

**(2004) 04 KAR CK 0017**  
**In the Karnataka High Court**  
**Case No : CCC (Civil) No. 2030 of 2000**

S. Balasubramaniam

APPELLANT

Vs

P. Janakaraju and Another

RESPONDENT

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**Date of Decision :** 29-04-2004

**Acts Referred:**

Contempt of Courts Act, 1971 — Section 12

**Citation :** (2004) ILR (Kar) 2442 : (2004) 5 KarLJ 338 : (2004) 3 KCCR 270 SN

**Hon'ble Judges :** R.V. Raveendran, J;N.K. Patil, J

**Bench :** Division Bench

**Advocate :** Vighneshwar S. Shastri, for the Appellant; G.S. Visveswara for Praveenkumar Raikote, for the Respondent

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## Judgement

R.V. Raveendran, J.—Complainant is the landlord and respondents are the tenants of premises No. 11-4-57 (Old) New No. 11-4-66, Cloth Bazaar, Raichur. The complainant filed an eviction petition in HRC No. 9/1994 on the file of the Munsiff, Raichur, u/s 21(1) (h) of the Karnataka Rent Control Act, 1961 ("KRC Act" for short), against the respondents which was allowed on 6.8.1996. The revision petition filed by the tenants u/s 50 (2) of Karnataka Rent Control Act, 1961, in HRC(RP) No. 7/1996 was dismissed by the District Court, Raichur on 18.11.1996. The second revision filed by the respondents (Tenants) in HRRP No. 1870/1996, came up for admission before a learned Single Judge on 18.12.1996. After arguing the matter for some time, the learned Counsel for the tenants submitted that if three years time is granted to deliver back vacant possession of the premises, they will not press the revision petition. Learned Counsel for the landlord, with a view to put an end to the litigation, agreed for grant of three years time provided the tenants filed an undertaking to the Court agreeing to voluntarily hand over the premises at the end of three years. The tenants agreed. In view of it, the Learned Single Judge disposed of the revision petition on 18.12.1996 granting time to the tenants, up to 31.12.1999 to vacate the premises, subject to the tenants filing an affidavit undertaking, (a) to voluntarily handover vacant possession of the premises to the Landlord on or before

31.12.1999; (b) to continue to pay rent for the premises; (c) not to induct any one else into the premises and (d) not to cause damage or alter the nature of premises.

2. Accordingly, the first respondent herein filed an affidavit dated 1.4.1997 (on his own behalf and on behalf of his mother who is the second respondent herein) undertaking to vacate the premises on or before 31.12.1999. In view of it, the Respondents had the benefit of three years of uninterrupted possession and enjoyment of the premises. But, the tenants did not vacate the premises on or before 31.12.1999 as undertaken by them. Therefore, the Landlord has filed this petition alleging wilful breach of undertaking by the respondents-tenants and praying initiation of contempt proceedings against them.

3. After hearing the parties, by order dated 4.4.2001 this Court recorded a prima-facie finding that there was breach of the undertaking by the respondents and respondents have therefore committed an offence punishable u/s 12 of the Contempt of Courts Act, 1971 ("Act" for short). On 12.4.2001, the charge was framed, relevant portion of which is extracted below:

"..... both of you had filed HRRP No. 1870/1996 and when the matter came up before a learned Single Judge of this Court on 18.12.1996, you sought time for vacating the premises till 31.12.1999 to vacate the premises and gave an undertaking to this Court to deliver vacant possession of the said premises on or before that date. Acting on the said undertaking, the learned Single Judge of this Court passed an order dated 18-12-1996 disposing of the revision petition granting you time till 31.12.1999 to vacate the premises. Having utilised the said time granted to you on your undertaking, you have failed and neglected to vacate the premises and thereby committed breach of the said undertaking given to this Court and thereby committed an offence punishable u/s 12 of the Contempt of Court Act, 1971 within our cognizance".

4. When the matter was listed for trial on 25.6.2001, both parties submitted that the facts as above are not in dispute and there is no need for recording any oral evidence and the matter may be finally heard with reference to the legal contentions.

5. The complainant contended that there is a wilful breach of the undertaking given to the Court by the Respondents to vacate the premises on or before 31.12.1999; and that irrespective of the fact whether the order of eviction is executed or not, executable or not, respondents are liable to be punished for contempt. He submitted that the respondents having availed the benefit of three years time to vacate the premises (secured by giving an undertaking to vacate the premises by 31.12.1999), cannot now contend that the undertaking was not valid or binding. It is pointed out that if the Respondents, instead of giving an undertaking to vacate premises by 31.12.1999 and obtaining the benefit of three years time, had prosecuted the petition and even succeeded in the Revision Petition, the complainant would have filed a suit for eviction immediately and by

now obtained a decree for eviction.

It is submitted that by giving an undertaking and obtaining three years time to vacate the premises, the Respondents also effectively prevented the complainant from filing a suit for eviction and therefore the Respondents are estopped from setting up any contention challenging the validity of the undertaking.

6. Respondents-tenants contend as follows: They are the tenants of a non-residential premises rent of which is more than Rs. 500/- per month. Having regard to the exemption contained in Section 31 of the KRC Act, Chapter V of KRC Act was inapplicable to non-residential premises, the monthly rent of which exceeded Rs. 500/-; and therefore a landlord of a non residential premises, the rent of which exceeded Rs. 500/- per month, who wanted to evict his tenant had to file a civil suit for ejectment, after terminating the tenancy as required under the provisions of the Transfer of Property Act, 1882 and an eviction petition under Chapter V of the KRC Act was not maintainable. However, a Division Bench of this Court in H. Padmanabha Rao Vs. State of Karnataka, declared Section 31 of the KRC Act as void and that decision attained finality. Therefore, litigants were proceeding on the basis that the protection against eviction under the provisions of Chapter V of KRC Act was available even in regard to non-residential premises monthly rent of which was more than Rs. 500/-. In these circumstances, the complainant, instead of filing a civil suit for ejectment, filed the eviction petition (HRC 9/1994) u/s 21 of KRC Act and that petition was allowed on 6-8-1996. Subsequently, on 1-11-1996 the Supreme Court rendered its decision in SHOBHA SURENDER v. H.V. RAJAN, Civil Appeal No. 13754/1996 the effect of which was to impliedly over rule the decision of this Court in PADMANABHA RAO and to restore Section 31 of the KRC Act, into the Statute Book. As a consequence, in regard to non- residential premises the monthly rent of which was more than Rs. 500/-, an eviction petition under KRC Act was not maintainable and a landlord had to file a civil suit for ejectment. Having regard to the decision in SHOBHA SURENDER and the subsequent decision of the Supreme Court in C.N. RUDRAMURTHY v. K. BARKATHULLA KHAN ILR 1998 KAR. 3371 and the decision of a Division Bench of this Court in Suresh Babu Vs. Smt. S. Susheela Thimmegowda, all eviction orders passed after 1-11-1996 in eviction petitions filed u/s 21 of the KRC Act in regard to non-residential premises the monthly rent of which exceeded Rs. 500/-, were void. As the order dismissing HRC.RP No. 7/ 1996 was passed by the District Court, Raichur on 18-11-1996 and the order dismissing HRRP No. 1870/1996 was passed by this Court on 18-12-1996, subsequent to 1-11-1996, the said orders were void and unenforceable. As the order of eviction became null and void for want of jurisdiction, disobedience with any order confirming the order of eviction or breach of any undertaking given in such a proceeding, will not amount to contempt.

7. Reliance is placed by the Respondents on the following observations of this Court in SURESH B ABU.

"Hence it has to be held that cases which have not reached finality, that is cases which are pending in Trial Courts, District Courts and High Court and cases where decision has been rendered, but the time for approaching the higher Court has not expired, will be subject to the law declared in SHOBHA SURENDER"s Case. Consequently the eviction petitions in such " pending matters will have to be rejected.

.....even in regard to a decision which has become final, it is possible to set up its invalidity as a defence to enforcement thereof, on the ground that it is a nullity (a) where there was an inherent lack of jurisdiction in the court which entertained and passed the decree; (b) where the decree was made by the Court, in violation of a specific bar contained in a statute, or (c) where a subsequent statute which is given retrospective effect nullifies such decrees or bars enforcement of such decrees."

Reliance is also placed on the decisions of the Allahabad High Court in *Kuldip Narain Lal Vs. Mahendra Pal Jain and Another*, and the decision of the Bombay High Court in *Dr. VIVEKANAND ATMARAM CHITALE v. V1DYA VARDHINI SABHA* 1985 Cri.L.J. 359 in support of the contention that disobedience of an order passed by a Court without jurisdiction, will not be contempt. Reliance is next placed on the decision in *DWARAKADAS MULJI v. SHANTILAL LAXMIDAS* 1980 MAH LJ 404 referred to in *Dr. VA CHITALE* (supra), wherein it was held that breach of an undertaking given by a party in a proceedings which is ab initio void for lack of jurisdiction, did not amount to contempt. It is, submitted by the respondents that their undertaking was given to this Court, in a proceedings which was void ab initio, and therefore the undertaking was not a valid undertaking and breach of it will not be contempt.

8. On the contentions raised, the following two points arise for consideration:

(1) Whether the eviction proceedings initiated in HRC No. 9/1994 are void ab initio; and whether the order of eviction dated 6-8-1996 passed by the learned Munsiff, Raichur in the said petition and the order dated 18-11- 1996 passed by the District Court in HRC (RP) No. 7/1996, and the order dated 18-12-1996 passed by this Court in HRRP No. 1870/1996 are null and void.

(2) Whether the respondents who had given a solemn undertaking to this Court (to vacate the premises on or before. 31.12.1999) to secure an advantage/benefit (that is three years time to vacate the premises) and who availed such advantage, is absolved from complying with such undertaking.

Re.Point(i)

9. The contention that the proceedings for eviction initiated against the Respondents were void ab initio, is liable to be rejected. Such a contention was considered and rejected in *SURESH BABU* (supra) relied on by the Respondents. This Court held:

"On the other hand, if the Court had jurisdiction to entertain the action, as the

law stood at the time of entertaining such action, and if the Court had jurisdiction to make the decree, as the law stood at the time of making the decree, a subsequent declaration by the Supreme Court that the Court did not have jurisdiction will not render the decision already rendered, a nullity. Judgments and decisions which were valid, when they were made, will not become null and void, on account of any subsequent declaration of a different position of law by a Court. A judgment based on the law as it stood on the day the judgment was pronounced, will never be a nullity. Two hallmarks of an act which is nullity is, that it is invalid from the very inception and it can never become valid by any subsequent act or event. Therefore, a decision, which was valid when made, can never become null and void. It may become voidable on account of subsequent declaration of a different position of law by the Court, and can be set aside, if the matter is pending, or if it can be challenged in appeal or revision subject to law of limitation. Thus, a judgment which is given based on the law as it stood on that day, and which has become final, will not be affected, nor become a nullity, merely because the Supreme Court or this Court subsequently declares the legal position to be otherwise. The only circumstance which such a judgment or decision, which has become final, can be made ineffective "or inoperative, is by a legislation with retrospective effect."

We may also refer to the decision of the Supreme Court in *RANGARAO v. KAMALAKANT* 1995 Su (1) SCC 271 which considered a some what similar situation. In Ranga Rao's case a civil suit was filed for possession by the landlord against the tenant. It ended in a compromise decree on 3-1-1985. The landlord had filed the said civil suit instead of an eviction petition, having regard to the fact that the building belonged to a category which was exempted from the purview of the Rent Control Act by a Notification issued under the Act. Subsequent to the compromise decree, the Notification exempting the said category of buildings from the operation of the Rent Control Act was struck down on 9-6-1985 as being unconstitutional. When the compromise decree dated 3-1-1985 was sought to be executed, the tenant contended that the decree had become inexecutable since the Civil Court had lost the jurisdiction to pass an order of eviction in view of the decision striking down the exemption notification. The High Court upheld the objections and held that the decree was inexecutable. In an appeal by the landlord, the landlord contended that existence of jurisdiction of the Court, which passed the decree, will have to be determined with reference to the date of decree and not any later declaration by a Court. The tenant contended that if on the date of execution of the decree, the Court has lost jurisdiction, to pass an order of eviction, it was possible to resist the decree for eviction passed prior to the Court losing jurisdiction. The Supreme Court rejected the contention of the tenant. The Supreme Court held that when the consent decree was made, the Court had jurisdiction to pass such decree and the subsequent decision striking down the exemption notification will only bar filing of civil suits thereafter and cannot have the effect of rendering any decree which had been passed before the striking down of the exemption notification, and

which had become final, a nullity; and no Court, including the Supreme Court, has the power to reopen decisions which have become final, as such power is available only to the legislature.

10. When the eviction petition was filed in 1994 and when the proceedings ended in an order of eviction on 8-6-1996, the decision of the Division Bench of this Court in PADMANABHA RAO declaring Section 31 of KRC Act to be void was holding the field. Therefore, the eviction proceedings were properly initiated and the learned Munsiff had the jurisdiction to entertain and dispose of such eviction petitions. Section 31 was reinstated into the Statute Book (KRC Act) only on 1-11-1996 when the Supreme Court rendered the decision in SHOBHA SURENDER, long after the disposal of the eviction petition. We are therefore of the view that neither, the eviction proceedings were void ab initio nor the order of eviction a nullity.

11. However, having regard to the law declared by the Supreme Court in SHOBHA SURENDER it was open to the tenants to challenge the eviction order dated 6-8-1996 passed in HRC No. 9/1994 and get it set aside. A wrong order is not a void order. In fact, respondents filed HRC (RP) No. 7/1996 challenging the eviction order of the learned Munsiff, Raichur. In the said revision proceedings, tenants did not contend that the eviction petition was not maintainable having regard to 31 of the KRC Act. The revision petition was dismissed on merits by the District Court, on 18-11-1996. Thereafter, tenants filed a second revision petition before this Court in HRRP No. 1870/1996. Even when the said petition came up before the learned Single Judge of this Court, the tenants did not contend that proceedings for eviction under Chapter V of the KRC Act were not maintainable having regard to Section 31 of the Act being restored to the statute. This is obviously because the decision in SHOBHA SURENDER (which had then recently been rendered) was not known to the respondents and the true effect of SHOBHA SURENDER became known only when it was explained by the Supreme Court in a subsequent decision in RUDRAMURTHY (Supra). Be that as it may.

12. It is equally untenable to contend that the order dated 18-12-1996 passed by this Court in HRRP is null and void. It should be remembered that the said order was not an order on merits, but was a consent order based on the request by the tenants. To repeat, it was open to the tenants to get the order of eviction which was an voidable order, set aside relying on the decision in SHOBHA SURENDER and C.N. RUDRAMURTHY, but they failed to do so. Tenants, got the order of eviction confirmed by seeking three years time. They did not seek review of the order dated 18-12-1996 passed by the learned Single Judge in HRRP No 1870/1996, nor file an application in HRRP No. 1870/1996 for being relieved of their obligations to act in terms of the undertaking, in view of the decisions in SHOBHA SURENDER and RUDRAMURTHY. The tenants are for the first time in these contempt proceedings contending that the order of this Court is void. A three Judge Bench of the Supreme Court, while considering the question whether validity of an order granting permission for limited tenancy of

five years u/s 21 of the Delhi Rent Control Act, 1958 can be challenged in a proceedings commenced by the landlord for redelivery in Panjak Bhargava and another Vs. Mohinder Nath and another, pointed out the circumstances in which orders will have to be challenged in an appeal or revision and the circumstances in which orders can be collaterally challenged. The Supreme Court held thus:

"Suffice it to say that in a collateral challenge the exercise is not the invalidation of a decision, but only to ascertain whether the decision "exists" in law at all and to rely upon incidents and effect of its "non-existence"... Doctrine of collateral challenge will not apply to a decision which is valid ex-hypothesis and which has some presumptive existence, validity and effect in law. Such a decision can be invalidated by the right person in right proceedings brought at the right time. It is only a nullity stemming from lack of inherent jurisdiction or a proceeding that wears the brand of invalidity on its forehead that might afford a defence even against enforcement."

(emphasis supplied)

In State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others, the Supreme Court held thus:

"Even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact be effective inter parties until it is successfully avoided or challenged in higher forum. Mere use of the word "void" is not determinative of its legal impact. The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity, depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise".

13. Therefore the order dated 18-12-1996 of the learned Single Judge, being merely an order disposing of the revision petition (against a voidable order) in terms of the undertaking given by the revision petitions can, by no stretch of imagination, be called as a void order. It is not even a voidable order.

14. Learned Counsel for the respondents placed strong reliance on the decision of the Supreme Court in Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., wherein the Supreme Court considered the question whether nullity of a decree can be raised in execution. That case related to a building governed by the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973. The Civil Court granted a decree for eviction. The tenant raised an objection regarding its validity in execution and the Executing Court rejected the same. The Supreme Court held that a decree passed by a Court without jurisdiction over the subject matter or on any other ground which goes to the root of its exercise of jurisdiction or inherent jurisdiction, is a nullity and is non est. It was further held that its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in a collateral proceedings; and that the inherent lack of jurisdiction

strikes at the very authority of the Court to pass a decree and such defect cannot be cured by consent or waiver. The tenants next relied on the decision of the Supreme Court in URBAN IMPROVEMENT TRUST, JODHPUR v. GOKUL NARAIN 1996 (4) SCC 176 wherein the Supreme Court held that decree can be said to be a nullity where it is passed by a Court having no inherent jurisdiction; that erroneous decree cannot be said to be a nullity, nor can a decree based on an error be a nullity. Nullity has to be understood in the sense that it is ultra vires the power of the Court passing the decree and not merely avoidable decree and if the decree strikes at the jurisdiction of the Court or the Court lacks jurisdiction it strikes at the very root of the authority to pass the order or the decree and in such event, nullity can be raised at any stage including at the execution or in a collateral proceedings since it strikes at the very jurisdiction and authority of the Court.

15. The two decisions cited by the respondents relating to orders which were held to be null and void, are of no assistance. We have already held that neither the order of eviction dated 6-8-1996 passed by the learned Munsiff nor the order dated 18-12-1996 passed by this Court are null and void. The order of eviction dated 6-8-1996 and the first revisional order dated 18-11-1996 were voidable orders and not void orders. The order dated 18-12-1996 passed by this Court is neither void nor voidable, being a consent order against an voidable order. The first point is therefore answered in the negative.

Re: Point (ii)

16. The respondents are the tenants of complainant and an order of eviction was passed against them on 6-8-1996 under the provisions of Karnataka Rent Control Act, 1961. As on that date the Supreme Court had not rendered any decision restoring Section 31 of KRC Act which had been struck down in PADMANABHA RAO v. STATE OF KARNATAKA back to the Statute Book. We have already held that the order of eviction cannot therefore be said to be void ab initio. The tenants filed a revision petition on 19-9-1996. The revisional Court [District Judge, Raichur ] by order dated 18-11-1996, dismissed the revision and confirmed the order of the learned Addl. Munsiff, Raichur. When the second revision filed by the tenants (HRRP 1870/1996) before this Court came up for admission, learned Counsel for the tenants, did not press the petition but sought three years to vacate the premises and undertook to vacate the premises and hand over the vacant possession to the landlord, on or before the expiry of three years. The Landlord's counsel, though reluctant, agreed for grant of such time. Accepting the said request of the tenants, the learned Single Judge of this Court disposed of the petition by order dated 18-12-1996, granting time till 31-12-1999 to vacate the premises subject to tenants filing an undertaking to vacate and deliver up vacant possession of the premises to the Landlord on or before 31.12.1999.

17. The first respondent, acting for himself and on behalf of his mother second respondent filed an affidavit dated 1-4-1999, undertaking to vacate the premises



on or before 31 -12-1999. But the respondents have not vacated the premises even after 31.12.1999 and have continued in occupation of the premises. At no point of time the Respondents applied to this Court for being relieved of the undertaking on the ground that the order of eviction had become unexecutable in view of the decisions in SHOBHA SURENDAR and RUDRAMURTHY and that there was no need to continue the undertaking. But the tenants now contended that as the undertaking was given in the context of an order which is void, it has no effect.

18. There is clear difference between orders which are "void" and orders which are "voidable". The term "void" is used referring to contracts or orders which can be ignored with impunity by those who are parties to it. The term "voidable" is used referring to contracts or orders which may be enforced until set aside. No order of Court wears the brand "null and void" on its forehead. The law on the matter is put succinctly by the Court of Appeal in HADKINSON v. HADKINSON 1952 (2) ALL E. R. 567 thus.

"It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a Court of Competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. LORD COTTENHAM L C said in CHUCK v. CREMER 1846 471 ER 820.

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

The said principle was approved by a Division Bench of this Court D.M. Samyulla Vs. Commissioner, Corporation of the City of Bangalore, :

"The principle laid down in the said decision is that a party who knows an order, whether it is null or valid, regular or irregular, cannot be permitted to disobey it and it would be dangerous to allow the party to decide as to whether an order was null or valid and whether it was regular or irregular. In our opinion, such a principle would be attracted in cases where there has been an order of the Court against any particular person or authority and that person or authority takes the stand that the order of the Court is illegal or it is bad for not following any mandatory procedure or takes upon himself or itself to disobey the order of the Court."

19. Orders of Courts have to be obeyed unless and until they are set aside in appeal/revision. Alternatively in any proceedings for execution or in a collateral

proceedings where an order is sought to be enforced or relied on, it is possible for a party to establish that the order is null and void. Then the Court considering the matter, if satisfied, will hold that the order is null and void and therefore not executable or enforceable. In this case, the order of eviction dated 6-8-1996 has been confirmed by the revisional Court by order dated 18-11-1996 which in turn has been confirmed by order dated 18-12-1996 of this Court. These orders are not set aside. They have not been declared or held to be null and void in any proceedings. Therefore the Respondents cannot assume for themselves that the undertaking given by them is not valid or that therefore they need not comply with it.

20. The principles relating to contempt are clear. The definition Civil Contempt includes wilful breach of an undertaking given to a Court. Public interest requires that solemn undertakings given to a Court with the intention of obtaining any benefit should not be breached willfully. No litigant can be allowed to wriggle away from a solemn undertaking given to the Court, as it will open dangerous trends and defeat the very purpose of giving undertakings to Court. While Courts will not be vindictive, Courts cannot also allow themselves to be trifled with by violating the solemn undertakings given to them. Litigants ought to understand that once they given an undertaking to a Court, they should comply with it in all circumstances, the only exceptions being fraud or statutory bar. They cannot break an undertaking with impunity and then attempt to justify it. The breach of solemn undertaking given to a Court is a serious matter and will have to be dealt with seriously. Further, while execution of a decree is a matter between the decree holder and the judgment debtor, an undertaking to a Court is a matter between the Court and the person who gives the undertaking to the Court. The right of a landlord to get his tenant vacated in terms of an order of eviction has nothing to do with the solemn undertaking given by a tenant to the Court to vacate the premises to obtain the benefit of grant of time for vacating the premises. It therefore follows that even if the order of eviction becomes unexecutable for any reason, that will not absolve the person giving the undertaking to Court, from acting in term of it.

21. In *Gour Gopal Dutt and Others Vs. Sm. Shantilata Mitra and Others*, a learned Single Judge of the Calcutta High Court considered a case where a consent order for eviction was passed giving time to vacate till 31-7-1967 in view of an undertaking given to the Court to vacate the premises by that date. In the context of a proceedings to set aside the said consent decree, there was a stay of execution of the decree. It was contended that in view of such order, there was no obligation to act in terms of the undertaking and consequently there was no contempt. The Court negated the contention on the following reasoning:

"Now the execution of a decree is between the parties, that is, between the judgment-creditor and the judgment-debtor. But, an undertaking to Court is a matter between the Court and the person who gives the undertaking to Court and they are entirely different and separate. Stay of execution of a decree

simpliciter will not stay the operation of the order of Court regarding the undertaking.

Mr. Ghose further argued that by giving the undertaking the respondents derived considerable benefit to the detriment of the petitioner and it will be unjust and improper if after enjoying the benefit given to them and their solemn undertaking given to Court they are allowed to resile from the same with impunity. If anyone is allowed to get away so easily from solemn undertaking then undertaking to Court loses all significance.

It will be a sad day for the Court if the Court allows the solemn undertaking given to this Court to be mere papers signifying nothing. The parties and litigants must know and appreciate that they should not be allowed to treat the solemn undertaking given to this Hon"ble Court like a child's play. Undertaking to Court and legal rights are entirely different and separate matters."

22. We are of the view that the validity of order of eviction, has nothing to do with a contempt action taken for any willful breach of solemn undertaking given by a litigant to the Court to vacate the premises. Reliance place on the decision rendered with reference to disobedience of orders passed without jurisdiction, as noticed above, may not be relevant, as the contempt alleged is not wilful disobedience of any order/judgment, but wilful breach of an undertaking given to this Court. We, therefore, hold that irrespective of the fact that an order of eviction is executed or unexecutable, it will not absolve the respondents from their liability and responsibility to act in terms of the solemn undertaking given to the Court. Failure to vacate the premises as undertaken by the tenants - respondents is clearly a willful breach of undertaking given to the Court which is a civil contempt punishable under the Act.

23. We however find that the undertaking by affidavit is given only by the first respondent. The Second Respondent, is an aged widow. Though the affidavit of first respondent no doubt states that it is also given on behalf of Second Respondent, she has not signed the affidavit nor filed any undertaking. Hence we do not propose to hold the second respondent guilty of willful breach of undertaking amounting to contempt. We hold the first Respondent, who has given the undertaking, guilty of willful breach of undertaking given by him to this Court.

24. In view of the above, this petition is allowed in part as follows:

(i) The First Respondent, held guilty of civil contempt is convicted and sentenced for such Civil Contempt to pay fine of Rs. 2,000/- (Rupees two thousand only). Such fine shall be paid within one month from today. In default, he shall be detained in a Civil Prison for a period of 15 days.

(ii) The Second Respondent is discharged.

(iii) The First Respondent shall pay Rs. 2,500/- as costs to the complainant under Rule 18 of the High Court of Karnataka (Contempt of Court proceedings) Rules,

1981.