

(1986) 07 BOM CK 0058

In the Bombay High Court

Case No : Contempt Appeal No. 1 of 1985 in Contempt Petition No. 71 of 1984

Uttam Hundrajmal Awatramani and Another

APPELLANT

Vs

Jayant Dattatraya Bhalerao and Another

RESPONDENT

Date of Decision : 30-07-1986

Acts Referred:

Contempt of Courts Act, 1971 — Section 2

Citation : (1987) 2 BomCR 33 : (1986) 88 BOMLR 522

Hon'ble Judges : S.N. Khatri, J; R.L. Aggarwal, J

Bench : Division Bench

Advocate : N.H. Gursahani and S.H. Gursahani, for the Appellant; C.R. Dalvi and S.G. Page, A.G.P., for the Respondent

Judgement

S.N. Khatri, J.

1 This is an appeal by the two contemnors who have been ordered by a learned Single Judge of this Court to be detained in Civil Prison for a month and to pay a fine of Rs. 200/- each for committing civil contempt.

2. The material facts are not in dispute and they are these: The first contemner Uttam is the son of one Rukmini. The second contemner Shyam is her son-in-law. The first respondent Jayant Bhalerao (hereafter for short "the plaintiff") instituted Regular Civil Suit No. 2475 of 1980 in the Pune Small Causes Court for eviction of the first contemner from a house, bearing C.T.S. No. 851/2, Bhandarkar Institute Road, on three grounds, namely, default in payment of rent, unlawful sub-letting and the tenant's having acquired an alternate suitable residence. The two sub-tenants were also impleaded as defendants Nos. 2 and 3. They are not parties before us. This suit was decreed by the Small Causes Court on 15th February, 1982 and the first contemner was directed to deliver possession of the premises (hereafter, for short "the suit premises") to the plaintiff. Here it may be noted that the second contemner was not a party to that suit. The first contemner carried an appeal to the Pune District Court, being Civil Appeal No. 456 of 1982. The appeal came up before the learned District Judge,

Pune, for hearing on 15th July, 1983. On that day, the two contemnors filed an undertaking (Ex. 21) before the learned District Judge. We extract the material part of this undertaking :

"We, Uttam.....and Shyam.....do hereby state on solemn affirmation that the appellant who is the original Deft. No. 1 accept the decree of the lower Court. However, his brother-in-law Shyam.....is in occupation of the said suit premises; hence we both undertake to deliver the actual, vacant and peaceful possession of the suit premises by 30th June, 1984 to the plaintiff."

The learned District Judge accepted the aforesaid undertaking given by the two contemnors and with consent of the plaintiff, passed a decree in terms thereof.

3. The contemnors did not abide by their undertaking. They did not deliver possession of the suit premises to the plaintiff by the agree date, inspite of his sending telegraphic reminders to them. The stand taken by them was that Rukmini was in possession of the premises, being the plaintiff's tenant. As she was not disposed to vacate the premises, the contemnors pleaded their inability to comply with their undertaking. The helpless plaintiff moved this Court in contempt. The two contemnors put in their appearance and reiterated their aforesaid stand before the learned Single Judge in separate affidavits filed by them.

4. The learned Single Judge by an exhaustive order, held both contemnors responsible for wilful breach of their undertaking. He rejected their contention that it was Rukmini who was in actual possession of the premises and was acting as an obstacle in their way. The learned Judge also gave an opportunity to the contemnors to purge the contempt and adjourned the matter. However, the contemnors did not budge and stuck to their stand. Eventually the learned Single Judge passed the order as indicated in the opening paragraph of this judgment.

5. Now before us Shri Gursahani who appears for the two contemnors, very fairly concedes that the alleged contempt stands proved against both of them. He points out that after the learned Single Judge made his order on 11th December, 1984, the contemnors have handed over possession of the premises to the plaintiff on 17th December, 1984 and purged the contempt. In the circumstances, he requests for leniency.

6. Shri Gursahani has rightly not challenged the merits of the findings of the learned Single Judge. Even otherwise, the impugned order is supported by very sound reasons. These exhaustive reasons are recorded in paragraphs 11 to 14 of his judgment. We are in entire agreement with the same. It is not necessary to repeat them here. Without dilating further, we affirm the finding of the learned Single Judge that both contemnors are guilty of committing wilful breach of their undertaking.

7. The next and the crucial question that falls for our consideration is whether the punishment imposed by the learned Single Judge should be modified in any

way. We have given our anxious thought to this aspect and have finally come to the conclusion, not without reluctance that the present is a case where the contemnors do not deserve any leniency. We proceed to state our reasons.

8. We may first advert to certain material facts disclosed in the judgment of the trial Court. The first contemner had taken a defence in that Court that it was his father Hundrajmal, and not he himself, who had initially taken the suit premises on lease. On Hundrajmal's death, the tenancy devolved on Rukmini and as such she was a necessary party to the suit. The learned Judge examined the evidence before him and came to a firm conclusion that it was the first contemner and not his father or mother who had initially taken the premises on lease from the plaintiff's father. That Court based this finding on a number of rent receipts issued by the landlord over a long period of 7 years from 1963 to 1970. The counterfoils proved by the plaintiff showed that the rent receipts were issued in favour of the first contemner himself as tenant. The genuineness of the counterfoils could not be doubted, because they bear countersignatures of the first contemner or his father or sister. The learned Judge also relied on 3 letters (Exh. Nos. 62 to 64) written by the first contemner to the plaintiff, which clearly show that he was the tenant of the premises. The defence of this contemner that initially his father (and subsequently Rukmini) was the tenant of the suit premises was thus without any merit whatever.

9. It is an admitted position that in 1975, the first contemner built a big bungalow with 9 rooms in Pune in Aundh locality and shifted there. The trial court's finding was that he was residing there with all members of his family and that the suit premises were in occupation of his sub-tenants. The record also shows that the voters list for Aundh locality (Exh. 48) was produced before the learned Single Judge. In this list Rukmini is shown as residing in the aforesaid bungalow of the contemner. On this state of evidence, the learned Single Judge was absolutely right in coming to the conclusion that Rukmini was not in actual possession of the suit premises at any material time.

10. In spite of the aforesaid clear factual position of which both contemnors had personal knowledge, they persisted in taking a blatantly false stand before the learned Single Judge that they were incapacitated by Rukmini from complying with the solemn undertaking they had given to the District Court. It is obvious that the constraint pleaded by them was just a ruse to hoodwink the Court and set at naught the undertaking. They did not care to purge the contempt, even when the learned Single Judge granted them an opportunity to do so. There cannot be two opinions that the contempt is gross, deliberate and persistent.

11. One aspect of the present case particularly pains us. The first contemner is a Graduate in Science and a responsible Government Building Contractor. The second contemner is again a Graduate in Engineering and is gainfully employed with a Delhi firm as Mechanical Engineer. It is not as if they are rustic simpletons who do not have the intellectual capacity to appreciate the seriousness of an undertaking given by them to Court of justice. We are conscious of the position,

even as the learned Single Judge was, that in a matter of civil contempt, the central purpose is not to punish the contemner, but to give relief to the wronged party. We also firmly believe that justice gets all the more just and elevated in its majesty, when tempered by mercy. But there is a limit to which this grace can go. Mercy and grace will have no opinion but to stay back, where they unfortunately stand confronted, as in the instant case, by two recalcitrant contemnors, who despite their high education, responsible station in life and availability of means, embark upon a misadventure of flouting a solemn undertaking given to a Court of Justice and persist in the perpetration of a gross contempt. The two contemnors would have been better advised to head the warning of the learned Single Judge. Of late, we are noticing a growing tendency amongst litigants to take solemn undertakings lightly and commit their breach with impunity. We are clear that we will be setting a bad precedent, if in the present case we take a lenient view and interfere with the quantum of the punishment ordered by the learned Single Judge.

12. We are aware that the contemnors have purged the contempt on 17-12-1984 after the learned Single Judge's order. But this was only after they had foreclosed all other options. Now they are further willing to offer an unconditional apology. To treat such an apology as bona fide will be indulging in self deception. The obvious purpose of such an apology is to wriggle out of the difficult situation in which the contemnors have landed themselves of their own will. We have accordingly no hesitation whatever in confirming the order of the learned Single Judge in its entirety and dismiss this appeal with costs. The contemnors will pay the costs in two sets for plaintiff and the State of Maharashtra, quantified at Rs. 300/- each.

13. At the request of Shri Gursahani, the operation of this order and that of the learned Single Judge is suspended upto 20th August, 1986.