

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 16.05.2012  
% Judgment delivered on: 17.05.2012

+ **FAO(OS) 206/2012**

INDIAN PILOTS' GUILD ..... Appellant

versus

AIR INDIA LTD ..... Respondent

**Advocates who appeared in this case:**

For the Appellant: Mr. Dushyant Dave, Sr. Adv. with Ms. Faranaaz Karbhari, Ms. Nandini G., Mr. Darpan Wadhwa, Ms. Aditi Bhatt, Ms. Abhiruchi M. & Mr. Kartik Bhatnagar, Advocates.

For the Respondents: Mr. Lalit Bhasin, Ms. Neena Bhasin, Mr. Sanjay Gupta, Mr. Mudit Sharma, Ms. Shriya Dabas, Ms. Shweta Shukla & Ms. Bhavna D., Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**SANJAY KISHAN KAUL, J**

**FAO(OS) No. 206/2012 & CM Nos. 8974/2012 (stay) & 8976/2012 (for suit record)**

1. This Appeal brings to fore the competing rights of parties in a lis, which has its genesis in the merger of two national air carriers, i.e., Air India and Indian Air Lines. In this, internecine and passionate battle of rights there are several dramatis personae. The appellant, which is a trade union representing evidently 600 pilots of erstwhile Air India is one such party, the respondent

which is the management is the other party. But there is an important party to this list which, often goes unrepresented, which is, the passenger. The respondent, that is, the management, in this litigation, seeks to represent this powerless, but important player, i.e., the passenger. One may or may not be able to decipher the motive of the respondent for doing so, but surely, as is well known, of which we can take judicial notice, that the respondent would find it difficult to survive if the passenger were to give up on it. This is apart, from the fact that, a national carrier is required to fulfill certain social obligations by connecting remote parts of the country, which may not be, economically gainful for private players presently operating in the aviation industry.

1.1 There is also another element of large public funds being infused to keep the respondent organization afloat. A private organization would have wound up given the financial constraints of the respondent but it is the infusion of public funds by the Government of India (GOI) which has kept the respondent afloat. In such difficult times all stake holders have to make sacrifices and the endeavour should be to rescue the organization from the financial difficulty, it finds itself in. On the other hand the members of the appellant appear to have taken the movement as an opportunity to raise issues about their alleged rights pending consideration before the competent court to bring the functioning of the respondent to a stand-still. The action of the appellant thus, is undoubtedly contrary to public weal.

2. With this preface articulated, what presently ails the appellant is this: The appellant is aggrieved by the ex-parte order dated 09.05.2012, passed by a learned Single Judge of this Court, whereby the appellant (original defendant no.1) has been restrained from continuing with: *"illegal strike and/or reporting sick and/or staging demonstrations, dharnas, gheraos etc. inside and outside the*

*premises of the plaintiff - company located at the Airports, Terminals, Head Offices and all other offices of the plaintiff - company including the residence of the officers of the plaintiff - company. The defendant no. 1, its members and all others acting on its behalf are further restrained from obstructing ingress and egress from the Head Office, the Regional Offices or any other offices/ branches and counters of the plaintiff-company, wherever these are...."*

3. The aforementioned order has been passed broadly in the context of the following facts. These facts are gleaned by us from the record, which is, the plaint and the documents filed alongwith, as also, the averments made in the appeal.

3.1 It appears that in 2005, the erstwhile Air India had placed orders for 50 Boeing aircrafts of which, 23 were Boeing 777 and 27 were Boeing 787. Similarly, it appears that the erstwhile Indian Airlines placed an order for 43 Airbus aircrafts. It is the stand of the appellant before us, that the 43 Airbus aircraft have been delivered and are being operated only by pilots who were earlier employed by the erstwhile Indian Airlines. On parity, the appellant claims exclusive rights to train on and fly Boeing aircrafts, to the exclusion of the pilots employed by the erstwhile Indian Airlines.

3.2 It is the stand of the appellant that in 2007, just prior to the merger of Air India with Indian Airlines a wage agreement was entered into between the pilots of the Air India and the then management of Air India which envisaged the induction of twelve (12) Boeing 787 aircrafts and on its completion, the pilots who would command the said aircrafts would get enlisted as per the seniority list related to Boeing 747-400 Boeing 777/A310.

3.3 Admittedly, the merger was sanctioned, under a scheme of amalgamation, by the Ministry of Corporate Affairs vide order dated 28.02.2007. Upon merger

a new company by the name of National Aviation Company of India Ltd. (hereinafter referred to as the NACIL), came into existence while, the erstwhile transferor companies, i.e., Air India and Indian Airlines dissolved without being wound up. The business of Air India and Indian Airlines was consolidated into NACIL. However, the name of NACIL was changed to Air India Ltd. (which is the respondent in the present proceedings) w.e.f. 24.11.2010.

3.4 It is averred by the appellant that in 2008 when, delivery of Boeing 777 was to be made the respondent attempted to send pilots from erstwhile Indian Airlines for training, on the said aircrafts. This led the appellant to file a writ petition bearing no. 1615/2008 in the High Court of Bombay. According to the appellant, in the writ petition, restraint orders were sought against the respondent against unilateral and arbitrary alteration of service conditions as contained in the wage agreement. Apparently, a prayer was also made against pilots of erstwhile Indian Airlines being trained on Boeing 777 aircrafts. It is also averred by the appellant that on 26.02.2009, a deed of recognition was signed between the appellant and the respondent whereby broadly, it was agreed that if the aforementioned writ petition was withdrawn, the issue raised in the writ petition could be discussed and mutually settled, and that, training on Boeing 777 aircraft would involve only the pilots employed by erstwhile Air India.

3.5 Evidently, the said writ petition was withdrawn on 25.02.2010, as claimed by the appellant, after taking the deed of recognition on record. The matter apparently did not end here, as according to the appellant it received information about the respondent engaging the representatives of the Indian Commercial Pilots Association (hereinafter referred to as ICPA) (which as we understand represents the pilots of erstwhile Indian Airlines) with a view to convey to them,

that the crew required for flying Boeing 787 aircraft would be drawn in equal measure from both airlines. This fact was evidently communicated by the appellant to the respondent on 16.11.2010.

3.6 There is an averment also to the effect that a meeting was held on 23.03.2011, between the representatives of the appellant and the respondent wherein assurances were given that the pilots from the erstwhile Indian Airlines would be engaged on Boeing 777 and 787 only after exhausting the resources available from amongst those who were employed with the then Air India. This aspect evidently is, recorded according to the appellants, in the minutes of the meeting 13.04.2011.

3.7 Undeniably, a notification was issued on 11.05.2011, constituting a committee headed by Justice Dharmadhikari (as he then was) to examine the aforesaid issues including the aspects of integration of cadres and determination of inter se seniority.

3.8 The respondent it appears was concerned with effective cross-utilization of valuable human and material resources available in the two airlines and hence, apparently took a policy decision that in so far as Boeing 787 aircrafts were concerned, pilots would be sent for training from the two airlines in the ratio of 1:1. In this regard a meeting was held apparently amongst the representatives of the appellant, the ICPA and the respondent on 08.10.2011. It is the stand of the respondent, in paragraph 7 of the plaint that, an agreement was arrived between the parties referred to above, to the effect that at least eight (8) sets of pilots would be sourced from the two airlines for being trained on Boeing 787 aircraft. We observe that the appellant has averred, similarly, in paragraph 7(xiv) of the appeal, though with a caveat. The averment of the appellant is while they had agreed to consider a simultaneous movement of

pilots from the two airlines, it was only in respect of the first Boeing 787 aircraft and that too subject to certain conditions. The offer, according to the appellant, was conditional. The respondent on the other hand has pleaded that the appellant after agreeing had resiled from the agreement arrived at the meeting dated 08.10.2011, by issuing a letter dated 18.10.2011.

3.9 The appellant being of the view that drawing of pilots from the two streams would be contrary to the earlier agreement and assurances and would possibly render the proceedings before the Committee headed by Justice Dharmadhikari, a mere formality, instituted a writ petition in the Bombay High Court, on 29.10.2011. The writ petition was numbered as: WP(L) No. 2399/2011; wherein a challenge was laid to the action of the respondent of reserving one-half of its training slots, on new Boeing 787 aircrafts, for pilots earlier engaged with Indian Airlines. In the aforementioned writ petition the Bombay High Court granted an interim order dated 13.03.2012. The upshot of the said interim order is that, the Bombay High Court restrained the GOI from changing the position then obtaining, to the disadvantage of the appellant till such time a final decision was taken by the GOI qua the Justice Dharmadhikari Report.

4. The ICPA, being aggrieved, by the order dated 13.03.2012, passed by the Bombay High Court, preferred a special leave petition bearing no. 13046/2012. The Supreme Court on 23.04.2012, while issuing notice in the said special leave petition passed the following order:

"Issue notice.

Operation of the impugned order shall remain stayed pending further orders of this court.

We make it clear that the training imparted to the members of the petitioner- association shall remain subject to the final outcome of the writ petition and shall not prejudice the rights and contentions

of the writ petitioners before the High Court in any manner.

The High Court is requested to expedite the hearing of the main petition and dispose the same off as far as possible within six months."

4.1 Evidently, on 13.04.2012, ICPA became ambitious and filed an IA bearing no. 2/2012 in the pending special leave petitions preferred by them seeking broadly that; pilots from erstwhile Air India should not be sent on training on Boeing 787 aircraft until the ratio of 1:1 is achieved. The said application was disposed of by the Supreme Court on 02.05.2012, on an assurance of the respondent that, equal number of pilots would be deputed from both airlines w.e.f. 08.05.2012. Accordingly, the said IA was disposed of by the Supreme Court.

4.2 On the very same day apparently representations were sent by the appellant to the Minister of Civil Aviation, Chairman and Managing Director of the respondent and the Secretary to the Govt. of India, M/o Civil Aviation. It is averred that the ICPA also filed a writ petition in this court, in which, the appellant has been impleaded and permitted to make submissions.

5. What evidently has brought about consternation, in so far as the respondent is concerned, is the continued confrontationist attitude of the members of the appellant. The members of the appellant, according to the respondent, have resorted to illegal concerted actions, which include failure to report for duty. Consequently, the flights which were scheduled for destinations such as, New York, Chicago, Toronto on 4th, 5th and 6th May, 2012 had to be rescheduled, which resulted in delay in excess of 14 hours. The device of sickness adopted by the members of the appellant forced the respondent to send the doctors at the residence of the pilots, which revealed in some cases that the pilots were not sick, and in the others, the concerned pilots refused to co-operate

with the doctors. It is averred by the respondent that the continued illegal strike of the members of the appellant had resulted in disrupting the flight schedules, causing not only inconvenience to thousands of passengers but also a huge financial loss. It appears that prior to the institution of the suit, the respondent on account of the impugned actions of the members of the appellant, had to cancel nearly 24 flights.

6. As averred by the respondent, the strike called by the appellant, is in violation of Sections 22 and 24 of the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act). The reason for labeling the strike "illegal" by the respondent is the lack of statutory notice before proceeding on strike.

7. We may also note that the conciliation proceedings had also been set in motion, which required the parties to re-convene on 09.05.2012 at 2.30 p.m. The premise of such conciliation was that the members of the appellant would withdraw the agitation and restore normalcy qua operations, and the respondent, on the other hand, would continue with bilateral discussion with the appellant, to resolve the stalemate.

8. It appears, given the logjam, the respondent moved this court by way of the instant suit for permanent injunction and declaration, on 09.05.2012. It is in the suit that, the impugned order has been passed by the learned Single Judge.

9. To complete the narrative, we may also record that on 10.05.2012 the respondent filed a contempt petition in the Supreme Court, being : C.P. (Crl.) No. 3/2012 in the pending Special Leave Petition No. 13046/2012. The contempt petition came up for hearing before the Supreme Court on 11.05.2012, when the Court was pleased to post the contempt petition alongwith the Special Leave Petition after summer vacation.

10. In the background of the aforesaid Mr Dushyant Dave, Sr. Adv. alongwith with Mr Darpan Wadhwa, instructed by Ms. Faranaaz Karbhari, Advocate advanced arguments on behalf of the appellant, while Mr Lalit Bhasin, advocate alongwith Ms. Neena Bhasin appeared for the respondent/caveator.

10.1 Mr Dave broadly submitted as follows:

(i) The impugned order of the learned Single Judge was without jurisdiction, in as much as the subject matter of the dispute could be entertained and tried only by the labour court. In this regard, Mr Dave, drew out attention to Section 7 read with item no. 5 of the second schedule of the ID Act. It was his contention that the issue pertained to the “illegality” or “otherwise” of a strike called by the appellant and hence such a dispute could only be entertained and tried by the labour court. In support of his contention the learned Senior counsel relied upon the following judgments of the Supreme Court: ***Rohtas Industries Ltd. & Anr. vs Rohtas Industries Staff Union & Ors. (1976) 2 SCC 82, Premier Automobile Ltd. vs K.s. Wadke (1976) 1 SCC 496 and Syndicate Bank & Anr. vs K. Umesh Nayak (1994) 5 SCC 572.***

(ii) It was contended that the impugned order was passed in gross violation of the principles of natural justice, in as much as, the learned Single Judge ought to have put the appellant to notice before passing an adverse order. Dilating upon this submission, Mr Dave contended as follows: Firstly, the court ought not to have passed impugned order in such case. Secondly, the single Judge ought to have known the law on the issue, i.e., that the jurisdiction qua industrial disputes lay only with the labour court under the ID Act. Thirdly, if the learned Single Judge was so disposed as to pass an ex-parte order, it should have recorded reasons for doing so and in any event could not have given a date beyond thirty (30) days, since it is incumbent on the court to decide an interlocutory

application under Order 39 Rule 1& 2 of the Code of Civil Procedure, 1908 (in short Code) within the said time frame. In this regard reliance was placed on the provisions of Order 39 Rule 3A. In support of this submission, Mr Dave placed reliance on the judgment of the Supreme Court in the case of **A. Venkatasubbiah Naidu vs S. Chellappan & Ors. (2000) 7 SCC 695.**

(iii) Lastly, it was argued that the appellant need not have approached the single Judge by way of an application under Order 39 Rule 4 of the Code for vacation and/or for modifying the impugned order, and that, it could straight away file an appeal before the Division Bench. In support of this submission once again reliance was placed on the judgment in **A. Venkatasubbiah (supra)** and a Division bench of this court in **Shri Jayesh Kanaiya Lal Shukla vs RFCL Ltd. 2010 (43) PTC 357.**

10.2 Mr Dave thus, in nutshell submitted that, the impugned order being completely without jurisdiction required interference by the appellate court.

11. On the other hand, Mr Bhasin contended that the action of the members of the appellant was completely illegal and in contravention of Section 22 and 24 of the ID Act. It was further contended that admittedly no notice, which is a statutory requirement, under Section 22 of the ID Act was served prior to the appellant calling for a strike. It was Mr Bhasin's submission that the concerted action of the members of the respondent of reporting sick for duty was nothing but a strike, and being without notice, was completely illegal. On the aspect of jurisdiction, it was Mr Bhasin's contention that, the issue raised in the suit was not a pure industrial dispute but, had its basis in general and common law, giving it the right to approach a civil court against continued illegal actions which, affected the passengers and the interest of the respondent. It was Mr Bhasin's contention that the labour court had no powers to issue final and

interim orders of the nature sought for by the respondent in the suit and hence, the jurisdiction of the civil court could not be said to be ousted, as was contended by the appellant. It was Mr Bhasin's contention that, from time to time this court, even on earlier occasions, has protected the interest of the passengers by passing interim directions of like nature as are found contained in the impugned order.

12. Having heard the learned counsels for the parties and perused the record, in our view, the following essential facts have emerged:

(i) On 08.10.2011, at a meeting held amongst the representatives of the appellant, the respondent and the ICPA some sort of agreement was arrived at (entire details of which may emerge at trial) where the appellant had communicated that it was willing to consider simultaneous movement of pilots from both trade unions subject to certain conditions.

(ii) This understanding, however, was given a go-by by the appellant by shooting of a representation to the respondent on 18.10.2011.

(iii) The aforementioned was followed by the appellant by instituting a writ petition in the Bombay High Court being WP(C) No. 2399/2011, wherein the Bombay High Court granted an ad interim order on 13.03.2012. By virtue of this order, the Bombay High Court directed that the GOI would not change the position, as obtaining then, to the disadvantage of the appellant.

(iv) The said order was, however, stayed by the Supreme Court on 23.04.2012. This order was passed in the Special Leave Petition filed by the rival group, i.e., ICPA. In this order the Supreme Court while staying the operation of the Bombay High Court order observed that the training imparted to the members of the ICPA, shall be subject to the final outcome of the writ petition, and that, it shall not prejudice the rights and contentions of the writ

petitioners (i.e., the appellant herein). The Bombay High Court was also requested, by the very same order, to expedite the hearing of the writ petition and dispose of the same as far as possible within six months.

(v) By a subsequent order dated 02.05.2012, the Supreme Court in an interlocutory application moved by ICPA, observed, while disposing of the same, that the members from the two airlines would be deputed in equal number for training on Boeing aircrafts.

(vi) The said Special Leave Petition is pending disposal before the Supreme Court.

(vii) It also emerged that a contempt petition was moved in the aforementioned Special Leave Petition, which came up for hearing on 11.05.2012, when it was directed that the same be posted alongwith the Special Leave Petition after summer vacation.

(viii) Lastly, Justice Dharmadhikari Committee has submitted its report which is pending action before the GOI, Ministry of Civil Aviation.

13. Therefore, the issue with regard to whether or not pilots have to be sourced both from erstwhile airlines, i.e., Air India and Indian Airlines, for training, in the interregnum, while the writ petition is pending adjudication before the Bombay High Court, is pending adjudication before the Supreme Court. There is, therefore, in our view no justification whatsoever on behalf of the appellant to rock the boat, so to say, and resort to a concerted action which has resulted in disruption of the operations of the respondent – the impact of which, is undoubtedly, felt by the unsuspecting passenger. We must note here, however, that while Mr Dave in the opening had advanced lengthy arguments (for nearly two hours), on the basis that the action resorted to by the members of the appellant was a strike, strangely in the rejoinder, Mr Wadhwa, who also

appeared for the appellant, took the stand that the action resorted to by the members of the appellant was not a strike within the meaning of the ID Act. On being asked by the court to amplify his submission, Mr Wadhwa submitted that the members of the appellant had reported sick and hence their actions did not come within the ambit and the meaning of the term "strike". Since this argument destroyed the very edifice of an elaborate argument made in the opening, by Mr Dave, senior counsel that the legality of a strike cannot be adjudicated in the civil suit, we specifically put it to Mr Wadhwa, learned counsel arguing in rejoinder, whether he was sure as regards this aspect. Learned counsel took the instructions and categorically stated that the stand of the appellant is that they have not gone on strike. However, Mr Wadhwa contended that though the plea of the appellant is that they are not on strike, the plea of lack of jurisdiction qua the subject is based on a demurer. However, on perusal of the appeal we find that no such case has been set out by the appellant nor was the case presented in the opening arguments in this manner, as otherwise there was no need to spend almost two hours in the opening arguments. Furthermore, on the learned counsel being asked pointedly, as to whether the members of the appellant were willing to get examined by medical practitioners, the response was evasive to say the least. The moot question then arises can the appellant be said to be really aggrieved by the impugned order.

14. This brings us to the question as to whether the impugned order was without jurisdiction. Having perused the averments made in the plaint, and having regard to the fact that the Single Judge did not have before her the say of the appellant, it is quite obvious that the respondent's action is based on general and common law, though a part of its root may be embedded in the provisions of the ID Act. Prima facie, it appears to us that a civil court would be an

alternative forum for agitating the rights which the respondent seeks to pursue in the suit, before the learned Single Judge. We do not wish to say any more as the interlocutory application filed by the respondent has yet not been disposed of by the learned Single Judge. We may only note the principle enunciated by the Supreme Court in the case of *The Premier Automobiles Ltd.* (*supra*) to guide the learned Single Judge in determination of this like issue. These being:

“(i) if the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(ii) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(iv) If the right, which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.”

14.1 These principles are reiterated in the other judgments cited by the appellant.

14.2 It is not as if it is a clear case, as was strenuously contended by Mr Dave, of lack of subject matter jurisdiction of the civil court. As a matter of fact, Mr Wadhwa did contend that the reliefs sought in the suit and the interlocutory application, which seek prevention of disruption of operations of the respondent, and injunction on impeding ingress and egress to various offices of the respondent, were maintainable. In other words, reliefs (a), (c) to (e) were maintainable. His objection was to the relief sought for in prayer clause (b) of

the plaint. As to whether interim relief of the nature sought in the suit can be granted is also an issue which the learned Single Judge will have to address.

15. Apart from the contentions raised by Mr Dave with regard to subject matter of the jurisdiction, he also alluded to the fact that this court did not have even the territorial jurisdiction to entertain the suit. In this regard he adverted to the memo of parties set out in the plaint to demonstrate that the address of the appellant in the plaint was that of Mumbai. In our view, this submission is untenable as, a perusal of the averments in the plaint, in particular, paragraph 28 of the plaint, would show that the respondent has pivoted its claim to territorial jurisdiction of this court in entertaining the suit, on the ground that the strikes and agitations have been held by the members of the appellant even at Delhi. In the circumstances, it cannot be said that no part of cause of action arose in Delhi.

16. As regards the contention of Mr Dave that the learned Single Judge had acted beyond the mandate of law in passing the ad interim ex-parte order, in our view, such a contention is completely untenable and misconceived. The averments made in the plaint and the facts adverted to, by us, hereinabove, leave us in no doubt that the urgency of the issue and the larger public interest required the learned Single Judge to grant an ad interim ex-parte order. The contention of Mr Dave that, the returnable date of notice in the application, could not extend the period of 30 days, is in our view, again erroneous, as the 30 days period would fall within the vacation period of this court.

17. In any event, as we understand the ratio of the Supreme Court Judgment in the case of *A. Venkatasubbiah* (*supra*), it appears that it is not as if – on the court issuing a notice, in an interlocutory application, after granting an ex-parte orders, beyond a period of 30 days would by itself make the order illegal (see

paragraph 17 at page 700). The court is required under Rule 3A of Order 39, to make an “*endeavour*” to dispose of the interlocutory application within a period of 30 days, where injunction is granted without notice to the opposite party. The endeavour, in our view, can only be made with the assistance of the opposite party. This is more so given the hard reality of paucity of judges and the inability of the court to accommodate all matters, of equal urgency, given their large numbers at any given point in time. The desire to hear and dispose of matter of moment and urgency is not lost on the court. But then desire by itself, would not, help the cause unless the court has requisite resources available at its command. It is not as if the lawyers are always willing to confine their arguments to a specific time frame. Elaborate arguments are addressed even in ex-parte hearing and during hearing of applications for interim relief, in contested matters. A classic example of this is, the present appeal itself where arguments were advanced for more than two hours!

18. It is in this context that, we had at one stage suggested to Mr Dave to approach learned Single Judge by way of an application under Order 39 Rule 4 of the Code. We ought not to be given to understand that, in no circumstances a litigant can approach the appellate court by way of an appeal, prior to exhausting the remedy available under Order 39 Rule 4 of the Code. The facts and circumstances in each case have to be weighed by the appellate court before, interceding in such like matters. One of the premise on which the appeal has been predicated is the purported urgency in the matter and the long gap between the date of the impugned order and the returnable date given by the learned Single Judge as per the perception of the appellant. The urgency does not appear to exist at all if one was to consider the arguments made in rejoinder as it is the case of the appellant that they are not on strike.

19. In the given case, as noticed above, there is an additional fact, which has weighed with us in not interfering with the order of the single judge. This fact is, the action which the GOI is to take, on the report submitted by the Committee of Justice Dharmadhikari. We have no doubt that given the circumstances obtaining in the matter the respondent and GOI would act post haste to resolve the dead lock in the matter.

20. In the end we would like to say that we had asked Mr Dave, senior counsel for the appellant, to examine the controversy on a larger canvas as the public interest element was involved. Reasonable suggestions were made by learned counsel for the respondent that the members of the appellant are the employees of the respondent and that they should join their duties while conciliation proceedings can go on. We put this proposal to learned senior counsel for the appellant specifically as the appellant is in breach of the injunction order under appeal. Learned counsel, however, was not inclined to accept such a course of action and insisted that the appellant wanted a legal finding on the issues raised in the appeal. Thus, our endeavour to find a middle path was not successful.

21. Before we conclude we must also advert to another aspect which we had put to Mr Dave during the course of his submissions in court. This aspect pertains to the continued defiance of the members of the appellant in not reporting for work even after the passing of the impugned order by the learned Single Judge. We had specifically put to Mr Dave, as to whether, pending the institution of the appeal the members of the appellant had rejoined work. Mr Dave, quite candidly, informed us that, the members of the appellant had not done so. In our view, no litigant can avail of any discretionary remedy from the court by willfully and flagrantly disobeying the orders of the Court. In this

behalf Mr Dave had suggested since the order was without jurisdiction the members of the appellant could choose to ignore it. This submission is stated to be rejected. A litigant who is aggrieved by an order of the court should approach the same court or a superior court immediately to either ask for suspension or stay of the operation of the order which, according to him, is unsustainable in law. A litigant cannot allow the order to operate and not comply with the order. It is trite law that even orders which are without jurisdiction cannot be ignored by those towards whom the order is directed. It is also settled law that interim order passed, pending adjudication, on the issue of jurisdiction have to be complied with. Failure to comply with such orders, can trigger contempt proceedings against the violator who, can be visited with the necessary consequences if, found guilty of violating orders of the court. The following observations of the Supreme Court in *Tayabbhai M. Bagasarwalla & Anr. vs Hind Rubber Industries Pvt. Ltd. & Ors. (1997) 3 SCC 443* makes this abundantly clear where a similar argument was made:

“15. The next thing to be noticed is that certain interim orders were asked for and were granted by the Civil Court during this period. Would it be right to say that violation of and disobedience to the said orders of injunction is not punishable because it has been found later that the Civil Court had no jurisdiction to entertain the suit. Mr Sorabjee suggests that saying so would be subversive of the Rule of Law and would seriously erode the majesty and dignity of the courts. It would mean, suggests the learned counsel, that it would be open to the defendants-respondents to decide for themselves whether the order was with or without jurisdiction and act upon that belief. This can never be, says the learned counsel. He further suggests that if any party thinks that an order made by the Civil Court is without jurisdiction or is contrary to law, the appropriate course open to him is to approach that court with that plea and ask for vacating the order. But it is not open to him to flout the said order

assuming that the order is without jurisdiction. It is this principle which has been recognised and incorporated in Section 9-A of Civil Procedure Code (inserted by Maharashtra Amendment Act No. 65 of 1977), says Mr Sorabjee. Section 9-A reads as follows:

*“9-A. Where at the hearing of an application relating to interim relief in suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue.—(1) Notwithstanding anything contained in this Code or any other law for the time being in force, if, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the Court to entertain such suit is taken by any of the parties 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 setting 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 suit.*

*(2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction.”*

16. According to this section, if an objection is raised to the jurisdiction of the court at the hearing of an application for grant of, or for vacating, interim relief, the court should determine that issue in the first instance as a preliminary issue before granting or setting aside the relief already granted. An application raising objection to the jurisdiction to the court is directed to be heard with all expedition. Sub-rule (2), however, says that the command in sub-rule (1) does not preclude the court from granting such interim relief <sup>454</sup> as it may consider necessary pending the decision on the question of jurisdiction. In our opinion, the provision merely states the obvious. It makes explicit what is implicit in law. Just because an objection to the

jurisdiction is raised, the court does not become helpless forthwith — nor does it become incompetent to grant the interim relief. It can. At the same time, it should also decide the objection to jurisdiction at the earliest possible moment. This is the general principle and this is what Section 9-A reiterates. Take this very case. The plaintiff asked for temporary injunction. An ad interim injunction was granted. Then the defendants came forward objecting to the grant of injunction and also raising an objection to the jurisdiction of the court. The court overruled the objection as to jurisdiction and made the interim injunction absolute. The defendants filed an appeal against the decision on the question of jurisdiction. While that appeal was pending, several other interim orders were passed both by the Civil Court as well as by the High Court. Ultimately, no doubt, the High Court has found that the Civil Court had no jurisdiction to entertain the suit but all this took about six years. Can it be said that orders passed by the Civil Court and the High Court during this period of six years were all non est and that it is open to the defendants to flout them merrily, without fear of any consequence. Admittedly, this could not be done until the High Court's decision on the question of jurisdiction. The question is whether the said decision of the High Court means that no person can be punished for flouting or disobeying the interim/interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of the Rule of Law and would seriously erode the dignity and the authority of the courts. We must repeat that this is not even a case where a suit was filed in the wrong court knowingly or only with a view to snatch an interim order. As pointed out hereinabove, the suit was filed in the Civil Court bona fide. We are of the opinion that in such a case the defendants cannot escape the consequences of their disobedience and violation of the interim injunction committed by them prior to the High Court's decision on the question of jurisdiction.

17. In *Shiv Chander Kapoor v. Amar Bose*<sup>2</sup>, J.S. Verma, J. speaking for a three-Judge Bench observed thus, with reference to the statement of law at pp. 351-53 of *Wade's Administrative Law* (6th Edn.): (SCC p. 247, para 23)

‘[V]oid’ is meaningless in an absolute sense; and ‘unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders’. In the words of Lord Diplock, ‘the order would be presumed to be valid  unless the presumption was rebutted in competent legal proceedings by a party entitled to sue’

23. In *Hadkinson v. Hadkinson*<sup>11</sup> the Court of Appeal held:

‘It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in *Chuck v. Cremer*<sup>12</sup> (at p. 342):

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

Such being the nature of this obligation, two consequences will, in general follow from its breach. The first is that anyone who disobeys an order of the court (and I am not now considering disobedience of orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the court by such a person will be entertained until he has purged himself of his contempt.”

**32. Insofar as Defendant 2 (Shri K.S. Jhunjhunwala) is concerned, the order of the Civil Court holding him guilty of contempt and sentencing him to one month's imprisonment is affirmed.**”  
(emphasis is ours)

21.1 The observations of the court also make it clear that just because an objection as to the jurisdiction of the court is raised (assuming the appellant were before the learned Single Judge had raised such an objection) the court is not helpless or incompetent to grant interim relief pending determination of the objection to its jurisdiction.

22. We may also note that in this case, Mr Dave had sought to contend that the respondent had moved an application for contempt before the learned Single Judge, which was withdrawn. Mr Bhasin in rebuttal explained that the said application was withdrawn keeping in mind the fact that such overt action on the part of the respondent, should not result in vitiating the atmosphere that the respondent was seeking to create, to arrive at an amicable settlement with the members of the appellant, to break the ensuing dead lock.

22.1 It would be trite to say that ultimately the issue of disobedience of the order by a litigant is an aspect which is largely between the violator of the order and the court. A party to the litigation may be an initiator of such proceedings but that would not necessarily deprive the court of the power to take cognizance

of such violation by a litigant. In this case, we have no doubt that the members of the appellant are and continue to be in violation of the order of the learned Single Judge. Since we are not entertaining the appeal and the order of the learned Single Judge stands, the members of the appellant would be well advised to comply with the orders of the learned Single Judge, failing which it would be open to the learned single Judge pending decision on the interlocutory application to proceed under the Contempt of Courts Act, 1971, the provisions of Order 39 rule 2A of the Code and the attendant powers which the court has under the Constitution of India, as a court of record, against the members of the appellant.

23. In the aforesaid circumstances, we are not inclined to entertain the appeal. The appeal is, accordingly, dismissed. The appellant, however, is at liberty to approach learned Single Judge to vacate, modify or vary the impugned order. Needless to say any observations made by us hereinabove, are recorded, only for the purposes disposal of the present appeal. The observations made by us will not impact either the disposal of the pending interlocutory application or the trial of the suit.

24. It is ordered accordingly.

SANJAY KISHAN KAUL, J.

RAJIV SHAKDHER, J.

MAY 17, 2012

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