

(2000) 10 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 32 of 1998

Sudripto Roy and Another

APPELLANT

Vs

Suresh Kumar and Another

RESPONDENT

Date of Decision : 27-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, 115, 151
Constitution of India, 1950 — Article 32

Citation : (2001) 1 ShimLC 191

Hon'ble Judges : C.K. Thakker, C.J

Bench : Single Bench

Advocate : M.S. Chandel, for the Appellant; Ajay Sharma, for the Respondent

Judgement

C.K. Thakker, C.J.—This petition is filed by the Petitioners against an order passed by the Senior Sub Judge, Dharamshala on 24th September, 1992 in C.M.A. No. 42 of 1992 and confirmed by the Additional District Judge (I), Kangra at Dharamshala on 31st December, 1997 in Civil Misc. Appeal No. 8 of 1994 (RBT No. 22-D/96).

2. Necessary facts leading to the present revision may now be stated. Respondents were the Plaintiffs of Civil Suit No. 127 of 1991 pending in the court of Senior Sub Judge, Kangra at Dharamshala. It was their case that they were the employees of Judicial Department of the State. Whereas the Plaintiff No. 1 was appointed as clerk-cum-Typist on February 10, 1977, Plaintiff No. 2 was appointed as Ahlmad with effect from October 31, 1980. Both of them were working in the courts of the Additional District Judge and Senior Sub Judge at Dharamshala respectively.

3. The case of the Plaintiffs was that they were eligible and entitled to get residential accommodation (Type II) from general pool as per the Himachal Pradesh House Allotment Rules. Both the Plaintiffs for the said purpose submitted applications through proper channel, but neither they were allotted Government

quarters nor their applications were even considered. Not only that but ignoring their legitimate claims and without holding any meeting of the House Allotment Committee after August 1, 1989, several persons were provided residential accommodation out of turn who were very much junior to the Plaintiffs. It was also the allegation of the Plaintiffs that some of them had even sub let the quarters allotted to them. Likewise, though some of the occupiers of Government quarters got retired or transferred from Dharamshala, they continued to occupy such quarters by depriving accommodation to other Government employees.

4. The Plaintiffs, therefore, filed civil suit No. 127 of 1991 in the Court of Senior Sub Judge Kangra at Dharamshala for a declaration that the Plaintiffs being employees of judicial establishment were entitled to allotment of Government accommodation of Type II quarters as per the policy of the State Government and for permanent injunction restraining the Defendant authorities from allotting Government quarters to other employees till the claim of the Plaintiffs was decided.

5. Alongwith the plaint, they filed an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) seeking temporary injunction restraining the Defendants from making any allotment of residential quarters to any other person before making allotment to the applicants. On that application, notice was issued by the Court and ad-interim relief was granted restraining Defendant Nos. 1 to 3 from making any allotment of Government accommodation till further orders.

6. On February 22, 1992 another application was made u/s 151 of the Code seeking direction for allotment of two quarters to them on provisional basis as they had become vacant in the meantime.

7. On 6th of April, 1992, the learned Sub Judge passed the following order:

(i) Respondents No. 2 and 3 shall hold meeting of the house allotment committee within a fortnight by giving notice to members thereof;

(ii) The claim of the Petitioners that Sar/Sh. Parkash Chand, Sukhdev Sood, Manohar Lal and Smt. Shakuntla Devi whose names appear at serial No. 1 to 3 and 5 of the seniority list prepared by the Respondents for the year 1992, are not in fact senior to the Petitioners No. 1 and 2 (in this application) on the ground that aforesaid officials were appointed as Class-III employees w.e.f. 10.2.1977 and 11.10.1980 shall be examined by the aforesaid Respondents before placing the matter before the house allotment committee and in case the contention of the Petitioners is found to be correct, revised seniority list, placing the Petitioners at the appropriate place of seniority, be prepared and put up before the house allotment committee for consideration.

(iii) The cases of all allotments made on provisional basis after 1.8.1989 by Respondents 2 and 3 shall also be placed before the house allotment committee for consideration together with the seniority list of respective years when those

allotments on provisional basis were made.

(iv) The decision of the house allotment committee shall be conveyed to this Court on the next date of hearing.

8. Then on 4th of May, 1992 the learned Sub Judge issued a mandatory direction for allotment of two residential quarters in favour of two applicants on provisional basis. The relevant part of the said order read as under:

It is the admitted case of the parties that without convening the meeting of the House Allotment Committee after 1.8.1989, the Chairman of the House Allotment Committee i.e. (Deputy Commissioner Respondent No. 2) had been making allotments from time to time to various officers/officials which are being termed by him as "provisional". All these allotments have been challenged by the Petitioners on the grounds that although they have been submitting their applications regularly as per details given in the annexure attached to their rejoinder dated 9.10.1991, their names were neither considered nor any allotments made to them although they are much senior to those who have been allotted the accommodation by Respondents 2 and 3. In this manner according to the Petitioners they are suffering and as such the allotments already made should be declared null and void and Respondents 2 and 3 be ordered not to make any further allotments till the disposal of the suit. Although the Respondents have admitted to have made allotments which according to them are "provisional" but have denied the assertion of the Petitioners about their applications being submitted to the Estate Officer (Respondent No. 3). The Respondents 2 and 3 have not explained the reasons as to why they have not been holding the meetings of the House Allotment Committee and instead have been allotting the accommodation themselves. Respondent No. 2 himself is not competent to make such allotment under the Rules, although he may be the Chairman of the House Allotment Committee and it is the House Allotment Committee which is competent to make the allotments. According to the Petitioners they are much senior to the officials who have been allotted accommodation by Respondents 2 and 3 during the last more than two years. Thus in my opinion, the Petitioners have a prima facie case and balance of convenience in their favour for the grant of temporary relief particularly so when Respondents No. 1 to 3 have not complied with the earlier court order dated 6.4.1992.

Since four type-II quarters are already lying vacant since long and Petitioners are much senior to those to whom Respondent Nos. 2 and 3 have already allotted accommodation, so in partial modification of this Court order dated 6.4.1992, in the interest of justice out of four vacant quarters No. 6, 7, 10 and 11, quarter Nos. 6 and 7 are ordered to be allotted forthwith to Petitioners respectively by Respondent No. 3 (Estate Officer) on the strength of this order provisionally till the disposal of the suit. In this manner no injury is likely to be caused to Respondents No. 1 and 3, rather Government shall get rent of these quarters which will also be saved from deterioration by keeping them closed for

considerable time. The prayer of the Petitioners for restraining Respondents No. 4 to 6 from occupying the accommodation provisionally allotted to them by Respondent No. 2 is declined as having become infructuous for the reasons that these quarters have already been occupied by Respondents No. 4 to 6, with this order the application stands disposed off, accordingly. It may be mentioned that any observation made above shall not be construed to be an expression of opinion on the merits of the suit and have been made only for the disposal of the present application. Be tagged with the main suit file.

9. Aggrieved by the above order dated 4th May, 1992 granting mandatory direction, the Defendants preferred an appeal before the District Judge, Kangra at Dharamshala, but it was dismissed on 28th May, 1992. Against the appellate order, a revision petition was carried to this Court, which also met with the same fate on 24th September, 1996.

10. It was alleged by the applicants Plaintiffs that even though an order was passed by the trial court, confirmed by the Appellate Court as also by this Court, the authorities did not comply with those orders. The Plaintiffs, therefore, were constrained to institute Civil Misc. Application 42 of 1992 on May 5, 1992 under Order 39, Rule 2-A of the Code against the Defendants inter alia, alleging that the order dated 6th April, 1992 wherein certain directions were issued, was not complied with. No meeting of the House Allotment Committee was held within a fortnight from the date of the order, by giving notice to the members of the committee, no decision was taken, nor it was conveyed to the court on the next date of hearing (30th April, 1992). The Defendants thereby "wilfully and intentionally" flouted and disobeyed the order of the Court. They were, thus, liable to be punished under Rule 2-A of Order 39 of the Code.

11. The application was resisted by the Defendants vide a reply, dated May 14, 1992 raising preliminary objections as well as objections on merits. It was contended that the application was not maintainable at law as it was vague and was filed only with a view to harass the Defendants, though there was no fault on their part. On merits, it was admitted that an order was passed by the Court on 6th April, 1992. Their case, however, was that no decision of the House Allotment Committee could be taken because no such meeting could be convened within fortnight from 6th April, 1992. It was stated that Defendant No. 1, who was the Chairman of the Committee, was not available till 1st May, 1992. The details of the Official Commitments of Defendant No. 1 between April 6 and May 1, 1992 were also annexed. According to him, the meeting of the House Allotment Committee could not be held within the "desired" time for the reasons beyond the control and power of the Defendants. Thus, there was no wilful disobedience or intentional flouting of the order of the court and, the petition was liable to be dismissed.

12. The learned Judge, on the basis of the pleadings of the parties, framed following issues:

1. Whether the Respondents have wilfully or intentionally disobeyed the court order dated 6.4.1992 ? OPA

2. Whether the application is not maintainable ? OPR

3. Relief.

13. At the hearing, applicant No. 1, Suresh Kumar Thakur was examined as AW-1 who tendered and proved a copy of the order dated 6th April, 1992 as Ex. P-I. As observed in the order, in spite of the opportunities granted to the Defendants, no evidence was led on their behalf. After hearing the parties, the learned Judge held that an application was maintainable; it was proved from the evidence on record that the Defendants (present Petitioners) wilfully and intentionally disobeyed the order of the court dated 6th April, 1992 and thereby they were, liable to be dealt with in accordance with the provisions of Rule 2-A of Order 39 of the Code. The learned Judge, accordingly, allowed the application and passed the order, operative part of which read as under:

In the light of my findings on issue No. 1, above, I allow the application by holding both the Respondents contemnors guilty for wilful disobedience of this Court order dated 6.4.1992. Taking into consideration the fact of the Respondents flouted the court order with impunity and that too that both the Respondents happen to be the responsible officers of the State Government. I consider it expedient that in the interest of justice, they deserve to be dealt with severally. Accordingly, I sentence both the Respondents contemnors S/Shri S. Roy and Jagat Ram to undergo civil imprisonment for a term of three months under Order 39 Rule 2-A Code of Civil Procedure.

14. Being aggrieved by the said order, the Defendants preferred an appeal. In the Memorandum of Appeal, it was contended that the Senior Sub Judge exercised jurisdiction not vested in him inasmuch as the provisions of Order 39 Rule 2-A were not penal in nature but they were enacted for enforcement of orders. It was stated that the order passed by the court on 6th April, 1992 had been complied with at a later stage. On 25th June, 1992, a meeting of House Allotment Committee was convened, a decision was taken and it was conveyed to the Court. The proceedings under Rule 2-A of Order 39 of the Code thereafter could not have been continued. The order passed by the trial court on 24th September, 1992 was, therefore, liable to be quashed and set-aside.

15. After considering the submissions made on behalf of the Defendants, the lower appellate court held that the order passed by the Court on 6th April, 1992, had not been complied with. A finding was recorded that no meeting as per the direction issued by the trial court was convened within a period of fortnight from the date of the order, nor a decision was taken by the House Allotment Committee nor such decision was conveyed to the court on the next date of hearing (which was April 30, 1992). Thus, there was disobedience and non-compliance of the order of the court. The lower appellate court also observed that the order dated 6th April, 1992 was passed by the learned Senior Sub

Judge, Kangra, in presence of learned Counsel for the Defendants. It was further observed that though AW-1 Suresh Kumar was cross examined at length by the Defendants, nothing favourable to the Defendants could be derived. The averments made and allegations levelled by him against the Defendants were thus duly established from the record. They were also not controverted by the Defendants by leading any evidence. It was, therefore, proved, according to the lower appellate court, that there was deliberate and wilful disobedience of the order passed by the court. The court also noted that from the evidence of AW-1 Suresh Kumar, it was clear that even after a mandatory order, was passed by the court granting provisional allotment of quarters in favour of applicants, "the Petitioners (Defendants) made best efforts to deprive the Respondents (Plaintiffs) from being put into possession of those quarters by all means within their powers and even the Petitioners ventured to re-allot those quarters to some other employees afterward, which had earlier been allotted by the learned Senior Sub Judge to the Respondents." In the opinion of the lower appellate court, that fact also showed intentional disobedience of the order by the Defendants. Regarding failure to convene meeting by the Defendants, the court observed that although it was the assertion of the Defendants that "they remained busy in other works and could not hold the meeting of the House Allotment Committee nor could intimate the court", in absence of evidence the defence version could not be taken to have been proved. According to the court, even otherwise, the explanation given was not acceptable. It was, therefore, held that the lower court had rightly appreciated the evidence on record and arrived at a finding that the Defendants had committed breach of order dated 6th April, 1992.

16. It was then contended before the appellate court that since the trial court had no jurisdiction to pass an order, the Defendants were not bound to obey such order. Dealing with the said contention and referring to several decisions, the court held that the plea was not maintainable. Once an order was passed by a court it was incumbent on the Defendants to comply with the said order and since there was failure on their part, the case was covered by Rule 2-A of Order 39 of the Code and the Defendants were liable to be dealt with under the said provision. In the light of the above finding, the appellate court dismissed the appeal and confirmed the order passed by the trial court.

17. Being aggrieved by the order passed by the trial Court and confirmed by the lower appellate court, the present revision petition was filed by the Petitioners-Defendants. It was admitted and interim relief was also granted.

18. I have heard Mr. M.S. Chandel, learned Counsel for the Petitioners and Mr. Ajay Sharma, learned Counsel for the Respondents.

19. Mr. Chandel submitted that though the order passed by the trial Court on 6th April, 1992 was not complied with within the stipulated period, at a later stage, it had been complied with and a decision was taken on 25th June, 1992. Thus, the case is not of non-compliance of the order but at the most, of late compliance. He also submitted that Petitioner No. 1 was not available during the relevant

period for quite some time and thus there was no wilful or deliberate non-compliance of the order but he could not comply with the order because of the reasons beyond his control. Relying on an additional affidavit filed in this Court, the counsel submitted that from the said affidavit it is clear that between 6th April, 1992 and 30th April, 1992, Petitioner No. 1 was on leave from 8th April, 1992 to 19th April, 1992 and thereafter from 24th April, 1992 to 28th April, 1992. Thus out of about 25 days, for more than 15 days he was on leave. Again, even during the period when he was on duty, he was busy with other work. Relying upon a tour programme, the counsel stated that because of the circumstances mentioned in the affidavit and the tour, which the Petitioner No. 1 had to undertake, he could not carry out the directions of the court. The counsel submitted that even if the court holds that there was non compliance of the order passed by the court, liberal view may be taken, in the light of the three facts, namely, (i) the order was complied with subsequently and the meeting was held on 25th June, 1992; (ii) mandatory order passed by the trial court on 4th May, 1992 was obeyed and both the Respondents were put in possession of Government quarters and allotment is continued even today, and (iii) unconditional apology has been tendered by the Petitioners and they are repenting for the mistake they had committed. It was submitted that Rule 2-A of Order 39 is not a penal or punitive provision and when the Petitioners sincerely regret and repent, they may be excused.

20. Mr. Sharma, learned Counsel for the Respondents, on the other hand, supported the order passed by the trial court and confirmed by the lower appellate court. He submitted that considering the totality of facts and circumstances of the case, both the courts held that it was a clear case of disobedience, violation and intentional flouting of an order passed by a competent court. He submitted that the order was simply ignored by the Petitioners. Even after the order was confirmed by the appellate court and also by this Court in revision petition, there was non compliance. The Plaintiffs were constrained to file another application which was granted by the court on 4th May, 1992. Even at that stage, the Petitioners tried their best to create obstructions and quarters which were directed to be allotted to the Plaintiffs were sought to be allotted to other persons. This is not a case of non compliance because of circumstances beyond the control of the Petitioners, but wilful and intentional disobedience of the order of the Court. Moreover, before the trial court, it was not the case of the Petitioners that they could not comply with the order of the court because of the reasons beyond their control. On the contrary, the action was sought to be defended by raising all sort of contentions. The Counsel also drew the attention of the court to certain observations made by this Court when an order passed by the trial court and confirmed by the lower appellate court was challenged in this Court in Civil Revision No. 201 of 1992. According to the counsel, when all steps were proved futile and the Petitioners did not succeed upto this Court, a subsequent order dated 4th May, 1992 was complied with. So far as order dated 6th April, 1992 is concerned, till today it has

not been fully complied with inasmuch as there is nothing on record to show that as per the direction dated 6th April, 1992 any meeting was held, decision was taken and it was conveyed to the court by producing a copy of the decision taken at such meeting. Regarding jurisdiction of the trial court, it was submitted that the contention was negated by the trial court and the Petitioners lost upto this Court. But even otherwise, it was within the jurisdiction of the court to pass an interim order and it was not open to any party to ignore such order contending that the court had no jurisdiction to pass such order. Once an order is passed, it has to be complied with. In the case on hand, the Petitioners are high ranking officers, Petitioner No. 1 being IAS, Deputy Commissioner-cum-Collector and Chairman of the House Allotment Committee and Petitioner No. 2 Assistant Commissioner-cum-Estate Officer. If such educated and responsible officers ignore orders passed by a court, it would adversely affect rule of law. When two courts below have passed orders and the Petitioners have invoked jurisdiction u/s 115 of the Code, this Court may not interfere with it considering the facts and attending circumstances. The counsel urged that the jurisdiction of this Court, u/s 115 of the Code is limited to keep subordinate courts within their jurisdiction. But if there is no jurisdictional error on their part, this Court will not substitute its decision by interfering with findings arrived at by them on merits. It was also submitted that so called tender of apology by the Defendants cannot be said to be sincere and candid, inasmuch as it has been made at the last stage with a view to avoid consequences likely to be ensued by their act and omission. It is settled law, submitted the counsel, that the court will not accept the apology tendered by the contemner if it is not frank, honest or sincere and is not the result of real repentance. It was submitted that affidavits filed by the present Petitioners in this Court may not be relied upon but even if they are considered, looking at the conduct of the Petitioners all throughout, no lenient view is called for. Moreover, it was not even the case of Petitioner No. 1, that for the entire period from 6th April, 1992 and 30th April, 1992 he was not available. Further, no extension was sought by Petitioners before 30th April, 1992. So far as Petitioner No. 2 is concerned, even today there is nothing on record to show what prevented him from acting as per the direction of the court or from filing an application for extension of time. On all these grounds, it was submitted that there is no substance in the revision petition and it deserves to be dismissed.

21. Having considered rival contentions of the parties, in my opinion, this is not a case which deserves giving of clean chit to the Petitioners. From the record it clearly appears that according to the Plaintiffs, they were eligible and entitled to Government accommodation. They were, however, not allotted quarters and persons junior to them were allotted accommodation. They, therefore, approached a civil court by filing a civil suit. In an application under Order 39, Rules 1 and 2 of the Code, an order was passed by the trial court on 6th April, 1992. Reading the order extracted hereinabove, it is clear that certain directions were issued by the court. The Defendants were required to hold meeting within a period of fortnight; they were to consider the claim of the Plaintiffs vis-a-vis

other allottees said to have been junior to them and to re-consider the seniority for allotment of quarters, to place before the Committee cases of provisional allotments made after August 1, 1989 and to convey a decision to the court on the next date of hearing. It is not in dispute by and between the parties that the next date of hearing was 30th April, 1992. It is an admitted fact that no such meeting was held within a period of fortnight and no decision was taken nor it was conveyed to the court on 30th April, 1992. No step whatsoever was taken by the Petitioners to comply with the order. No extension of time was sought and "virtually" the order passed by the court was ignored. It is also not disputed that the Petitioners were aware of the decision. They were aggrieved by the said decision and an appeal was filed which was dismissed by the appellate court. A revision petition also met with the same fate.

22. While dismissing the revision, this Court was constrained to observe in paragraph-7:

After hearing the learned Counsel for the parties and after going through the impugned judgments, I find that learned Courts below have not committed any illegality, impropriety or error of jurisdiction. The orders passed by the learned Courts below are perfectly just and proper in the peculiar facts and circumstances of this case. The Petitioner State has invited those orders in view of their own conduct which has to be deprecated. It is not understood as to why appropriate action was not taken by the learned Court when it was found that the officers of the State were wilfully disobeying the orders and directions passed by the Court from time to time. It is stated at the bar that action was initiated in this respect and that is the subject matter of the other case. Be that as it may. In case, the State in its wisdom and on application of mind has considered the case of the Plaintiffs for allotments, it is open for them to move an application before the learned trial Court for modification of the order if so advised. So far as this revision petition is concerned, there is hardly any merit in this and the same is ordered to be dismissed.

23. It also appears from the record that when nothing was done by the Petitioners upto 30th April, 1992 and meanwhile, two quarters fell vacant, another order of mandatory nature was passed by the court on 4th May, 1992 directing the Petitioners to allot two quarters to the Respondents provisionally. As observed by the appellate Court in the order impugned in the present revision petition, even at that stage, the conduct of the Petitioners was not above board and befitting responsible public officers. They did not comply with the order and obstructions were caused. No doubt, later on, the Plaintiffs were allotted quarters and given possession thereof, but the grievance on behalf of the Plaintiffs was and is well founded that over and above an order dated 6th April, 1992, the order dated 4th May, 1992 was also not implemented immediately.

24. Regarding jurisdiction of the court, in my judgment, when an order was passed by a court, it had to be complied with and implemented unless and until such order was set-aside by a superior court. Though several cases have been

referred to by the appellate court, it is sufficient, if, I refer to a leading decision of the Supreme Court in *Tayabbhai M. Bagasarwalla and another Vs. Hind Rubber Industries Pvt. Ltd. etc.*, In that case, in a suit filed by the Plaintiff a civil court had passed an interim order. That order was not complied with. By the CPC (Maharashtra Amendment), 1970 (Act XXV of 1970), after Section 9, Section 9-A came to be inserted in the State of Maharashtra. That section enacts that when an application for grant of interim relief is made in any suit and an objection as to the jurisdiction of the court to entertain such suit is raised by any party to the suit, "the court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or set-aside the order granting the interim relief. Any such application shall be heard and disposed of by the court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit. (Emphasis supplied)

25. The contention of the Defendant was that a Civil Court had no jurisdiction and hence could not have granted injunction. It may be stated that ultimately the High Court upheld the objection and ruled that a civil court had no jurisdiction. In the light of the said finding, it was contended by the Defendant that once it was held that a civil court had no jurisdiction, the suit was not maintainable at law. Consequently, no interim relief could be granted and if such interim order was not implemented it could not be said that there was disobedience of that order falling within the mischief of Rule 2-A of Order 39 of the Code. Contrary argument by the Plaintiff, on the other hand was, that till the High Court decided the question of jurisdiction, the order operated and by not complying with that order, the Defendants made themselves liable.

26. Negating the contention of the Defendants and advertng to several American, English and Indian cases, the Apex Court held that once an interim order is made by a court, it cannot be disregarded or disobeyed, even if, ultimately the court holds that it had no jurisdiction and no such order could have been passed. Interpreting the provision of Section 9-A, the Court observed in paragraph 29:

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

has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from suit property by appointing a receiver or otherwise; in such a case, the court should, while holding that it has no jurisdiction to entertain the suit, must put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the Plaintiff provided the violation is committed before the decision of the Court on the question of jurisdiction.

(Emphasis supplied)

27. The Court further held that the High Court was not right in holding that the party had not disobeyed the order of the court. Allowing the appeal, the Supreme Court posited that there was violation of the interim order by Defendant No. 2. He was, therefore, ordered to undergo imprisonment for one month.

28. In the instant case, an order was passed by a competent court. It was confirmed in appeal as well as in revision. It was, therefore, obligatory on the Petitioners to comply with the said order. It is undisputed that the said order had not been complied with. It is also admitted fact that no extension was sought. The legality and validity of the order was challenged by the Petitioners unsuccessfully. So far as Petitioner No. 1 is concerned, it was stated that for some time, he was on leave and for few days he was busy with other work. It was also stated in the affidavit filed in this Court that he hails from West Bengal and he had to proceed on leave because of sickness of his father. The counsel, however, had to concede that the fact regarding sickness of father was never brought to the notice of the courts below. It also cannot be disputed that no step whatsoever was taken by him to comply with the order dated 6th April, 1992. So far as Petitioner No. 2 is concerned, nothing was pointed out either before the trial Court, or before the lower appellate court, or even before this Court as to what prevented him from obeying the order or seeking extension of time from the trial court except the fact that he was a subordinate officer to Petitioner No. 1, Deputy Commissioner. Moreover, a finding of fact was recorded by the appellate court on the basis of evidence and material that even after a mandatory order was passed on 4th May, 1992, and Bailiff of the Court went to deliver possession of the quarters to the Plaintiffs, all endeavours were made by the Defendants to create obstruction in delivering possession and to deprive the Plaintiffs from reaping and realising the fruits of interim order.

29. In these circumstances, in my opinion, though today the order might have been complied with as asserted by the Petitioners in Memorandum of Appeal before the lower appellate court that the meeting was held on 25th June, 1992, a decision was taken and it was conveyed to the Court (though nothing has been shown to this Court even at the time of hearing of the present revision petition that any meeting was convened, a decision was taken and it was conveyed to the

court), disobedience of the order of the court by the Defendants has been duly established.

30. Mr. Chandel, relying upon the following decisions, submitted that no punishment may be imposed on the Petitioners, considering further affidavits filed in this Court and tendering of unconditional apology by them:

1. Dinabandhu Sahu Vs. The State of Orissa,
2. Bigyan Kumar and Others Vs. Union of India (UOI) and Others,
3. Sitaram Vs. Ganesh Das,
4. Chandmal Vs. Firm Ram Chandra and Vishwanath,

31. A special reference was also made to a decision of the Supreme Court in M.L. Sachdev Vs. Union of India and another, It was a contempt petition filed in a writ petition under Article 32 of the Constitution. A petition was instituted in the Supreme Court directing the Union of India to fill in post of Chairman and members of the Commission under the Monopolies and Restrictive Trade Practices Act, 1969. An interim order was made by the Court directing the authorities to fill in the posts which was not complied with. Extension was sought, which was granted. The said period was over and neither further extension was sought nor the order was complied with. A contempt petition was, therefore, filed. In affidavit in reply, it was stated by the Respondents that the order could not be complied with because "appointment of the Chairman could not be finalised as the Judge to whom the offer had been made, ultimately declined." The Court observed that it was incumbent on the part of the Respondents either to comply with interim order passed by the court or to seek extension and by not doing so, they had failed to comply with the order, but in the light of explanation and affidavit in reply, no serious view was called for. Hence, even though, the Respondent Union of India represented by the Secretary of the Ministry was held guilty of the Contempt of Court, the Apex Court did not think it proper to impose punishment.

32. While disposing of the petition, however, in paragraph 12, the Hon''ble Supreme Court observed:

In recent times, instances of non-compliance with Court's directions have multiplied and it is necessary to curb such tendency of litigating parties. We, however, do not propose to impose any punishment in view of the offer of unqualified apology offered in paragraph 8 of the affidavit but hope and trust that there would be no recurrence of the conduct.

(Emphasis supplied)

33. In my judgment, the ratio laid down in M.L. Sachdev, instead of supporting the Petitioners, deprecates conduct and behaviour of parties in not implementing orders of competent courts and show concern towards such tendency. In the present case, the conduct of the Petitioners was explicit and there was total

disobedience of the order passed by a competent court on April 6, 1992. I am also of opinion that when the Petitioners claim leniency and magnanimity from the court, the Court cannot be unmindful or oblivious of their subsequent conduct as well. As stated earlier, in the second application filed by the Plaintiffs, a mandatory order was passed by the court on May 4, 1992. Even that order was also not implemented by the Petitioners immediately showing respect to the court and by allotting quarters to the Plaintiffs. On the contrary, obstructions were created and even when the Bailiff of the court went to deliver possession of quarters to the Plaintiffs, "every endeavor to create obstruction in the delivery of the quarters" had been made. Such a conduct on the part of responsible Government officers is highly deplorable and cannot be countenanced by a court of law.

34. At the same time, I am conscious and mindful that in such matters, the court is expected to exercise its powers with magnanimity and without adopting emotional and sentimental approach. The underlying object of Order 39, Rule 2-A of the Code is, ultimately to maintain majesty of judicial orders, to preserve Rule of Law and to ensure faith of litigants in the administration of justice. It is therefore, expected of a court of law to strike balance by taking a balanced view in accordance with law.

35. Taking into account totality of the facts and attending circumstances, in my opinion, ends of justice would be met if the order passed by the trial court and confirmed by the lower appellate court is modified to the extent that both the Petitioners be detained in a civil prison till the rising of the court. The petition is accordingly allowed to the extent indicated above. There shall be no order as to costs.

36. The learned Counsel for the Petitioners prays that order passed by me may be kept in abeyance for some time so as to enable the Petitioners to approach higher forum. In my opinion, the prayer is reasonable. The order will not be implemented for a period of three months from today.

37. Interim order dated 16.1.1998 passed in CMP No. 34 of 1998 stands vacated.

CMPs No. 315 and 316 of 2000:

38. In view of the disposal of the main matter, both the applications stand disposed of.