

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 279, 362 AND 626 OF 2006

WRIT PETITION NO. 279 OF 2006

Sachin Y.Mense,
son of Shri Yalloji N. Mense,
major, married, resident of
Flat no. 15-S1, Kamat Gardens,
Near St. Xavier's College,
Altinho, Mapusa, Goa.

..... Petitioner

V e r s u s

1. Shri Sunil Noronha,
major, resident of 15-A,
Shiriji Complex, Next to
Manoshanti Hotel, Dada Vaidya
Road, Panaji, Goa.

2. Shri Jude G. Tandon,
Major, resident of Pacons
Villa, 12th Road, Catholic
Colony, Chembur, Mumbai.

3. M/s. Stafford Equipments (Goa) Pvt. Ltd.,
a company constituted under the
Companies Act, 1956, with
regd. Office at 15-A, Shiriji
Hotel, Dada Vaidya Road,
Panaji, Goa.

..... Respondents

Mr. P. P. Singh, Advocate for the Petitioner.

Mr. Anthony D' Silva, Advocate for the Respondent no. 1.

Mr. J. P. Mulgaonkar, Advocate for the Respondent nos. 2 and 3.

A N D

WRIT PETITION NOS. 362 AND 626 OF 2006

1. Shri Jude G. Tandon,
Managing Director,
M/s. Stafford Equipments (Goa) Pvt. Ltd.,
12th Road, Pacons Villa,
Catholic Colony,

Chembur, Mumbai 400 071.

2. M/s. Stafford Equipments (Goa) Pvt. Ltd.,
a company constituted under the
Companies Act, 1956,
with registered Office as
no. 3, Mahalaxmi Co-operative
Housing Society,
1st Floor, Opposite Hotel
Palacio de Goa,
Panaji, Goa and having its
Factory at D-310,
Thivim Industrial Estate,
Karaswado, Mapusa, Goa. Petitioners

V e r s u s

1. Shri Sunil Noronha,
Director,
M/s. Stafford Equipments (Goa) Pvt. Ltd.
major, resident of 15-A,
R/o. 15-A, Shiriji Complex, Next to
Manoshanti Hotel, Dada Vaidya
Road, Panaji, Goa. Respondents

Mr. J. Mulgaonkar, Advocate for the Petitioners.
Mr. Anthony D' Silva, Advocate for the Respondent no. 1.

Coram :- F. M. REIS, J

Date of Reserving Judgment : 15th December, 2014
Date of Pronouncement : 16th January, 2015.

JUDGMENT

Heard Shri P. P. Singh, learned Counsel appearing for the Petitioner in
Writ Petition no. 279 of 2006, Mr. Anthony D' Silva, learned Counsel appearing for
the Respondent no. 1 and Shri J. P. Mulgaonkar, learned Counsel appearing for the
Petitioners in Writ Petition nos. 362 and 626 of 2006 and for Respondent nos. 2
and 3 in Writ Petition no. 279 of 2006.

2. All the above Writ Petitions were ordered to be taken up together by an Order dated 09.08.2007.

3. WRIT PETITION NO. 279 OF 2006

Briefly, the facts of the case as stated by the Petitioners is that on 22.11.1993, the IDC leases of Plot no. 49 in Tivim Industrial Estate and shed no. D-310 was sold to Mrs. Alpine Engineering Works. An agreement of assignment dated 28.09.1994, came to be executed between Mrs. Alpine Engineering Works. But, however, the Agreement was not performed till August 2003 on account of paucity of funds with the Respondent no. 3. Consequently, the Petitioner agreed to assign the shed together with the lease hold rights in the plot for a total consideration of Rs.6,50,000/-. The draft of the Agreement for the assignment of rights between the Alpine Engineering, the Respondent no. 3 and the Petitioners was prepared and handed over to the Respondent no. 2 for execution. A sum of Rs.2,00,000/- was advanced by the Petitioners. Simultaneously, the Petitioner was put in actual physical possession of the plot shed. But, however, such document was not executed. Thereafter, M/s. Alpine Engineers on 01.08.2003, sold their share to the Respondent no. 3 and IDC leases the plot to the Respondent no. 3. Subsequently, on 28.10.2003, a fresh Agreement of Assignment was drafted and executed between the Respondent no. 3 through the Respondent no. 2 and the Petitioners. Thereafter, on 09.03.2004, the Respondent no. 3 through the Respondent no. 2, sold the share to the Petitioner. IDC leases plot to the Petitioners on 16.04.2004. Somewhere on 03.04.2004, Regular Civil Suit no. 69 of 2004, was filed by the Respondent no. 1 in the Court of the learned Civil Judge,

Senior Division at Mapusa for a declaration that the Respondent no. 1 is a Director of the Respondent no. 3 and for a permanent injunction restraining the Respondent nos. 2 and 3 from alienating the assets of the Respondent no. 3. An Application under Order 39 Rule 1 and 2 was also filed in the said suit for temporary injunction. The application for temporary injunction was dismissed by the learned Civil Judge, Senior Division at Mapusa by Order dated 12.04.2005. The Order was challenged before the learned District Judge by preferring a Misc,. Civil Appeal no. 46 of 2005. By an Order dated 28.11.2005, the learned Judge cancelled the registration of the Deed of Sale dated 09.03.2004 in favour of the Petitioners as also the Tri-partite Deed of Lease dated 16.04.2004.

4. Being aggrieved by the said Order, the Petitioners have filed the above Writ Petition challenging the adverse findings in the impugned Order against the Petitioner after he learnt about the said Order.

5. The main contention of the Petitioner in the above Writ Petition is that the Lower Appellate Court was in law obliged not to make any Order pre-judicial to the interest of the Petitioners behind his back and that the Lower Appellate Court has exceeded its jurisdiction in directing the cancellation of the registration of the Deed of Sale dated 09.03.2004 and the Tri-partite Lease Deed dated 16.04.2004 executed in favour of the Petitioners. It is further the contention of the Petitioner that the Petitioner neither has title to the said plot nor the factory shed nor the money paid by him to the Respondent nos. 2 and 3 to acquire title on the basis of the said documents.

WRIT PETITION NO. 362 OF 2006

6. Briefly, the facts of the Petition as stated in the above Writ Petition are that the Petition has been filed by the Petitioners who are the defendants in the said Regular Civil Suit no. 69 of 2004 filed in the Court of learned Civil Judge Senior Division in the Court of Mapusa challenging the Order dated 28.10.2005 passed by the learned Addl. District Judge, at Panaji, allowing the Misc. Civil Appeal no.46 of 2005 filed by the Respondent-Plaintiff in the said suit challenging the Order dated 12.04.2005 of the learned Trial Judge.

WRIT PETITION NO. 626 OF 2006

7. Briefly, the facts of the Petition as stated in the above Writ Petition are that the impugned Order therein has also been passed in the same suit filed by the Respondent-Plaintiff against the Petitioners herein wherein the Respondent has claimed that he was a permanent Director of the Petitioner no. 2-Company having valuable stakes in the business operations therein. The application for temporary injunction was also filed in the said suit which was opposed by the defendant-Petitioners herein. It was the case of the Petitioners who are defendants in the said suit that they had already surrendered on 09.03.2004 in terms of the Sale Deed executed between the defendant no. 1 and the third party purchaser who is the Respondent no. 2 in the above Petition and defendant no. 3 in the suit and the Tri-partite Lease Deed which came to be registered before the Sub-Registrar. It was also claimed by the Petitioners-defendants that the Plaintiff-Respondent no. 1 therein ceased to be a Director of the Company in terms of Section 283(1)(g) of the Companies Act, 1956. The application for temporary injunction was dismissed on

12.04.2005 which came to be challenged by the Respondent no. 1 before the Appellate Court. In the said suit application under Order 39 Rule 11 was also filed by the Respondent no. 1 claiming that the Petitioners have sold the factory shed in breach of the ex-parte Order dated 06.04.2004 restraining the Petitioners from alienating/transferring/encumbering the property. The application under Order 39 Rule 2-A was also filed by the Respondent no. 1 and both the applications were opposed by the Petitioners. By the impugned Order dated 26.09.2006, the learned Trial Judge without conducting any inquiry and based solely on the findings arrived at by the learned Addl. District Judge in Misc. Civil Appeal no. 46 of 2005, allowed the application filed by the Plaintiffs-Respondent no. 1 thereby ordering the defence of the defendants be struck off. Being aggrieved by the said Order, the Petitioners filed the present above Writ Petition.

8. The parties shall be referred to as they so appear in the cause title of the suit. It is to be noted that the Petitioners in Writ Petition no. 279 of 2006, were impleaded in the suit as defendant no. 3; the Petitioners in Writ Petition no. 362 and 626 of 2006, are the defendants in the suit and the Respondent no. 1 in all the Petitions are the Plaintiffs in the suit.

9. I have extensively heard Shri P. P. Singh, learned Counsel appearing for the defendant no. 3, Shri Anthony D' Silva, learned Counsel appearing for the Plaintiffs as well as Shri J. P. Mulgaonkar, learned Counsel appearing for the Defendant nos. 1 and 2.

10. The main contentions of the defendant no. 3 is that though the Sale Deed which has been ordered to be cancelled was for a valuable consideration which was paid by the defendant no. 3 to the defendant no. 2, he has been deprived of the benefits of the said Sale Deed in view of the impugned Order passed by he learned Additional District Judge thereby depriving the defendant no. 3 from enjoying the property despite of the defendant no. 3 parting with the consideration to the defendant no. 2. On perusal of the impugned Order passed by the Lower Appellate Court dated 28.10.2005, the learned Judge has noted that the Plaintiffs had approached the Court claiming that he was a Director of the defendant no. 2-Company and, on such basis, had filed an application for injunction. The learned Judge noted that defendant nos. 1 and 2 had taken the stand that the Plaintiff had been disqualified under Section 283(1)(g) of the Companies Act, 1956. The learned Judge also noted that it is the case of the Plaintiff that he had never been served with a notice of the meeting. The learned Judge also noted that it is the case of the Plaintiff that he had never been served with a notice of the meeting. The learned Judge further found that there was no proof, prima facie, to establish that the first notice dated 12.02.2001 was actually posted or received by the Plaintiff. The learned Judge also noted that as far as second notice is concerned, the seal appears to be dated 10.04.2001 and not 9th or 10th of March, 2001. The learned Judge also noted that as far as other notice dated 28.03.2001 is concerned though it was sent by registered post, but, however, the AD card has not been produced to show that it was actually sent. The learned Judge as such found that merely producing the notice cannot attract the consequences in terms of the provisions of Section 283(1)(g) of the Companies

Act, 1956. The learned Judge as such noted that, prima facie, the defendants have failed to establish that the Plaintiff was disqualified as a Director of the Company. The learned Judge also noted that the transaction of the Sale entered into by the defendant no. 1, prima facie, appears to be in contravention of the provisions of the Companies Act, 1956. The learned Judge further noted that in the present case, the Plaintiff had approached the Court on 03.04.2004. The learned trial Judge passed an ad-interim Order on 06.04.2004. The defendant no. 1 appeared in the Court on 19.04.2004. The Sale Deed transferring the factory shed was executed by the defendant no. 1 on 09.03.2004. But, however, it was presented for registration on 06.05.2004. The learned Judge also noted that prima facie it appears that the transaction of sale as well as the Sale Deed in favour of the defendant no. 3 was executed simultaneously when the Tri-partite Lease Deed was executed. The learned Judge further noted that the Deed of Sale as well as the Deed of Lease was executed in contravention of the Exparte Order of the Court prohibiting the transfer and alienation of the property. The learned Judge as such found that the alienation of the suit shed was made by the defendant no. 1 in violation of the Order of the Court. The learned Judge further found that as the said Deed of Conveyance and the Tri-partite Lease Deed document was executed in breach of the exparte Order, such acts are to be undone and, consequently, directed that the registration of the Sale Deed on 19.05.2004 and Tri-partite Lease Deed executed on 16.04.2004 and registered on 20.05.2005, stand cancelled. A further relief was granted, inter alia, restraining the defendants from alienating/transferring/encumbering the suit shed by temporary injunction in any manner in the suit shed existing in the suit property.

11. Upon hearing the learned Counsel, I find that admittedly defendant no. 3 was not a party to the Appeal preferred before the Appellate Court. The relief of cancellation of registration essentially affects the rights of the defendant no. 3. In such circumstances, before directing the cancellation of the registration, the learned Judge ought to have heard the defendant no. 3 in the matter. The findings of the learned Judge that the Deed of Conveyance and the Tri-partite Lease Deed was submitted for registration after the exparte Order was passed on 03.04.2004, cannot be faulted. No doubt, there is a contention raised by the defendants to the effect that the Deed of Conveyance was executed much before the service of the Exparte Order. This aspect in any case would have to be examined by the learned Judge while deciding the suit on merits. After examining the paramount consideration of granting such injunctions, the Court also has to balance the equities of the parties. No doubt, a contemptuous act cannot be condoned by a Court of equity. But, in the present case, it is the contention of the defendants that much prior to the exparte Order, there were documents executed between the defendant inter se in connection with the shed, There are also allegations that possession was also parted in favour of defendant no. 3 pursuant to documents executed by the defendant nos. 1 and 2. In such circumstances, one will have to examine whether in the peculiar facts and circumstances of this case and considering that admittedly the defendant no. 3 and the Goa Industrial Corporation were not parties to the suit, what could be a just and appropriate relief. The learned Trial Judge on the basis of the findings in the impugned Order passed by the Lower Appellate Court, has proceeded to dispose of the application under Order 39 Rule

2-A and 11 of the Civil Procedure Code by striking off the defence of the defendants. No doubt, the rights of the Plaintiffs would have to be established in the suit and ascertain whether the transactions intended to be executed were in fact contrary to the provisions of the Companies Act, 1956 and the effects thereof. In such circumstances, one will have to grant an appropriate relief in the facts of the present case. By directing the cancellation of the registration of the deeds, the learned Judge has in fact granted at this stage, a final relief when the rights of the Plaintiffs have not been established. No doubt, an act committed in contravention of an Order of the Court is to be dealt with severely and ensure that the illegality which has been committed is undone in the facts and circumstances of each case. Admittedly, the transactions which are impugned were with the consent of the Goa Industrial Corporation who are not parties to the suit and the registration would also affect their rights. In the present case, the party who is affected is in fact the defendant no. 3 and the Industrial Corporation who were admittedly not parties to the suit. In this background, one would have to examine what would be an appropriate relief in the facts and circumstances of the case.

12. Shri P. P. Singh, learned Counsel appearing for the Defendant no. 3, has pointed out that the injunction granted by the Lower Appellate Court as against the original defendant nos. 1 and 2 could also operate against the defendant no. 3 and, as such, the defendant no. 3 is restrained not to alienate/transfer or encumber the disputed shed until the disposal of the suit. In such circumstances, the rights of the Plaintiff would be protected at this stage as far as the disputed shed is concerned. Apart from that, the learned Counsel appearing for defendant no. 3

further points out that the defendant no. 3 shall not carry out any activities in the said shed until the disposal of the suit. The said statement is accepted as an undertaking on behalf of the Respondent no. 3 which would continue to be in operation until the disposal of the suit on merits.

13. In this background, one have to examine whether the learned Trial Court was justified to direct the striking off of the defence of the defendants.

14. In order to grant such relief, the disobedience of the Order should be willful and persistent. The provisions of order 39 Rule 2-A are curative in nature. The Court has powers and can pass appropriate Orders to ensure that the directions issued by the Court are implemented and enforced. The purpose of such provisions are to ensure that the directions of the Court are implemented and the disobedience of the Orders are remedied so that the status quo ante is restored. The punishment imposed on the party disobeying the Orders is primarily for upholding the dignity of the Court and showing respect for judicial process. There should be no element of vindictiveness nor can the proceedings be allowed to be used for feeding personal grudge or as an offensive weapon to satisfy private vendetta. In the present case, as pointed out above, the learned Judge whilst passing the impugned Order has ordered to strike off the defence of the defendants. The provisions of Order 39 Rule 11(2) of the Civil Procedure Code, would also have to be taken note of which clearly provides that when sufficient cause is shown, the Court may hear the parties in defence upon such terms as it deems fit. The provisions under Order 39 Rule 11(1) of the Civil Procedure Code

are directory in nature. In this connection, the Judgment passed by this Court in **Writ Petition no. 381 of 2013** along with **Appeal From Order Nos. 40 of 2013** and other connected Appeals dated 03.07.2014, in the case of **M/s. V. G. Quenim & Ors. vs Bandekar Brothers Pvt. Ltd. & Ors.**, at Paras 16, 17, 19 and 20 would be material which read thus :

“16. On plain reading of sub-section (2) of Order 39 Rule 11 of Civil Procedure Code, I find that in case the party who has been responsible for the default or contravention, makes amends for such default or contravention to the satisfaction of the Court and shows sufficient cause, the Court may hear the parties in defence upon such terms as it deems fit. In the present case, taking note of the fact that it is not in dispute that the value of the re-constructed bungalow would exceed the total claim of the Plaintiffs in the said suits, the breach or contravention, if any, by the defendants can be said to have been amended. These aspects have not been considered by the learned Judge whilst passing the impugned Order. No doubt, the conduct of the Plaintiffs to demolish the bungalow without taking any permission from the Court nor informing the Court to that effect is deplorable. The defendants ought to have taken necessary precautions to see that they had taken appropriate permission from the Court before embarking into the exercise of demolishing the construction. In fact the Judgments relied upon by the learned Counsel appearing for the Plaintiffs clearly suggests that it is not open to a party to make its own interpretation of the order to defeat such orders. In the present case, the defendants are not at all justified to

demolish the construction without informing the Court what further course of action they wanted to follow after such demolition. In such circumstances, the apprehension of the Plaintiffs that the defendants wanted to breach the orders of temporary injunction and the undertaking, were well founded. But, however, in order to suffice the consequences provided in Order 39 Rule 11 as well as Order 39 Rule 2-A of the Civil Procedure Code there should be willful disobedience of such orders and the party should persist in committing such contempt. In the present case, in the reply filed to the application, the defendant offered to give a Bank Guarantee covering the value of the said bungalow. Apart from that, they have clearly stated that they had no intention not to comply with the Orders passed by the Court. In this connection, there is also an apology given by the Defendants. In such circumstances, considering that the Defendants made amends to the contravention or the default of the undertaking, I find that the learned Judge was not justified to strike off the defence of the defendants and dismiss the counter claim filed by the Defendants. No doubt, exercise of such powers under Order 39 Rule 11(2) of the Civil Procedure Code, would have to be upon terms deemed fit. The terms to be imposed would be dealt with whilst dealing with the challenge to the Orders under Order 39 Rule 2-A of the Civil Procedure Code.

17. The Division Bench of this Court in the Judgment reported in **2004(1) ALL M. R. 822**, in the case of **Ramavatar Surajmak Modi vs. Mulchand**

Surajmal Modi, has observed at Para 7 thus :

“7. Rule 11 of Order 39 as introduced by the Bombay amendment provides for a procedure on parties defying orders of the Court and/or committing breach of any undertaking to the Court. We are concerned with the question whether sub-rule (1) of Rule 11, Order 39 leaves no discretion on the Court and that it obliges the Court to visit the defaulting party with the penalty prescribed therein irrespective of the circumstances that default is not willful or the conduct of the party responsible for the default is not contumacious or there is reasonable explanation for default. The meaning and intention of the rule making authority must govern, and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other. Inter alia the courts have applied the test whether the object of the provision will be defeated or furthered by holding the provision mandatory or directory. Let us not forget that the dismissal of suit or proceeding or striking out the defence of a defendant for non-compliance of the Courts order or

breach of an undertaking is serious and grave consequence. By making provision of serious penalty of dismissal of suit or striking out the defence against the party responsible for default, the rule making authority did not intend to leave no discretion to the Court. The object of the provision of Order 39, Rule 11(1) is not defeated if it is held to be directory as the Court can in its discretion for adequate reasons visit the defaulting party with the penalty envisaged therein. On the other hand if the provision is held mandatory, the Court "shall" be left with no discretion and peremptorily shall have to dismiss the suit where the plaintiff is responsible for the default or to strike off the defence when the defendant is guilty of default even though the default is not found willful or conduct of such party not obstinate or contumacious. In our considered view, the provision in sub-rule (1) merely vests power in the Court to dismiss the suit or proceeding where the default is by the plaintiff and strike off the defence of the defendant where the defaulter is the defendant. It does not obligate to do so in every case of default. This is further fortified by the provision contained in sub-rule (2) which gives a discretion to the Court that even after the order

contemplated under the sub-rule (1) of Rule 11 has been passed, upon sufficient cause being shown by the party responsible for the default or contravention or breach and such party makes amend for the default or contravention or breach to the satisfaction of the Court, the Court may restore the suit or hear the defence on such terms and conditions it deems fit. If the Court has power to restore the party to the same position even after the adverse order has been passed under sub-rule (1) of Rule 11 if the case is made out under sub-rule (2), the provision of sub-rule (1) has to be held to be directory and not imperative. The provision in the nature of sub-rule (2) leaves no manner of doubt the intention of the rule making authority that the provision of sub-rule (1) of Rule 11 is directory and that by such provision power has been vested in the Court to dismiss the suit or proceeding where the plaintiff is in default or striking off the defence of the defendant, where defendant is responsible for the default. Unfortunately, neither in Ratnakar D. Patade nor in Smt. Asha M. Joshi, the learned Judges adverted to sub-rule (2) of Rule 11 and its effect. The Supreme Court in (M/s. Babbar Sewing Machine

Co. v. Tirlok Nath Mahajan)⁶, A.I.R. 1978 S.C. 1436 held that the power of dismissal of suit or striking out of the defence under Order 11, Rule 21 of the Code of Civil Procedure should be exercised only where the defaulting party fails to attend the hearing or is guilty of prolonged or inordinate and inexcusable delay which may cause substantial or serious prejudice to the opposite party. It was further observed that an order striking out the defence under Order 1, Rule 21 should be made unless there has been obstinacy or contumacy on the part of the defendant or willful attempt to disregard the order of the Court to produce the documents.....

This Court has observed that the provisions and nature of sub-rule (2) leaves no manner of doubt that the intention of the rule making authority is that the provisions of sub rule (1) of Rule 11 of Order 39 of the Civil Procedure Code, is directory and by such provision, power has been vested in the Court to dismiss the suit when the Plaintiff is in default and struck off the defence of the defendants when the defendant is responsible for the default. In this connection, taking note of the fact that the defendants made amends to the default by furnishing a fresh undertaking of the new bungalow constructed in the same property, the question of passing a harsh Order striking off the defence would

lead to grave consequences to the defendant and, as such, would not be justified in the facts of the present case.

18. ...

19. On perusal of the impugned Order, the very fact that the learned Judge has granted an application under Order 39 Rule 2-A of the Civil Procedure Code, without even specifying the period of such detention would itself suggest that the learned Judge has not examined the predicates of granting said punishment under the said provisions. No doubt, under the provisions of Order 39 Rule 2-A of the Civil Procedure Code, the Court can detain the person in breach of an Order to civil imprisonment in cases in which there is contemptuous breach of a temporary injunction. Nevertheless, the provisions also recognises that the properties of the defaulter can be attached or be detained in civil imprisonment. No doubt, these powers are not in the alternative but can be exercised independently. But, however, the said provisions are not exhaustive. The Court has power and can pass appropriate Orders to ensure that the directions issued by the Court are implemented and enforced. In such circumstances, Rule 2-A of Order 39 of the Civil Procedure Code, is a curative provision. Its purpose is to ensure that the direction of the Court is implemented and the disobedience of the Orders are remedied and status quo ante is restored. Any punishment awarded on the party disobeying the Orders is primarily for upholding the dignity of the Court and showing respect for judicial process. There should be no element of vindictiveness and the

proceedings should not be allowed to be used for feeding personal grudge or as an offensive weapon to satisfy private vendetta.

20. In the present case, as pointed out herein above, the purpose of granting the injunction as well as taking an undertaking has been attained as the defendants have given a fresh undertaking in respect of the same land and the re-constructed bungalow in terms of the directions of the Apex Court referred to herein above. Apart from that, the defendants also offered during the course of the hearing that in lieu of such undertaking, they would even furnish a Bank Guarantee of a Nationalised Bank to the satisfaction of the Court to cover the total claim of the Plaintiffs if decreed in the suit as security during the pendency of the suit. The said offer was not accepted by the learned Counsel appearing for the Plaintiffs. In such circumstances, the provisions of Order 39 Rule 2-A and Rule 11 of the Civil Procedure Code, cannot be used as a tool to get the private rights of the parties decided or to satisfy any private vendetta. Taking note of the observations of the Apex Court, as referred to herein above, I find that detaining the defendants in civil imprisonment would be very harsh and inappropriate in the facts and circumstances of the case. The Plaintiffs as pointed out herein above are adequately secured in case any Decree for recovery of money is passed in their favour ultimately in the suits filed by the Plaintiffs. But, however, the act of the defendants to demolish the bungalow without informing the Court cannot be condoned and for

this act, the defendants should be directed to pay an amount as compensation/fine in the facts and circumstances of the case instead of being detained in civil imprisonment. It is also to be noted that the original undertaking was given by the defendant no. 2, who is the widow and her deceased husband. The conduct of the defendants, inter alia, to furnish the undertaking, offer to furnish a Bank Guarantee, tendering an apology in the reply, cannot rule out that the Defendants had bonafidely misinterpreted the Order and the undertaking. As such, the Judgments relied upon by Shri Doctor, learned Counsel appearing for the Respondents, would not be applicable to the facts of the present case considering the view taken herein above. Thus, looking at the facts in its entirety, I find that the directions to detain the defendants in civil imprisonment is unjustified and in lieu thereof, an amount of compensation/fine would meet the interest of justice in the peculiar facts of this case. The undertaking given by the Defendant nos. 1(e) and 1(f) in terms of the directions issued by the Hon'ble Supreme Court in the Judgment dated 13.04.2012 is accepted and shall continue to be in force during the pendency of all the four Suits filed by the Plaintiffs."

15. A Special Leave Petition preferred against the said Judgment bearing no. 34221 and 34222 of 2014, came to be dismissed by Order dated 06.01.2015.

16. Taking note of the said observations and applying them to the facts of the present case, the learned Judge by the impugned Order has already protected

the Plaintiffs by granting an injunction restraining the defendants by a temporary injunction, inter alia, from alienating, transferring or encumbering the suit shed. Apart from that, Shri P. P. Singh, learned Counsel appearing for the Defendant no. 3 has pointed out upon instructions of the Defendant no. 3 that Defendant no. 3 shall give an undertaking to the Court that until the disposal of the suit filed by the Plaintiffs the defendant no. 3 shall not alienate, transfer or encumber the suit shed in any manner whatsoever nor carry out any activities therein. Accepting the said statement of Mr. P. P. Singh, learned Counsel appearing for the defendant no. 3, I find that such undertaking coupled with the injunction granted by the learned Judge in the impugned Order would sufficiently protect the claim of the Plaintiffs in the suit. The directions of the learned judge to cancel the registration of the Tri-partite Lease Deed and the Sale Deed in the impugned Order as such are not at all justifiable and unsustainable and to that extent the impugned Order passed by the Lower Appellate Court deserves to be quashed and set aside.

17. The only aspect that would have to be examined is the conduct of the defendant no. 1. No doubt, it is the contention of the defendant no. 1 that the suit transaction was in fact executed four weeks prior to the exparte Order dated 03.04.2004, nevertheless, the learned Judge, prima facie, has not accepted the said contention and, as such, the conduct of the Defendant no. 1 in the disputed transaction is not at all appropriate. No doubt, to ascertain whether there was willful disobedience, an inquiry otherwise would have to be conducted with that regard. But, however, the peculiar facts and circumstances of the case would sufficiently show that the defendant no. 1 has committed a breach of the directions

in the exparte Order which otherwise came to be vacated by the learned Trial Judge. In such circumstances, taking note of the observations of this Court in a Judgment referred to herein above, a fine deserves to be imposed on the defendant no. 1 on that count. Such fine is fixed at Rs.10,000/- to be paid by the defendant no. 1 to the Plaintiff herein. Besides that, admittedly, on the basis of the disputed transaction, the defendant nos. 1 and 2 have received a sum of Rs.6,50,000/-. The question of the defendant no. 2 enjoyed the benefits of the said amount is not at all justified. In such circumstances, the defendant nos. 1 and 2 are directed to deposit the total consideration of Rs.6,50,000/- received pursuant to the disputed transaction before the learned Trial Judge within four weeks from today and after such amount is deposited, the learned Judge shall invest the amount in fixed deposit in any Nationalised Bank initially for a period of one year and the same shall be renewed from time to time until the disposal of the suit.

18. In this connection, the observation of the learned Single Judge of this Court reported in **2003(2) BCR 132** in the case of **Chandrashekhar Govind Daiwatkar & anr. vs. Ramdas Govindrao Daiwatkar** at para 10 would be relevant which reads thus :

“10. The learned Counsel for the respondent has stated that the respondent is willing to purge the contempt and is ready and willing to deposit before the trial Court the entire consideration which has been received out of the sale-deeds which were executed by the respondent. I am of the view that it would be appropriate, in the interests of justice, to grant one

final opportunity to the respondent to purge the contempt. In order to enable the respondent to do so, the order of sentence should be suspended for an appropriate period so as to furnish that opportunity to the respondent. Accordingly, there shall be a direction to the effect that the respondent shall, within one week from today, file an affidavit before the trial Court in Special Civil Suit No. 1385 of 1995, containing a full disclosure of the sale transactions which have been entered into by the respondent in respect of the property which forms the subject matter of the order of injunction that was passed by this Court on 11-2-1998 with full particulars of the dates on which the transactions were entered into, the parties with whom the transactions were entered into and the consideration that has been received in respect thereof. The respondent shall also file before the trial Court, within the aforesaid period, authenticated copies of the sale documents and all other documents which have been executed. The respondent shall also within a period of four weeks from today deposit before the trial Court the full consideration that has been received by him in respect of the aforesaid sale transactions. The learned trial Judge is directed to submit a report to this Court after verifying that compliance has been made by the respondent. The contempt petition shall be listed before this Court for verifying compliance on 19-8-2002. Until 23-8-2002, the sentence which has been imposed on the respondent shall remain suspended.

19. Taking note of the said observations and in order that the Respondent

nos. 1 and 2 may purge the contravention of the exparte Order passed by the learned Trial Judge, I find that the defendant nos. 1 and 2 shall also deposit the sum of Rs.6,50,000/- before the learned Trial Court within four weeks from today as condition precedent.

20. In view of the above, I pass the following :

ORDER

- (I) The impugned Orders dated 28.10.2005 passed by the Lower Appellate Court and the Order dated 02.09.2006 passed by the learned Trial Court, stands modified.
- (II) The directions of the learned Judge to cancel the registration of the Deed of Sale and the Tri-partite Lease Deed registered on 19.05.2004, stands quashed and set aside.
- (III) The relief of temporary injunction granted by the learned Lower Appellate Court stands confirmed and would also operate as against defendant no. 3 in the suit.
- (IV) The defendant no. 3 shall furnish an undertaking to the satisfaction of the learned Trial Judge to the effect that the defendant no. 3 shall not alienate or transfer nor carry out any activities in the disputed shed until the disposal of the suit filed by the Plaintiff.

(V) The impugned Order dated 02.09.2006 striking off of the defence of the defendants stands quashed and set aside.

(VI) The Defendant no. 1 shall pay a sum of Rs.10,000/- to the Plaintiffs as condition precedent to defend the suit.

(VII) The defendant nos. 1 and 2 are directed to deposit the total amount of consideration received on the basis of the disputed transaction amounting to Rs.6,50,000/- before the learned Trial Court within four weeks from today. After such amount is deposited, the learned Trial Court shall invest such amount in fixed deposit in any Nationalised Bank initially for a period of one year and the same shall be renewed from time to time until the disposal of the suit on merits.

(VIII) The learned Judge shall proceed to dispose of Regular Civil Suit No.69 of 2004 as expeditiously as possible preferably on or before 15.06.2016.

(IX) The parties are directed to appear before the learned Trial Judge on 02.03.2015 at 10.00 a.m.

(X) Rule is made absolute in above terms.

(XI) All the Writ Petitions stands disposed of accordingly with no order as to costs.

F .M. REIS, J.

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