

(2018) 09 DEL CK 0329

In the Delhi High Court

Case No : Contempt Appeal (Civil) No. 3 Of 2017

Suman Chadha And Another

APPELLANT

Vs

Central Bank Of India

RESPONDENT

Date of Decision : 27-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Code of Civil Procedure, 1908 — Order 21 Rule 32
Contempt of Courts Act, 1971 — Section 2(b), 19
Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 — Section 13(2), 14

Citation : (2018) 09 DEL CK 0329

Hon'ble Judges : Sanjiv Khanna, J;Chander Shekhar, J

Bench : Division Bench

Judgement

SANJIV KHANNA, J.

1. Suman Chadha and Komal Chadha, husband and wife, have preferred the present appeal under Section 19 of the Contempt of Courts Act, 1971

(the Act, for short) challenging the order dated 18th July, 2017 passed by the learned single Judge in Contempt Case (C) No. 531/2015 filed by the

Central Bank of India, the respondent before us. Â

2. The impugned order holds the two appellants guilty of contempt of court for wilful disobedience and non-compliance of the undertakings to the court

in Writ Petition (C) No. 3406/2015 by way of solemn promise to pay Rs.7 crores in three instalments of Rs.2 crores, Rs.2.5 crores and Rs.2.5 crores

on 30th April, 2015, 31st May, 2015 and 30th June, 2015, respectively. The impugned order also sentences the appellants to simple imprisonment of

three months and fine of Rs.2,000/- each.

3. The present appeal was first listed on 25th July, 2017, when the Division Bench on consideration of facts had passed over the appeal to enable the counsel for the appellants to obtain instructions whether they would deposit Rs.7 crores in the Registry in terms of the undertakings. As the appellants did not offer to deposit Rs.7 crores or even a substantial part of the said amount, the Division Bench vide the order dated 25th July, 2017 had declined and did not suspend the sentence. CM No. 26082/2017 filed in the present appeal for suspension of sentence was adjourned to 3rd August, 2017.

4. Aggrieved the appellants had preferred Special Leave Petition (SLP, for short) before the Supreme Court, vide diary No. 22243/2017 along with an application seeking exemption from surrendering. The application was dismissed by order-in-chamber dated 31st July, 2017, albeit the appellants were granted two weeks time to surrender. Appellants were to file proof of surrender in the Registry of the Supreme Court. The Supreme Court had also directed that if the appellants do not surrender within the extended time of two weeks, warrants issued by the High Court shall be executed.

5. The appellants did not surrender within the time granted by the Supreme Court.

6. By the order dated 3rd August, 2017, a Division Bench of this Court disposed of C.M. No. 26082/2017, seeking suspension of sentence during pendency of the present appeal, as infructuous stating that the order of the Supreme Court dated 31st July, 2017 had not been complied with. Â

7. The order of the Division Bench dated 3rd August, 2017 was challenged before the Supreme Court in SLP (Criminal) filed vide diary No. 23938/2017 along with an application seeking exemption from surrendering. This application for exemption from surrendering was dismissed vide order-in-chamber dated 18th August, 2017, albeit the appellants were granted two weeksâ time to surrender and submit proof thereof in the Registry. It was further directed that if the appellants surrender and submit proof thereof within the aforesaid time, the matter would be posted for consideration before the Court. Â

8. The appellants had then filed CRL M.P. 84168/2017 before the Supreme Court seeking extension of time to surrender as the second appellant was undergoing medical treatment in the AIIMS, New Delhi. Considering the said fact, the Supreme Court vide order dated 11th September, 2017 had

granted extension of time to surrender by three weeks. At the same time it was directed that if the appellants do not surrender within the extended

period, it could be presumed that they were not interested in pursuing the matter and the SLP would be deemed to be dismissed for non-prosecution

without further reference to the Court.

9. In the meanwhile, hearing in the present Contempt Appeal fixed on 22nd August, 2017 was deferred at the request of the Counsel for the appellants

to a date after 1st September, 2017 i.e. the date of surrender fixed by the Supreme Court. Accordingly, the appeal was directed to be listed for

hearing/arguments on 26th October, 2017.

10. Thereupon, the appellants had filed CM No. 38273/2017 in the present contempt appeal for order and direction to permit them to surrender before

the Court in terms of the order of the Supreme Court in Criminal M.P. No. 84168/2017 dated 11th September, 2017 and judgment and order dated

18th July, 2017 passed by the learned single Judge. Order dated 26th October, 2017 in this appeal observes that the Court could not understand the

purpose and object for filing the application as it was for the appellants to surrender before the jail authorities in compliance of the orders passed. Bail

application filed by the appellants and the contempt appeal were directed to be re-listed on 31st October, 2017 to report on surrender. Order dated

31st October, 2017 records admission that the appellants had not surrendered but would be surrendering on 31st October, 2017. Â

11. The appellants had surrendered and were taken into custody on 6th November, 2017. Â

12. Subsequently by the order dated 16th November, 2017, the appellants were granted interim bail because of the death of mother of the second

appellant. The interim bail has continued. Â

13. The appellants are directors in M/s Parul Polymers Private Limited, a company that had availed of the loan/finance facilities to the extent of Rs.

20 crores from the respondent bank. The appellants were guarantors and are jointly and severally liable. In addition, the second appellant, Komal

Chadha had mortgaged built up property No. 90, Block -1, Pocket-VI, Sector-16, Rohini, Delhi-110085 and one Neelam Kohli had mortgaged property

No. 13A, Gali No.3, Kanti Nagar, Shahdara, Delhi-10013, with the respondent bank.

14. On 18th August, 2014, the respondent bank had issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and

Enforcement of Securities Interest Act, 2002 (SARFAESI Act, for short) relating to and in respect of the immovable properties for recovery of

Rs.28,82,25,942.24 plus interest in respect of loan/finance facility extended to M/s Parul Polymers Private Limited. By the order dated 5th March,

2015, the application filed by the respondent bank under Section 14 of the SARFAESI Act was allowed by the Chief Metropolitan Magistrate, Rohini

Court, Delhi and a Receiver was appointed to take over physical possession of the Rohini property. On similar application by the orders dated 11th

February, 2015 and 26th February, 2015, the Chief Metropolitan Magistrate, Karkardooma Courts, Delhi had appointed a Receiver to take over

physical possession of the Shahdara property. Â

15. Thereupon, symbolic possession of the Rohini property was taken over by the first Receiver vide notice under Section 13(4) SARFAESI Act

dated 5th December, 2014. Aggrieved, the appellants had filed SA No. 367/2014 before the Debts Recovery Tribunal-III (DRT-III), New Delhi,

challenging the measures and action taken under the SARFAESI Act and for stay from taking over of physical possession. On the stay order being

declined, the appellants had preferred an appeal before the Debts Recovery Appellate Tribunal (the Tribunal), which was registered as Inward No.

684/2014. The appellants however had failed and did not make statutory pre-deposit equal to 25% of the notice amount under Section 13(2)

SARFAESI Act as directed by the Tribunal. The appellants had then made a prayer to withdraw the appeal, which request was accepted and the

appeal was dismissed as withdrawn by the Tribunal vide order dated 31st March, 2015.

16. Immediately thereafter, the appellants again approached DRT-III in SA No. 367/2014 expressing their willingness to pay the overdue amount with

interest to the respondent bank, with the promise and assurance that they would deposit Rs.5 crores within thirty days out of which Rs.2 crore would

be deposited on or before 3rd April, 2015. Accepting and believing the commitment regarding payments, the DRT-III vide ex-parte order dated 1st

April, 2015 issued a direction restraining the receivers/respondent bank from taking physical possession of the properties.

17. Notwithstanding the solemn commitment made to obtain the order dated 1st April, 2015 from the DRT-III, this order dated 1st April, 2015 was challenged by the appellants in the Writ Petition (C) No. 3406/2015 before this High Court. The contention was that the loans had been wrongly classified as Non Performing Assets (NPA). In the hearing in this Writ Petition held on 8th April, 2015, learned counsel for the appellants had stated that the appellants were admitting their liability provided some time was granted to settle the matter finally. The appellants had pleaded to be afforded an opportunity to deposit Rs.7 crores i.e. 25% of the notice amount in three instalments on or before 30th June, 2015. This order refers to personal presence of the first appellant in the Court and that he was a director and was authorised to depose. Statement of the first appellant on oath was recorded and kept on record. The first appellant who was not present in the Court was directed to file an affidavit/undertaking confirming the statement made by her husband i.e. the first appellant in this appeal. In view of the statement on oath and commitment/undertaking made to Â and accepted by the Division Bench, directions were issued that possession of the appellants in the properties would not be disturbed. The order dated 8th April, 2015 passed by the Division Bench reads as under:-

â??CM No.6099/2015

Exemption is allowed subject to all just exceptions.

The application is disposed of.

W.P.(C) 3406/2015 & CM No.6098/2015 (fordirection)

1. Issue notice

2. Mr. Anuj Jain, Advocate accepts notice.

3. The petitioners are aggrieved by the order of DRT on 01.04.2015 whereby the third petitioner was directed to deposit Rs.5 crores on or before

30.04.2015. The petitionerâ??s counsel submitted that since there is a dispute as to whether the liabilities are properly classified as NPA, the impugned

order should not have directed such drastic conditions.

4. Counsel for the respondent submitted that the petitioner had initially obtained stay against publication pursuant to the demand on 16.12.2014 but the

said order was vacated later on 19.12.2014. The petitioners thereafter approached the DRAT which directed deposit of 25% of the notice amount of

Rs.28,82,25,942.24. The petitioner did not do so and instead withdrew the appeal on 31.3.2015.

5. During the course of hearing counsel for the petitioner Dr. Sharma stated that the petitioners are admitting the liability provided some time is

granted in order to settle the matter finally. It was suggested by the counsel that the petitioners may be afforded opportunity of depositing Rs.7 (seven)

crores i.e. 25% of the notice amount in three instalments on or before 30.06.2015. The first petitioner is present in Court. He is a director of the third

petitioner and authorised to depose on its behalf. His statement to above effect has been recorded under oath separately and has been kept on record.

The second petitioner is directed to file an affidavit/undertaking within one week confirming the statement of the first petitioner. The counsel for the

respondent submitted his assent to the disposal of the writ petition on terms offered.

6. In view of the submission of the parties, it is ordered that the possession of the petitioners over the property in question shall not be disturbed subject

to their compliance with the following conditions:

(1) Deposit by the petitioners on or before 30.04.2015 of the sum of Rs.2 crores with the respondent bank and thereafter deposit of Rs.2.5 crores

each on or before 31.5.2015 and 30.06.2015.

(2) The second petitioner shall file an affidavit/undertaking, to comply with the above said arrangement.

(3) In the event of default, the respondent bank shall be at liberty to take recourse to law including the enforcement of further action in follow up of

order of appointment of the receiver by the Chief Metropolitan Magistrate (CMM). The order to such effect passed by CMM shall be kept in

abeyance to ensure compliance in the meanwhile till 30.6.2015.

7. Petitioners' counsel requests that after compliance of the above order, any application for relief to the bank including the restructuring of the

account may be considered reasonably. The bank shall consider such application if made on its merits independently having regard to its applicable

policy. This will not in any way preclude the rights of the bank for recovering the amounts due.

8. Subject to the petitioner filing the necessary affidavit/undertaking, copy of which shall be provided to the counsel for the respondent within a week

from today, the writ petition is disposed of.

9. Dasti under signature of the Court Master.â??

The appellants knew that any indulgence and an order of stay from the High Court would require at least part payment. With the intent and desire to procure a favourable order to protect physical possession, they had held out promise and gave an undertaking avowing to pay Rs.7 crores, i.e., 25% of the amount mentioned in the demand notice in instalments on or before 30th June, 2015.

18. As the contempt also arises and is predicated on the statement on oath made by the appellant No. 1 and the affidavit/undertaking filed by the second appellant in terms of the order dated 8th April, 2015, we would like to reproduce the statement of appellant No.1 on oath as well as the undertaking/affidavit of appellant No.2.

19. Statement of Suman Chadha, appellant No.1, referred to in order dated 8th April, 2015 is as under:-

â??Statement of Mr. Suman Chadha S/o Jangi Lal Chadha R/o H-3/50 Sector -18, Rohini, Delhi.

I am the petitioner and the director of the third petitioner in this case. I am duly authorised to make a statement on its behalf. I have also filed an affidavit in support of the petition and have taken advice from my lawyer who is present with me in Court.

I hereby state and confirm that the sum of Rs.28,82,25,942.24 (Twenty Eight Crores Eighty Two Lakh Twenty Five Thousand Nine Hundred Forty

Two and Paise Twenty Four only) as on 18.8.2014 is due and payable to the respondent i.e. the Central Bank of India as per notice u/s 13(2) of

SARFAESI Act. I request that in view of the demand I may be granted relief of some deferment with regard to the repayment of the loan liability. I

hereby agree on behalf of self and other petitioners to deposit a total amount of Rs.7 (seven) crores with respondent-bank on or before 30.6.2015. An

amount of Rs.2 (two) crores of the said amount shall be paid on or before 30.04.2015; the balance would be paid in equal instalments i.e. Rs.2.5 (Two and a half) crores on or before 31.5.2015 and 30.06.2015.

I also agree and affirm that in the event of default, the bank is free to initiate any such proceedings and avail of legal remedies as are available.â??

Appellant No. 1 on oath had admitted and affirmed that Rs.28,82,25,942.24/-

was due and payable to the respondent bank as on 18th August, 2014. He had made this admission of himself and the others, including second appellant, and had agreed to deposit Rs.7 crores with the respondent bank on or before 30th June, 2015. Rs.2 crores was to be deposited on or before 30th April, 2015 and the balance amount of Rs.5 crores was to be paid in equal instalments of Rs.2.5 crores each on or before 31st May, 2015 and 30th June, 2015, respectively. In case of default, the bank was free to initiate such proceedings and avail such legal remedies as were available to it. Â

20. Appellant No. 2 had filed an affidavit/undertaking stating that she was a director of M/s Parul Polymers Private Limited and was aware that her husband had made a statement, which was understood by her. She gave an undertaking to abide by the same. The affidavit/undertaking filed by Komal Chadha, the appellant No. 2 reads as under:

Â ""I, Komal Chadha aged about 46 years, w/o Suman Chadha R/o H3/50, Sector-18, Rohini Delhi, do hereby solemnly affirm and declare as under:

1. That the above petition was filed by me as Petitioner no. 2 and my husband, as Petitioner no. 1. He also signed the Petition on behalf of Petitioner no. 3, as Director. I am also one of the directors of Petitioner no.3, My husband has made a statement before this Hon'ble court, which I have understood from him.

2. That I affirm the statement made by Mr. Suman Chadha, my husband and undertake to abide by the same.

21. In view of the solemn assurance on oath made to the Court and accepting the assurance and commitment, the Division Bench had disposed of the writ petition by passing a favourable order that the possession of the properties shall not be disturbed, subject to compliance with the order. It was also directed that on complying with the order, the appellants would be at liberty to move an application seeking relief to the respondent bank for re-structuring of the amount due, which would be considered reasonably under the applicable policy of the respondent bank. The Receivers who were to take possession of the properties at Rohini and Shahdara on 10th April, 2015 and 30th April, 2015, deferred their action. Possession was not taken.

22. On 29th April, 2015, the appellants had handed over four cheques post dated for 6th May, 2015 of Rs.50 lacs each to the respondent bank. As the payment offered was not in terms of the order dated 8th April 2015 passed by the

Court, the respondent bank had moved CM No. 8353/2015 for clarification in Writ Petition (C) No. 3406/2015. They were cautious by not wanting to accept and present the cheques for encashment without informing the Court, as it could be interpreted and claimed that the terms and undertaking given by the appellants were modified. This application was disposed of by the Division Bench on 27th May, 2015 observing that this tender of four cheques of Rs.50 lacs was not in conformity with the directions in the order dated 8th April, 2015 and the appellants had committed default. The said order also records that the respondent bank would be free to take action towards possession, apart from other remedies available under law.

23. The four cheques of Rs.50 lacs each when presented by the respondent bank for encashment were not honoured and bounced due to insufficient funds. Â

24. Letter dated 29th April, 2015 on behalf of M/s Parul Polymers Private Limited enclosing therewith four cheques of Rs.50 lacs each dated 6th

May, 2015 reads as under:-

Â??PARUL POLYMERS PRIVATE LIMITED

Off: H-3/50, Sector-18, Rohini, Delhi-110085. Godown: 722, 723, Basement DSIDC, Narela, Delhi 110040.

To

The Branch Manager,

Central Bank of India,

Rohini Branch, Delhi-110085.

Respected Sir,

Â Â Please sign enclosed herewith Four Cheques bearing No.

Cheque No. Date Amount

098629 06.05.2015 50,000,00.00

098681 06.05.2015 50,000,00.00

618728 06.05.2015 50,000,00.00

618727 06.05.2015 50,000,00.00

Â Total: 20,000000.00

Drawn at to Central Bank of India, Rohini Branch, Delhi-110085 for Rs.20,000000.00 in complies(sic) with the Honâ??ble Delhi High Court order.

Dated: 29/04/2015

Â Place: Delhi Â

Â Thanking you,

Â Yours faithfully

Â Parul Polymer Pvt. Ltd.

Â Sd/-

(Authorised Signatory)â??

25. Aforesaid cheques were not issued by M/s Parul Polymers Private Limited or the two appellants. The said cheques, as per the appellants, were

issued by their alleged debtors, namely, Remex Enterprises, Nandini Enterprises and M/s Countrywide Traders. The judgment under challenge before

us, refers to the enquiry conducted by the Serious Fraud Investigation Office on the order of the learned single Judge dated 7th December, 2015. As

per the report of the Serious Fraud Investigation Office, the three concerns who had issued these cheques were conduit/shell companies operating

under the control of the first appellant. The impugned judgment with merit observes that the defence taken by the appellants that they had handed over

cheques given to them by their debtors to honour their commitments, was a sham, dubious and malevolent act to avoid and defend contempt

proceedings. Â

26. The first issue, which arises for consideration in the present appeal, is whether the appellants had given an undertaking to the Court to make

payment of Rs.7 crores, which was accepted and acted upon by the Court. Learned single Judge, in our opinion, has rightly observed that the appellant

Nos. 1 and 2 had not only admitted their liability to pay the outstanding amount of Rs.28,82,25,942.24 as on 18thAugust, 2014 but also had promised

and undertaken to the Court to deposit Rs.7 crores on or before 30th June, 2015. It is only on the said solemn assurance and undertaking to the Court

that the Receivers were restrained from taking further action and accordingly, the Division Bench had ordered that possession of Shahdara and Rohini

properties would not be disturbed. The undertaking to the Court was the basis and foundation of the favourable order.

27. Statement of the first appellant on oath was recorded. As the second appellant was not available on the said date, she was asked to file an

affidavit/undertaking confirming the statement of the first appellant, which was filed by her. The first appellant on oath had agreed to pay/deposit Rs.7

crores on or before 30th June, 2015 to stall and defer the action of taking over of physical possession. Undertaking given by the second appellant is

also clear. She had affirmed the statement made by her husband and had given an undertaking to abide by the same. The Court would not have

recorded statement of the first appellant on oath and directed the second appellant to file an affidavit, if the assurance was merely a statement but not

a solemn promise and undertaking that was given to and accepted by the Court.

28. As elucidated below, there is a difference between right of execution, which right every decree holder has in case of default of payment, and

contempt of Court proceedings, which arises not because of default and failure to make payment but is predicated and is a consequence of wilful

disobedience and deliberate non-compliance of assurances and promises given to the Court in the form of undertaking to procure and obtain orders

and indulgence. When there is wilful disobedience and non-performance of the undertaking given to the Court, proceedings under the Act, i.e. The

Contempt of Court Act, would be maintainable. When a person gives an assurance in the form of undertaking to the Court, which he had no intention

to fulfil or knew was a mere pretence and was a false promise, it would amount to an act of fraudulence practiced on the Court to procure an order

that otherwise would not have been passed. Â

29. During hearing of this appeal, it was learnt that the Central Bureau of Investigation has registered a case under Section 120-B read with Sections

420, 467, 468 and 471 of the Indian Penal Code, 1860 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against

the two appellants as directors of M/s Parul Polymers Private Limited and M/s New Era Trading Private Limited and others. The Central Bureau of

Investigation was required to file status report. The status report filed on 17th January, 2018 records that M/s Parul Polymers Private Limited was

granted loan/credit facilities of Rs.6 crores by the Central Bank of India, Rohini Branch in 2011. In 2014, this credit facility was enhanced to Rs.10

crores and with additional facility in the form of Letter of Credit (Inland) Rs.10

crores, enhancing it to Rs.20 crores. Demand facility of Rs.1.18 crores was also extended. There were defaults and failure to pay the afore-stated loans and as per investigation, the two appellants have caused wrongful loss to the respondent bank and siphoned away more than Rs.10.50 crores by diverting the same to one Inderjit Singh, stated to be an accomplice of the appellants. The funds were also diverted by way of fictitious sales and purchases. To procure loans/finance, total turnover of M/s Parul Polymers Private Limited was fictitiously escalated to Rs.570 crores by inter-se (cross/circular) transactions in financial year 2013-14 from Rs.57 crores in the Financial Year 2012-13. As per the records/documents, the appellants had dealings of Rs.285 crores in food grains business, an activity totally unrelated to the main business of plastic and chemicals undertaken by M/s Parul Polymers Private Limited. Â 30. We would, however, not go by the status report filed by the Central Bureau of Investigation as charge sheet etc. is yet to be filed and the allegations made would not be relevant for the present proceedings. Copy of the report was not furnished to the counsel for the appellants as the alleged criminal offences are under investigation. In the present case, we are concerned with the contempt proceedings, which are predicated and arise from the wilful disobedience of the order dated 8th April, 2015 as well as wilful failure to comply and abide by the statement on oath/undertaking given by Suman Chadha and the affidavit-cum-undertaking filed by Komal Chadha. Therefore, we have completely eschewed the status report for the present judgment.

31. In order to decide whether the appellants are guilty of civil contempt, we would like to refer to Section 2(b) of the Contempt of Courts Act, 1971, which reads as under:-

â??2. Definitions

In this Act, unless the context otherwise requires-

XXXXX

(b) ""civil contempt"" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;â??

Â Referring to the said Section, the Supreme Court in Rama Narang versus Ramesh Narang and Another, (2006) 11 SCC 114 had referred to the

Contempt of Courts Act, 1952, which did not contain many of the provisions of the Act, for the Legislature had left formulation of the law of contempt

to the Courts, which had resulted in conflicting views expressed by different High Courts. Reference was made to the conflicting view expressed by

the Calcutta High Court in *Nisha Kanto Roy Chowdhury versus Smt. Saroj Bashini Goho*, AIR 1948 Calcutta 294 and the Bombay High Court in

Bajranglal Gangadhar Khemka and Another versus Messrs. Kapurchand Limited, AIR 1950 Bombay 336. In the former case, it was held that a

compromise decree passed by the Court containing an undertaking was nothing more than an agreement of the parties with the sanction of the Court

super-added. The order passed by the Court cannot mean anything more than an agreement and had no greater sanctity than the agreement itself. Per

contra, the Bombay High Court, in *Bajranglal Gangadhar Khemka and Another* (supra) had drawn a distinction between execution proceedings and

proceedings for contempt which arise from wilful default of an undertaking. The judgment referred to the long standing practice as per which the

expression "undertaking" had come to acquire a technical and legal meaning and understanding. It was observed that the expression "when a

party undertakes" is used to give an undertaking to the Court as distinct from when a counsel states that he undertakes on behalf of his client. When

a person gives an undertaking to the Court, it is not given to the other side but to the Court itself, and that being said must carry sanctity. Therefore,

when a Court passes a decree after an undertaking was embodied in the consent terms, it would show that the Court had sanctioned the particular

course and put its imprimatur on the consent terms. The Supreme Court agreed with the view expressed in *Bajranglal Gangadhar Khemka and*

Another (supra) in preference over the view expressed in by the Calcutta High Court in *Nisha Kanto Roy Chowdhury* (supra). Thereafter, reference

was made to Sanyal Committee report, which had preceded framing of the enactment of the Act and thereupon interpreting Section 2(b) of the Act

the Supreme Court in *Rama Narang* (supra) had observed:-

"18. The Act has been duly widened. It provides inter alia for definitions of the terms and lays down firmer bases for exercise of the court's

jurisdiction in contempt. Section 2(b) of the Contempt of Courts Act, 1971 defines civil contempt as meaning "wilful disobedience to any judgment,

decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. (emphasis supplied) Analysed, the definition provides for two categories of cases, namely, (1) wilful disobedience to a process of court, and (2) wilful breach of an undertaking given to a court. As far as the first category is concerned, the word "any" further indicates the wide nature of the power. No distinction is statutorily drawn between an order passed after an adjudication and an order passed by consent. This first category is separate from the second and cannot be treated as forming part of or taking colour from the second category. The legislative intention clearly was to distinguish between the two and create distinct classes of contumacious behaviour. Interestingly, the courts in England have held that the breach of a consent decree of specific performance by refusal to execute the agreement is punishable by way of proceedings in contempt (see *C.H. Giles and Co. Ltd. v. Morris* [(1972) 1 All ER 960 : (1972) 1 WLR 307 (Ch D)]).

32. It is to be, therefore, clearly understood that Section 2(b) of the Act, which defines civil contempt, consists of two different parts and categories, namely, (i) wilful disobedience to any judgment, decree, direction, order, writ or other process of a court and (ii) wilful breach of an undertaking given to a Court. The expression "any" used with reference to the first category indicates the wide nature of power given to the Court and that the statute does not draw a difference between an order passed after adjudication or an order passed by consent. The first part or category is distinct and cannot be treated as a part or taking colour from the second category. The Supreme Court consciously observed that the Courts in England have held that breach of consent decree of performance by refusal to execute an agreement was punishable by way of contempt proceedings. With reference to the second part, in *Rama Narang* (supra) it was observed that giving of an undertaking is distinct from a consent order recording compromise. In the latter case of violation of compromise, no question of contempt arises, but the party can enforce the order of compromise either by execution or injunction from a Court. However, in the former case, when there is wilful disobedience, contempt application and proceedings would be maintainable.

33. In *Rama Narang* (supra), several suits inter se and legal proceedings between the second wife of the deceased and her step sons were

compromised, with both the parties agreeing that the suits/proceedings be disposed of in terms of the settlement agreement by minutes of the consent order. Consent contained various terms agreed upon by the parties. Allegations were that the step sons had not complied with the consent terms consequent to which contempt proceedings were initiated for wilful disobedience. In this case, the Supreme Court relied upon first part/category mentioned in Section 2(b), i.e., wilful violation of any order or decree that would amount to contempt. It was observed that a consent decree is a compromise by way of command or a contract and the Bombay High Court's view in *Bajranglal Gangadhar Khemka and Another* (supra) correctly holds that a consent decree is a contract with imprimatur of the Court, which means authorised and approved by the Court. Such decrees are executable under the Code of Civil Procedure, but merely because an order or decree is executable would not take away the Court's jurisdiction to deal with the matter under the Act, provided the Court is satisfied that the violation of the order or decree is such that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends to substantially interfere with the course of justice. Reference was made to *Bank of Baroda versus Sadruddin Hasan Daya and Another*, (2004) 1 SCC 360 wherein the ratio in *Bajranglal Gangadhar Khemka and Another* (supra) that violation or breach of an undertaking, which becomes part of the court decree itself, amounts to contempt, irrespective of whether it is open to the decree holder to execute the decree, was upheld. This, it was observed was the law and it cannot be argued that if the party aggrieved can execute a decree per se, it can be a defence having bearing on the contempt proceedings. Â

34. In *Kanwar Singh Saini versus High Court of Delhi*, (2012) 4 SCC 307, the Supreme Court had cautioned that if there is non-compliance of a decree passed in a civil suit, the remedy available to an aggrieved person in case of non-compliance of a decree passed in a civil suit is to institute execution proceedings under Order XXI Rule 32 of the Code, which provides for elaborate proceedings in which the parties can adduce evidence, examine and cross-examine witnesses. Proceedings under the Act are discretionary and, therefore, when the matter relates to infringement of a decree or decretal order that embodies rights, it may not be expedient to invoke and exercise contempt jurisdiction. The Supreme Court had referred

to civil contempt as defined in Section 2(b) of the Act to mean wilful breach of an undertaking as distinct from criminal contempt. In civil contempt, disobedience of a civil action is a matter involving private rights of a party, albeit contempt jurisdiction is exercised when administration of justice is undermined if the order of the competent court is permitted to be disregarded with impunity. Criminal contempt, on the other hand, is predicated on public interest. In cases of civil contempt where the civil contempt jurisdiction is invoked, there should be violation of judgment, decree, direction or order and such disobedience should be wilful and intentional. In cases of execution, an executing court may not be bothered whether the disobedience was wilful or not, as the Court was bound to execute the decree irrespective of the consequences. In contempt proceedings, however, the Court may not direct execution if the disobedience has been under compelling circumstances and in that situation, no punishment need be awarded. In the said case, criminal contempt proceedings were quashed. Kanwar Singh Saini (supra), makes reference to Daroga Singh versus B.K. Pandey, (2004) 5

SCC 26 and other judgments and has observed:-

“37. In Daroga Singh v. B.K. Pandey [(2004) 5 SCC 26 : 2004 SCC (Cri) 1521] , this Court rejected the plea of the contemnors that the High

Court could not initiate the contempt proceedings in respect of the contempt of the courts subordinate to it placing reliance upon earlier judgments in

Bathina Ramakrishna Reddy v. State of Madras [AIR 1952 SC 149 : 1952 Cri LJ 832] , Brahma Prakash Sharma v. State of U.P. [AIR 1954 SC 10 :

1954 Cri LJ 238] and State of M.P. v. Revashankar [AIR 1959 SC 102 : 1959 Cri LJ 251] . The Court further explained the scope of contempt

proceedings observing: (Daroga Singh case [(2004) 5 SCC 26 : 2004 SCC (Cri) 1521] , SCC pp. 46-47, para 33)

“33. For the survival of the rule of law the orders of the courts have to be obeyed and continue to be obeyed unless overturned, modified or

stayed by the appellate or revisional courts. The court does not have any agency of its own to enforce its orders. The executive authority of the State

has to come to the aid of the party seeking implementation of the court orders. The might of the State must stand behind the court orders for the

survival of the rule of the court in the country. Incidents which undermine the dignity of the courts should be condemned and dealt with swiftly. If

the judiciary has to perform its duties and functions in a fair and free manner, the dignity and the authority of the courts has to be respected and

maintained at all stages and by all concerned failing which the very constitutional scheme and public faith in the judiciary runs the risk of being lost.â??

Â Similarly, in Bank of Baroda (supra) wherein certain statements were made and undertaking was given promising non-encumbrance of immovable

properties. In violation of the said promise and undertaking, the immovable properties were encumbered vide a consent decree in another suit.

Contempt it was held was made out.

35. It would be relevant and important to understand meaning of the term â??wilful disobedienceâ?. The word â??wilfulâ? as defined in dictionaries

means purposely without reference to bona fides, deliberately, intentionally with evil intention, wantonly and causelessly. The Supreme Court in Niaz

Mohammad and Others versus State of Haryana and Others, (1994) 6 SCC 332 explaining the expression â??wilful disobedienceâ? had held:-

â??9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as â??the Actâ?) defines â??civil contemptâ? to mean â??wilful

disobedience to any judgment, decree, direction, order, writ or other process of a court â?|â?. Where the contempt consists in failure to comply with or

carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been

made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order

or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order

has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished

for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case.

That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction,

order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be

satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and

intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner.â??

36. In *Ashok Paper Kamgar Union versus Dharam Godha and Others*, (2003) 11 SCC 1, the expression â??wilful disobedienceâ? in the context of

Section 2(b) of the Act was read to mean an act or omission done voluntarily and intentionally with the specific intent to do something, which the law

forbids or with the specific intention to fail to do something which the law requires to be done. Wilfulness signifies deliberate action done with evil

intent and bad motive and purpose. It should not be an act, which requires and is dependent upon, either wholly or partly, any act or omission by a third party for compliance.

37. In *Ram Kishan versus Tarun Bajaj and Others*, (2014) 16 SCC 204, it was observed as under:-

â??12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is â??wilfulâ?. The word â??wilfulâ? introduces

a mental element and hence, requires looking into the mind of a person/ contemnor by gauging his actions, which is an indication of one's state of mind.

â??Wilfulâ? means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes

casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to

be done with a â??bad purpose or without justifiable excuse or stubbornly, obstinately or perverselyâ?. Wilful act is to be distinguished from an act

done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include

any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part.

Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for

the contemnor to comply with the order, the contemnor cannot be punished. Committal or sequestration will not be ordered unless contempt

involves a degree of default or misconduct. (Vide *S. Sundaram Pillai v. V.R. Pattabiraman* [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC

591] , *Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao* [Rakapalli Raja Ram Gopala Rao v. NaraganiGovindaSehararao, (1989) 4

SCC 255 : AIR 1989 SC 2185] , *Niaz Mohammad v. State of Haryana* [Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332 : AIR 1995 SC 308]

, *Chordia Automobiles v. S. Moosa* [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282] , *Ashok Paper Kamgar Union v. Dharam Godha* [Ashok

Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1] , *State of Orissa v. Mohd. Illiyas* [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 :

2006 SCC (L&S) 122 : AIR 2006 SC 258] and *Uniworth Textiles Ltd. v. CCE* [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753] .)??

This decision also holds as under:-

11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or

obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary

citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined.

Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and

unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the

Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It

would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide

V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. KedarNath Gupta, (1992) 4 SCC

697 : 1993 SCC (L&S) 202 : (1993) 23 ATC 400], Chhotu Ram

v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar

v. Hirak Ghosh, (2002) 4 SCC 21] , Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] ,

Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. Tuncay Alankus

[National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172] .)â??

Therefore, in case of a reasonable doubt, it is not fair and reasonable for the Courts to exercise jurisdiction under the Act for the proceedings are

quasi-criminal in nature and the standard of proof required in these proceedings is beyond all reasonable doubt and not mere probabilities. Thus, in

cases where two interpretations of an order are possible and if the action is not contumacious, contempt proceedings are not maintainable and for this

purpose the order must be read in entirety. It may also be noted that there is a difference between â??standard of proofâ? and â??manner of

proofâ? in contempt proceedings. Contempt proceedings are sui generis in the sense that strict law of evidence and Code of Criminal Procedure are

not applicable. However, the procedure adopted in the contempt proceedings must be fair and just.

38.This brings us to the second and relevant aspect, whether the appellants were guilty of civil contempt? We must also examine whether, in the

context of the present case, the appellants had given an undertaking which has been violated and whether the court order dated 8th April, 2015 was

obtained and procured on the solemn assurances and promises that were never intended to be fulfilled and complied with. The expression

â??undertakingâ?? was interpreted in Rama Narang (5) versus Ramesh Narang and Another, (2009) 16 SCC 126,as under:-

â??34. In this case the respondents have deliberately violated the orders of this Court dated 12-12-2001 [Ramesh Narang (1) v. Rama Narang,

(2009) 16 SCC 631] and 8-12002 [Ramesh Narang (2) v. Rama Narang, (2009) 16 SCC 600] based on the undertaking given by the parties to this

Court. We have been called upon to decide whether deliberate breach of undertaking can attract Section 2(b) of the Contempt of Courts Act. Before

we examine the issue further, it is imperative to clearly comprehend the expression “undertaking” with the help of settled law which has been crystallised in a large number of cases of this Court.

Â 35. Black's Law Dictionary, 5th Edn. defines “undertaking” in the following words:

“A promise, engagement, or stipulation. An engagement by one of the parties to a contract to the other, as distinguished from the mutual

engagement of the parties to each other. It does not necessarily imply a consideration. In a somewhat special sense, a promise given in the course of

legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. A promise or

security in any form.”

36. Osborn's Concise Law Dictionary, 10th Edn. defines “undertaking” in the following words:

“A promise, especially a promise in the course of legal proceedings by a party or his counsel, which may be enforced by attachment or otherwise

in the same manner as an injunction.”

37. In *M. v. Home Office* [1992 QB 270 : (1992) 2 WLR 73 : (1992) 4 All ER 97] , All ER at p. 132g, the expression “undertaking” has been

dealt with in the following manner: “If a party, or solicitors or counsel on his behalf, so act as to convey to the court the firm conviction that an

undertaking is being given, that party will be bound and it will be no answer that he did not think that he was giving it or that he was misunderstood.”

38. *Hudson, In re* [1966 Ch209 : (1966) 2 WLR 398 : (1966) 1 All ER 110] , the English court observed as under: (All ER pp. 112 I-113 A)

“An undertaking to the court confers no personal right or remedy on any other party. The only sanctions for breach are imprisonment for contempt,

sequestration or a fine.”

39. Similarly, in *Shoreham-by-Sea Urban District Council v. Dolphin Canadian Proteins Ltd.* [(1972) 71 LGR 261] the Court observed as under:

“Failure to comply with an undertaking to abate a nuisance may be visited with a substantial fine.”

40. The Division Bench of the Bombay High Court in *Bajranglal Gangadhar Khemka v. Kapurchand Ltd.* [AIR 1950 Bom336 : (1950) 52 Bom LR

363] had an occasion to deal with similar facts. Chagla, C.J., speaking for the

Court, observed as under: (AIR p. 337, para 4)

“4. We are not prepared to accept a position which seems to us contrary to the long practice that has been established in this Court, and,

apparently, also in England. There is no reason why even in a consent decree a party may not give an undertaking to the court. Although the court

may be bound to record a compromise, still, when the court passes a decree, it puts its imprimatur upon those terms and makes the terms a rule of the

court; and it would be open to the court, before it did so, to accept an undertaking given by a party to the court. Therefore, there is nothing contrary to

any provision of the law whereby an undertaking cannot be given by a party to the court in the consent decree, which undertaking can be enforced by

proper committal proceedings.”

41. In *Noorali Babul Thanewala v. K.M.M. Shetty* [(1990) 1 SCC 259] , a tenant committed breach of undertaking given by him to the Supreme Court

to deliver vacant possession of certain premises. The Supreme Court held the tenant guilty of contempt. Hon'ble V. Ramaswami, J., delivering the

judgment observed: (SCC pp. 265-66, para 11)

“11. When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in

substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the court by or on behalf of a

party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the

purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on

the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach

of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct

amounting to contempt.”

42. In *Mohd. Aslam v. Union of India* [(1994) 6 SCC 442] this Court dealt with the contempt proceedings raising the issues as to the amenability of

the State and of its Ministers for failure of obedience to the judicial pronouncements. In this case, the Chief Minister of Uttar Pradesh had made a

statement before the National Integration Council that the Government of Uttar

Pradesh will hold itself fully responsible for the protection of the Ram Janma Bhumi-Babri Masjid structures. Upon this statement of the Chief Minister, this Court had passed an order. However, in the contempt proceedings it was alleged that the orders passed on the basis of the statements made have been deliberately and wilfully flouted and disobeyed by the State of Uttar Pradesh. While dealing with the expression ‘‘undertaking’’, this Court observed as under: (SCC p. 453, para 22)

‘‘The Chief Minister having given a solemn assurance to the National Integration Council and permitted the terms of that assurance to be incorporated as his own undertaking to this Court and allowed an order to be passed in those terms cannot absolve himself of the responsibility unless he placed before the Court sufficient material which would justify that he had taken all reasonable steps and precautions to prevent the occurrence.’’

The aforesaid passage from Rama Narang (5) (supra), which quotes several other decisions, also refers to when and in which situations breach of an undertaking will amount to contempt, including Bajranglal Gangadhar Khemka and Another (supra).

39. In this context, we would also like to quote from Bank of Baroda (supra), which had quoted from Bajranglal Gangadhar Khemka and Another (supra) and observed:-

‘‘14. The respondents had filed consent terms in this Court but the same contained an undertaking that they would not alienate, encumber or charge the properties to anyone until the decree was satisfied. Acting upon this undertaking and the consent terms, this Court passed the decree whereunder the respondents (defendants) were given the facility of depositing the amount in eight quarterly instalments commencing from 1-11-1999 to 1-8-2001. This Court, therefore, put its imprimatur upon the consent terms and made it a decree of the court. The violation or breach of the undertaking which became part of the decree of the court certainly amounts to contempt of court, irrespective of the fact that it is open to the decree-holder to execute the decree. Contempt is a matter between the court and the alleged contemner and is not affected in any manner by the rights or obligations of the parties to the litigation inter se.

15. Shri Nariman has referred to the affidavit filed by Respondent 1 before the Debts Recovery Tribunal, Bombay in the recovery proceedings

initiated by Oman International Bank, SAOD and has submitted that the respondents have no money or assets apart from the immovable property, which is lying under attachment, to pay the amount. The learned counsel has also submitted that the respondents have themselves tried their best to secure a purchaser for the property at Versova which is the only valuable property in order to pay the amount to the petitioner. Copy of a letter sent to the Recovery Officer, Debts Recovery Tribunal-II, Bombay on 10-10-2003 by the solicitors of an intending buyer, who had made an offer to purchase the said property for Rs 3 crores along with a demand draft of Rs 30 lakhs was also placed before us. Shri Rohatgi, learned Additional Solicitor General has, on the other hand, submitted that apart from Oman International Bank, SAOD, one Shiraj Taher Alli Lokhandwala has also obtained a money decree against the respondents due to which several problems have arisen in executing the decree and realizing the amount. In the present proceedings we are basically concerned with the violation or breach of the undertaking given by the respondents. Shri C.A. Sundaram, learned Senior Counsel, has submitted that Respondent 2 was not personally present and the undertaking was given by him through a power of attorney. In our opinion, the mere fact that Respondent 2 was personally not present and the undertaking and the consent terms were given through a power of attorney will make no difference as he also got benefit under the consent decree passed by this Court.â??

The aforesaid passage refers to the benefit which a party derives by making and giving an undertaking to the Court, which is a relevant factor while deciding and examining question of contempt jurisdiction under the second category. In this context, we would like to reproduce observations of the Supreme Court in Rosnan Sam Boyce versus B.R. Cotton Mills Limited and Others, (1990) 2 SCC 636 wherein an undertaking was given to the Court knowing that it would not be complied with and it was held as under:-

â??7. We have no doubt at all that it was respondent 2 who, along with some of his family members, was in full charge of the affairs of respondent 1-company. In these circumstances, it appears clear to us that all the actions taken by the legal advisors and counsel of respondent 1 including, in particular, the giving of the aforesaid undertaking as well as the clarification given by learned counsel regarding the meaning of that

undertaking as aforesaid were with the fullest knowledge and consent of respondent 2. It is impossible to maintain this dichotomy, for the purposes of the contempt petition, between respondent 1 and respondent 2. Respondent 2 knew fully well when he authorised the giving of the undertaking on behalf of respondent 1 or consented to its being given that respondent 1 was in no position to hand over possession of the suit premises in execution of the decree because respondent 2 claimed to be in possession of the said premises and claimed sub-tenancy rights in the same and had no intention whatsoever of giving up the claim. In fact, the entire course of conduct adopted on behalf of respondent 1 was only with one aim in view and that was to frustrate or to at least delay indefinitely the execution of the decree which the appellant had obtained after the lapse of many years and after such sustained and lengthy legal proceedings which must have caused the appellant considerable expenses and anguish. It is significant that till Mr R.J. Joshi, the learned counsel, who gave the clarification in respect of the said undertaking was alive, no contention was ever raised that the said clarification was given by him without taking instructions or that respondent 1 or respondent 2 were not aware of the same. It was only after the sudden demise of the learned counsel that this contention was first raised by respondent 1. This conduct speaks volumes for the dishonest attitude adopted by respondents 1 and 2. Raising this contention after the death of Mr R.J. Joshi can only be regarded as one more of the tricks which respondents 1 and 2 have played throughout the case in order to defeat and delay the execution of the decree for possession against respondent 1.â??

40. In the context of the present case we find that the appellants had taken benefit and advantage of the "undertaking" made by them before the Court to secure and obtain the order dated 8th April, 2015. The said order is completely predicated and premised on the promise made by Suman Chadha, appellant No. 1, and the affidavit and the undertaking given by Komal Chadha, appellant No. 2, with regard to payment of Rs.7 crores within the time limit stated and agreed. It was a promise made to the court. The undertaking and promise had the effect of the Court interfering and granting stay and restraining the Receiver from taking physical possession of the properties. The grant of stay resulted in delay of enforcement of the action by the Receiver appointed to take possession. Thus the appellants had taken advantage and benefit of the stay order, based upon their undertaking given to

the Court. They would be liable for wilful default under the second category i.e., wilful disobedience of their undertaking. Â

41. Facts of the case, as expositied above, indicate that the conduct of the appellants was wilful and mala fide from the very beginning i.e., on the date when promise and assurance on oath was held out and given to the court on 8th April, 2015. The appellants knew right from the start that they would not be able to pay the Rs.7 crores. It is not the case wherein the appellants could have possibly arranged for the said funds. In fact, their conduct in getting cheques issued from third parties, which was dubious, has aggravated their malicious and mala fide conduct. Â

42. In Rita Markandey versus Surjit Singh Arora, (1996) 6 SCC 14, it was observed that even if parties have not filed an undertaking before the court but if the court was induced to sanction a particular course of action or inaction on the representation made by a party and the court ultimately finds that the party never intended to act on the said representation or such representation was false, the party would be guilty of committing contempt.

It was observed:-

â??12. Law is well settled that if any party gives an undertaking to the court to vacate the premises from which he is liable to be evicted under the orders of the court and there is a clear and deliberate breach thereof it amounts to civil contempt but since, in the present case, the respondent did not file any undertaking as envisaged in the order of this Court the question of his being punished for breach thereof does not arise. However, in our considered view even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the court ultimately finds that the party never intended to act on such representation or such representation was false. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order dated 5-10-1995 extending the time for vacation of the suit premises, he may be held guilty of contempt of court, notwithstanding non-furnishing of the undertaking, if it is found that the representation was false and the respondent never intended to act upon it. However, the respondent herein cannot be held liable for contempt on this score also for the order in question clearly indicates that it was passed on

the basis of the agreement between the parties and not on the representation of the respondent made before the Court. It was the petitioner who agreed to the unconditional extension of time by four weeks for the respondent to vacate and subsequent extension of time on his giving an undertaking and this Court only embodied the terms of the agreement so arrived at, in the order. We are, therefore, of the opinion that the respondent cannot in any way be held liable for contempt for alleged breach of the above order. As regards the contention of the petitioner that by trespassing into some other portion of the house in question during the pendency of the appeal the respondent has committed contempt of court, we are unable to accept the same; firstly because, the respondent's claim is that he has been in occupation thereof since long and this contentious issue cannot be decided solely on the basis of affidavits and secondly because the above issue does not fall within the limited scope of our enquiry in this proceeding which centres round the order dated 5-10-1994.â??

A similar view has been expressed in *Bank of Baroda*, (supra) wherein it was held that the parties since inception had no real intention to pay the amount but had agreed to the settlement and consent terms only for the purpose of gaining time whereunder instalments were fixed, this would still come under the purview of contempt as the party had intentionally and deliberately adopted a course of action so as to create further hurdles and obstruction, clearly being a case of wilful breach.Â

43. The decision in *Rita Markandey* (supra) would be squarely applicable to the facts of the present case, even if we were to assume that the appellants had not given any â??undertakingâ? to the court. The observations made in the said case are significant and refer to another facet when contempt jurisdiction can be invoked, different and distinct from cases where parties have given undertaking to the court and have thereafter wilfully refused to abide and comply with the same. However, we must caution that where a party has given a statement and made a promise and representation to the court with the intent and purpose to comply with the same but due to subsequent events and for bona fide reasons compliance could not be made, it would not be a case of wilful disobedience. In such cases, the party aggrieved must ask for execution of the decree or implementation of the order and the court would not exercise its discretion in the

contempt jurisdiction. Â

44. Facts of the case, as noticed by the learned single Judge, are glaring and disclose the cavalier attitude, scorn and abuse of the process of the Court

by the appellants, not on one occasion but on several occasions, and demonstrate the intent of the appellants to deceive and procure interim orders by giving undertaking and making promises on solemn assurance to the Court, notwithstanding the true intent and knowledge that the undertaking to the

Court would not be complied with.

45. It is stated and observed in several cases that the contempt is between the Court and the contemnor and the aggrieved party cannot insist that the

Court should exercise such jurisdiction. The discretion is exercised by the Court for maintenance of Court's dignity and majesty of law. However, it

would not be entirely correct to state that punishment under the contempt jurisdiction is granted to uphold the dignity of the Court. Contempt

jurisdiction is invoked and punishment is imposed to uphold the authority of Court to punish the contemnor and to act as a deterrent to others. This

deterrent is motivated in the interest of the public in order to prevent future incidents of wilful disregard and disobedience of the Court orders by a

party. Further, contempt jurisdiction may even invoke belated compliance, which is in public interest and when such compliance is made, the

contemnor may seek reduction or discharge of the sentence in view of subsequent conduct to purge the contempt by complying with the order.

Contempt jurisdiction is invoked when breaches are of the highest level of culpability in the sense that they are wilful. Further, persistence and

continuous damage and disobedience could in a given case reflect no remorse from the person against whom action is taken. Â

46. On the question of sentencing, the courts are normally reluctant to pass an order for imprisonment, the principle being that if at all possible,

sentence of imprisonment should not be imposed and that any term should be as short as possible. This is the basic precept behind the sentencing

policy in contempt. In the context of the present case, however, the intent of the appellants from the beginning itself, when the representation and

statement/undertaking was given and recorded by the Court in Writ Petition (C) No. 3406/2015, was fraudulent and dishonest. This is a case wherein

the wilfulness and dishonesty was at the initial and crucial time when the

promise and representation was made to the Court that the two appellants would ensure payment of Rs.7 crores. This is not a case where the representation was made honestly but subsequently the appellants could not keep their promise, in which case possibly in the absence of deliberate or wilful disobedience no case for contempt would be made out. In this case, it is necessary for the court to step in and invoke contempt jurisdiction as the appellants had deliberately and intentionally made promises in form of undertaking to the court which they never intended to comply. Devious promises which the party knows would not be complied with, would constitute misrepresentation of wilful nature as they become the ground and reason to induce the court to grant indulgence and favour by passing an order of action or inaction. These should not be made with the intent to obstruct the action being taken in accordance with law. Mala fide representations in the nature of an undertaking have to be checked as they make a mockery of the Court order, and lest the Courts start disbelieving and stop giving due credence to honest and bona fide representations. Contempt jurisdiction is not only concerned with the contemnor, but is also concerned with the effectiveness and the piousness attached to the undertakings and Court orders. Representation to the Court in the form of undertakings even when a promise to make payment etc., should not be made in platitude as if the undertaking is inconsequential, for on disobedience and failure the Court would be helpless and the aggrieved party has no remedy for violation of the undertaking. The representations and promises made before the Court should have sanctity and should be made with the intent and purpose to honour the commitment made and not with the objective of procuring an order of indulgence on that particular date though compliance of the promise was never intended. The latter would be inexcusable and defeat the very purpose of making such commitment and undertaking to the Court.

47. In view of the aforesaid discussion, we do not find any merit in the present appeal. We uphold the decision of the learned Single Judge, holding the appellants guilty of Contempt of Courts. We find no reason to interfere and uphold the sentence imposed on the appellants. As the appellants are on interim bail, they would surrender within a period of 10 days from the date of pronouncement of this order. In case of failure to surrender, the bail bonds would be forfeited and warrants of arrest would be issued and executed.

In the facts of the case, there would be no order as to costs.