

**(1997) 03 KAR CK 0032**

**In the Karnataka High Court**

**Case No :** (Criminal) Original Second Appeal No. 3 of 1997

Webbs Sales and Service (Private) Limited, Bangalore

APPELLANT

Vs

Bharat Petroleum Corporation Limited, Bangalore and Others

RESPONDENT

---

**Date of Decision :** 31-03-1997

**Acts Referred:**

Contempt of Courts Act, 1971 — Section 15(1)  
Karnataka High Court Act, 1961 — Section 4

**Citation :** (1997) 3 KarLJ 355

**Hon'ble Judges :** M. B. Vishwanath, J;M. F. Saldanha, J

---

## **Judgement**

M.F. Saldanha, J.-We have heard the petitioners' learned Advocate at some length. We had issued notice to the State for a limited purpose in so far as the petitioners' learned Advocate had contended that an appeal to the Division Bench is maintainable on the criminal side against an order passed by a learned single Judge of this Court. This contention proceeded on the footing that Section 4 of the Karnataka High Court Act, 1961, which provides for inter-Court appeals from a single Judge to a Division Bench of this Court contains the clause:-

"An appeal from a judgment, decree, order or sentence passed by a single Judge in the exercise of the original jurisdiction of the High Court under this Act or under any law for the time being in force, shall lie to and be heard by a Bench consisting of two other Judges of the High Court". The reference to the word "sentence" in this section has prompted the petitioner's learned Advocate to contend that it is self-evident that an order or judgment of a learned single Judge in a criminal proceeding wherein a "sentence" has been passed would be appealable. The learned Additional Special Public Prosecutor who had earlier argued the matter and the learned Special Public Prosecutor who now appears have contended that this presupposes the fact that the order was passed in exercise of the original jurisdiction and that it does not contemplate a situation where the Court is exercising appellate or supervisory powers. This contention is undoubtedly correct because it is well-settled that no such appeal is either contemplated or maintainable from an order passed by a learned single Judge

sitting on the criminal side. Under these circumstances, we need to hold that the present appeal cannot be entertained as it is not maintainable. The Registrar General shall however forward a copy of this order to the Government of Karnataka and it shall be specifically brought to the notice of the Law Minister as it is very clear that the wording of Section 4 of the Act particularly the use of the word "sentence" will require either an amendment or deletion. Unless this is done, proceedings of the present type could be filed and would create difficulties to the Court.

2. In the course of the arguments, which did proceed for a considerable period of time we were required to scrutinise the record of this case threadbare. To say the least, the record makes shocking reading. We find that there is a Public Sector Corporation involved in this litigation and that this Corporation through its Chief Regional Manager had filed a suit before the City Civil Court which, to say the least, has been very mischievously drafted as far as certain material particulars are concerned. The facts of this case do not leave much scope for dispute in so far as the petitioner's before us are the owners of the property in question and the lease had been executed in the year 1970 for a period of 25 years with the then Burmah Shell Oil Storage and Distributing Company of India Limited. The plaintiffs before the Civil Court contend that they are the successors in title of the original lessee. The lease was executed for a period of 25 years and the lease had expired on 30-9-1995. The record which we have scrutinised very clearly indicates that this lease was never renewed by the owners. On the contrary, the record indicates that irrespective of the execution of the lease that the owners themselves had been appointed as dealers and that the petrol pump or station as the case may be, was being run by them. They contend that for a variety of reasons, the continuation of such an installation in that area was contra-indicated and according to them, the authorities themselves had directed them, from the angle of safety, not to continue with that business. It is their case that the licence stood in their name which is borne out by the record and that in view of the aforesaid situation they had surrendered the licence, stopped the business and kept the premises locked since 30-9-1995.

3. The plaint filed before the City Civil Court briefly sets out the background of the case. The contention raised is that the plaintiffs are the successors in title to the original lessees and that according to them, they are entitled to continuation of the lease. Significantly enough, if there was any substance in this contention, the action for continuation of the lease ought to have been instituted prior to its expiry as once the lease has expired, it would be difficult to conceive of any continuation. All this has been cleverly suppressed and a bald contention has been raised that the plaintiffs are entitled to continuation of the lease and a declaration to that effect. The fact that the owners themselves were running the installation has not been stated in the plaint. The fact that the licence was surrendered and that the installation was closed has not been stated and has obviously been suppressed deliberately and further more, the most important aspect of the matter namely the fact that the plaintiffs were only the lessees on

paper and that in fact the possession of the installation during the entire period of 25 years was with the defendants and that at no stage had they handed over the possession to the plaintiffs or for that matter had the plaintiffs been given possession of the premises has again been very cleverly suppressed from the Court. This is far from honest. With this material, an averment has been made that the possession of the plaintiffs is likely to be obstructed and that in this background, an injunction order should be passed by the Court in favour of the plaintiffs restraining the defendants from interfering with their possession. It is condition precedent that the plaintiffs must first make out an unimpeachable case to the satisfaction of the Court that they are in lawful possession of the premises and it is only thereafter that such a prayer can be made. Despite this, unfortunately, an injunction order was passed and subsequently, that order was confirmed in appeal by a learned single Judge of this Court. We do not propose to say anything with regard to those orders because that is an entirely different jurisdiction and in any event, the orders in question are only interim orders.

4. What has emerged in the course of the hearing however is that the present case presents a massive fraud played on the Trial Court which was carried through again when the matter came in appeal to the High Court and this presents a very serious situation vis-a-vis the justice dispensation system. It has unfortunately become customary in certain circles to make false statements before a Court, suppress relevant facts and material and obtain injunction orders by misleading the Court and thereafter under the guise of the injunction order to forcibly take possession of the premises in dispute and to then try to hold on to that possession. This is prima facie the modus operandi that has been followed in this case. Even though the appeal filed is not maintainable, these disturbing facts have come to the notice of this Court and it is impossible to us to shut our eyes to atrocities of this type. Prima facie, there can be little doubt about the fact that this material would indicate that it is imperative for this Court to issue suo motu notice and take action under the Contempt of Courts Act in so far as such acts do seriously interfere with and impede the administration of justice.

5. In order to satisfy ourselves that the material placed before us does justify such a course of action, we have called for and looked at the entire record of this case and we have found from the Affidavit filed on behalf of the plaintiffs that the plaintiffs after having obtained the order from the Civil Court in the aforesaid circumstances went and took forcible possession of the premises and there is a clear unequivocal admission of this fact in the counter-affidavit dated 8-11-1996 filed by one G.V.K. Raju, senior Divisional Manager of the Bharat Petroleum Corporation. This material clearly establishes that even after having obtained the order from the Civil Court that the respondents virtually took the law into their own hands.

6. The facts of this case present an extremely grave situation and it is our considered view that unless this Court were to take stringent action in situations of this type that it will result in not only undermining but an absolute mockery of

the working of the Courts. We therefore dispose of the present appeal which is not maintainable and we direct the office to register it as a contempt proceeding against the respondents on the basis of suo motu action that is being taken by this Court. The present petitioners shall be required to file an affidavit setting out in detail the facts of this case with all necessary supportive documents as these will be necessary for the Court hearing the contempt proceeding. Notice shall be issued to the respondents to show-cause as to why action for having committed criminal contempt should not be taken against them. The notice shall also call upon the respondents to show-cause as to why appropriate orders should not be passed against them for purposes of stopping the continuation of the contempt. It is well-settled law that a party in contempt cannot be permitted to enjoy the benefits of such contempt or to continue in contempt even during the pendency of the contempt proceedings and the respondents shall therefore show-cause to this Court within a period of three weeks of the service of notice as to why appropriate injunction orders should not be passed against them. They shall also explain as to how and under circumstances the respondents have inducted a third party to run the installation.

7. With these directions, this appeal to stand disposed of.

8. In the light of the last direction, the office shall list the contempt petition for orders immediately after service. Alternatively, it shall be open to the present petitioners to move the Court for appropriate orders immediately after service.