor No. 2 who is chairman of judgment debtor No. 1 company is concerned, he has admitted that he had transferred his house at Rewari, which was mortgaged with the Decree-holder Bank, to his wife Smt. Kanta Devi during the pendency of the litigation, apparently to deprive the Decree-holder Bank from its valuable security of decretal amount. However, he promised either to get the said house re-transferred in his name or persuade his wife to sell it and pay the decretal amount. He further undertook to deposit an amount of Rs. 3,00,000 upto 30-4-1993 but failed. It seems he gave this undertaking for not abiding by it because he had already got prepared his OMP No. 149 of 1993 on 27-3-1993 though filed on 26-4-1993 praying that the order dated 24-8-1992 be recalled and he be exonerated of the consequences of his undertaking. The reason given for not abiding by the undertaking is that due to many legal complications it will not be possible for him to get the said house re-

transferred in his name and thereafter to sell it to enable him to deposit the amount as per his undertaking. He has also alleged that his effort to persuade his wife to sell the house for paying the decretal amount have also failed. This explanation is not only vague, as details of legal complications are not given, but also an excuse for not complying with the undertakings. In reply to the show-cause notice, it is again stated that judgment debtor Nos. 2 and 3, "...can persuade Smt. Kanta Devi to mortgage this house in favour of the Decree-holder Bank provided the Bank does not put this house to sale. The decree holder Bank will also have to give some reasonable time to the Respondents to repay the decretal debt. If they failed to do so, then the house may be put to sale in execution of the decree". It cannot be believed that J.D. No. 2, who is husband of Smt. Kanta Devi and who had voluntarily transferred the house in her name, obviously to defeat the decree of the Decree holder Bank is not able to persuade his wife to retransfer the house to him by telling her the consequences of his breach of undertaking which were made clear to him at the time of recording his statement on 24-8-1992. If he has failed to persuade her for retransfer, how can he again persuade her to mortgage it with the Decree holder Bank as promised now. This only shows that J.D. No. 2 gave the statements/undertakings in a most casual manner knowing that he will not comply with it and find out a way to wriggle out of it by either tendering apology or by taking further time Therefore, from the totality of facts and circumstances on record, it is clear that the explanation given by J.D. No. 2 for not complying with his undertaking is not at all genuine and bona fide. His conduct has been to hoodwink the Court and delay the payment of the decretal amount despite his having resources to pay. His request for pardon as well as promise to pay if further time is granted is as shallow as his earlier undertaking. This Court is satisfied that J.D. No. 2 has wilfully disobeyed the order dated 24-8-1992 by not complying with his undertaking given on the same day and he is guilty of committing civil contempt of this Court and is liable to be punished u/s 12 of the Contempt of Courts Act. Accordingly, he is ordered to be detained in civil prison for a term of one month and also to pay a fine of Rs. 2,000.

18. Detention charges and process fee will be deposited by the Decree-holder Bank within a period of three weeks.

19. The proceedings of notice to show-cause stand disposed of accordingly.