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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 191 OF 2013
AND
NOTICE OF MOTION NO. 192 OF 2013
AND
NOTICE OF MOTION NO. 193 OF 2013
AND
NOTICE OF MOTION NO. 665 OF 2012
IN
SUIT NO. 448 OF 2012

CTR MANUFACTURING INDUSTRIES LTD.

A company registered under the provisions of the
Companies Act, 1956 and having its registered
office at Nagar Road, Pune 411 014

... Applicant

In the matter between

CTR MANUFACTURING INDUSTRIES LTD.

A company registered under the provisions of the
Companies Act, 1956 and having its registered
office at Nagar Road, Pune 411 014

... Plaintiff

versus

- SERGI TRANSFORMER EXPLOSION
PREVENTION TECHNOLOGIES
PRIVATE LIMITED**, a company incorporated
under the provisions of the Companies Act,

1956 and having its registered office at 426,
Udyog Vihar, Phase IV, Gurgaon, Haryana,
India

2. EASUN MR TAP CHANGERS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its office at 612, (232), M.T.H. Road, Thiruinravur, Chennai 602 024

3. EMCO LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its office at No. F-5, Road No. 28, Wagle Industrial Estate, Thane, Maharashtra.

... Defendants

APPEARANCES

FOR THE PLAINTIFF

Mr. Navroz Seervai, Senior Advocate,
Mr. Himanshu Kane, Ms. Gulnar Mistry, Mr. Amit Jajoo, Ms. Anaisha Zachariah and Ms. Poorva Pant, i/b PKA Advocates.

FOR THE DEFENDANTS

Mr. I. M. Chagla, Senior Advocate,
with Mr. Sharan Jagtiani, Mr. Jehangir J. Jeejeebhoy, Mr. Vivek A. Vashi, Mr. Krishnendu Sayta & Aditya Sikka, i/b M/s. Bharucha & Partners.

CORAM

: G.S.Patel, J.

JUDGMENT RESERVED ON

: 13th June 2016

JUDGMENT PRONOUNCED ON

: 28th June 2016

JUDGMENT:

GENERAL

1. These are four Notices of Motion under Order 39 Rule 2A and 11 of the Code of Civil Procedure, 1908 (“**CPC**”). All are filed by the Plaintiff (“**CTR**”), alleging that the Defendant (“**Sergi**”) is in repeated and contumacious breach of restraint orders passed in CTR’s patent infringement suit. This common judgment disposes of all four Notices of Motion.

2. I heard Mr. Seervai for CTR and Mr. Chagla for Sergi at some length. They took me through this record; no easy task, I might add, for not only do the Notices of Motion overlap, but they are also tied hand and foot to, and share a history with, CTR’s principal Notice of Motion No. 497 of 2014 for injunctive relief. That Notice of Motion is now separated from this group, since I decided it by a judgment dated 23rd October 2015. There, I held for CTR and against Sergi on the issue of infringement of CTR’s patent, one that relates to an explosion and fire detection technology for use in electrical transformers. Sergi is in appeal. It seems that on 1st December 2015, the Appeal Court stayed the order on the Notice of Motion; CTR moved the Supreme Court from that appellate stay order. On 16th December 2015, the Supreme Court set aside the appellate order and put in place its own earlier order of 25th May 2012, one to which I will presently return. That order now governs the parties. The appeal is pending hearing and final disposal before the Appellate Bench of this Court.

AN OVERVIEW OF THE FOUR MOTIONS

3. In this judgment, I refer to these applications as ‘contempt Motions’; I do not propose to spend time on overly nice distinctions between applications such as these under the CPC and others under the Contempt of Courts Act. Apart from anything else, this is not a distinction that CTR itself has ever been careful to make, for it refers to its own applications as ‘contempt applications’ throughout.

4. CTR filed the present Suit as Civil Suit No. 1 of 2010 in the Thane District Court. On Sergi filing a Counter-Claim, in view of the proviso to Section 104 of the Patents Act, 1970, the Suit and the Counter-Claim were both transferred to this Court, the Suit being numbered as Suit No. 488 of 2012.

5. **Notice of Motion No. 193 of 2013 — “the First Contempt Motion”;** “NM 193”: CTR originally filed this as Civil Miscellaneous Application No.68 of 2010 on 23rd March 2010 before the Thane District Court under Order 39 Rule 2-A of the CPC, alleging breach of an ad-interim order dated 15th February 2010. Sergi filed a reply on 26th March 2010. CTR filed a rejoinder, and then Sergi filed a further Affidavit in Reply. The application was argued, but the District Judge decided or directed that the decision on this application would be pronounced along with other pending applications. That never happened as the District Judge was, in the meantime, transferred in routine course. CTR alleged that Sergi

delayed the pending hearing of and decision on the first Contempt Motion.

6. Notice of Motion No. 192 of 2013 — “the Second Contempt Motion”; “NM 192”: Alleging continued contempt by Sergi of the ad-interim order of 15th February 2010, and on the basis of additional factual material, CTR filed the Second Contempt Motion as Miscellaneous Application No. 319 of 2010 before the Thane District Court under Order 39, Rr. 2-A and 11 of the CPC on 9th December 2010.

7. Notice of Motion No. 191 of 2013 — “the Third Contempt Motion”; “NM 191”:¹ CTR filed this as Miscellaneous Application No. 87 of 2010 on 21st March 2011 before the Thane District Court. It was also under Order 39, Rr. 2-A and 11 of the CPC. In this, CTR alleges breach by CTR of the final order dated 25th February 2011 on its application for interim injunctive relief. In circumstances to which I will presently advert, that final order came to be treated as a continuing ad-interim order. The application for interim relief was ultimately numbered as Notice of Motion No. 497 of 2014, and this is the one that I decided on 23rd October 2015 (and which, I suppose, makes my order the ‘final final order’ on that Motion). In the Third Contempt Motion, CTR alleges, principally, that by keeping alive its website on which its products are displayed, and by distributing pamphlets and brochures, Sergi continues to offer its products for sale.

¹ The numbering of the first three Motions is, therefore, in the reverse order of their filing.

8. Notice of Motion No. 665 of 2012 — “the Fourth Contempt Motion”; “NM 665”: CTR filed this after the Suit’s transfer to this Court. Again, CTR alleges breach of the first final order dated 25th February 2011 (the one that was later held to be an ad-interim order); and specifically seeks an order of restraint against Sergi from participating in a tender floated by the Rajasthan Rajya Vidyut Prasaran Nigam Ltd, (“RRVPL”; “the Rajasthan Electricity Board”).

RE: THE FIRST CONTEMPT MOTION, NM 193

9. I do not believe it is necessary to deal at length with the First Contempt Motion, NM 193. It has more or less coalesced into the Second Contempt Motion, NM 192: both allege breach of the same ad-interim order of 15th February 2010, though at different points in time, and both seek the same reliefs in that regard. Deciding NM 192 is effectively an order on NM 193. I will refer to some of the material on affidavit in NM 193, but this is to be taken as material in support of, or against, NM 192.

RE: THE THIRD CONTEMPT MOTION, NM 191.

10. NM 191, the Third Contempt Motion, can also be quickly disposed. Its conspectus is very narrow, limited to whether Sergi’s continued use of its website to display its products is contempt or an ‘offer to sell’. I believe the contempt jurisdiction to be far too serious in its consequences to admit of application to something that seems

to me to be utterly trivial. There is no specific order directing Sergi to take down its website. Annexed to the Affidavit in Reply are copies of some screenshots or web pages.

11. There is some controversy about the date of these screen grabs: some seem to show the date of 6th March 2011, and Mr. Seervai contends that following the first final order of 25th February 2011 on CTR's injunction application, those web pages 'ought to have been taken down'; they constitute a 'continued offer for sale'. The Affidavit in Reply denies that these web pages are of the dates or times alleged. Now if CTR expects so exacting a standard, then it must itself conform to that standard. These are printouts of digital or electronic documents, and they require, the Supreme Court tells us, the necessary certifications under Section 65B of the Evidence Act.² I do not find those. If, absent those certificates, the material is inadmissible in evidence — or even if there is the slightest doubt about admissibility — then I do not see how I can make an order in contempt on that basis. After all, these proceedings are as close to the standard of beyond reasonable doubt that one can find in civil law.

12. Mr. Chagla also submits that these web pages are no different from a newspaper or a magazine advertisement. On the basis of a passage from Chitty on Contracts,³ he submits that this does not in any way constitute an 'offer to sell', at least where the display is prefatory to a future bilateral contract. At best, it may be an

² *Anvar PV v PK Basheer & Ors.*, (2014) 10 SCC 473;

³ Chitty on Contracts, 29th ed. 2004, paragraph 2-015.

invitation to treat. Different considerations may arise in unilateral contracts, such as the legendary one in *Carlill v Carbolic Smoke Ball Co. Ltd.*,⁴ but that is hardly the case here. To be fair, Mr. Seervai does not press the point further.

THE RELIEFS SOUGHT

13. At this stage, and before I proceed to the remaining two Notices of Motion, I believe I should consider the nature of the reliefs sought. At least one of these is critical. Broadly, they are similar, and may be summarized thus:

- (a) An order detaining the Sergi's Directors and committing them to civil imprisonment;
- (b) An order attaching Sergi's properties;
- (c) For an order 'striking out the defence' placed by Sergi.

14. NM 193 seeks only the first two of these reliefs. NM 192 expands this to include the third. NM 191 and NM 665 include all three. In addition, NM 665 has a prayer to restrain Sergi from participating in the RRVNL tender, and for a Receiver. Neither of these is pressed. The first two are clearly reliefs in contempt. The third is a relief squarely within the frame of Order 39, R.2-A and Rule 11 of the CPC. The former reads thus:

⁴ [1893] 1 QB 256

2A. Consequence of disobedience or breach of injunction

- (1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.
- (2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

15. Order 39, R.11 is a Bombay amendment of 1st October 1983:

11. Procedure on parties defying orders of Court, and committing breach of undertaking to the Court.—

- (1) Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or proceeding, or where any party to a suit or proceeding gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such commits

any default in respect of or contravenes such order or commits a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the default or contravention or breach is committed by the defendant or the opponent.

(2) The Court may, on sufficient cause being shown, and on such terms and conditions as it may deem fit to impose, restore the suit or proceeding or may hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes amends for the default or contravention or breach to the satisfaction of the Court:

Provided that before passing any order under this sub-rule, notice shall be given to the parties likely to be affected by the order to be passed.

16. I believe Mr. Chagla to be completely correct in his general submission that not only are these reliefs not to be lightly granted but, at least as regards reliefs for arrest and attachment, the reliefs are quasi-criminal in their scope, ambit and conspectus, paralleling the power to punish for civil contempt under the Contempt of Courts Act, 1971. I do not think this admits of any debate at all. Mr. Chagla quite correctly relies on paragraph 38 of the Supreme Court decision in *Food Corporation of India v Sukh Deo Prasad*:⁵

38. The power exercised by a court under Order 39 Rule 2-A of the Code is punitive in nature, akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. The person who

⁵ (2009) 5 SCC 665

complains of disobedience or breach has to clearly make out beyond any doubt that there was an injunction or order directing the person against whom the application is made, to do or desist from doing some specific thing or act and that there was disobedience or breach of such order. While considering an application under Order 39 Rule 2-A, **the court cannot construe the order in regard to which disobedience/breach is alleged, as creating an obligation to do something which is not mentioned in the “order”, on surmises, suspicions and inferences.** The power under Rule 2-A should be exercised with great caution and responsibility.

(Emphasis added)

17. This is the clearest possible enunciation of the underlying principle, and it must be my guide in all these Motions. In itself, this is enough to warrant an immediate dismissal of the NM 191, the Third Contempt Motion (regarding Sergi’s website), for that calls precisely for the kind of conjecture and surmise that the Supreme Court forbade.

18. What is of very serious moment, however, is the third of the reliefs I summarized earlier, the prayer to ‘strike out’ Sergi’s defence; and I have understood Mr. Seervai constantly to press this relief. I have had no doubt at all that this striking out of Sergi’s defence is what CTR truly seeks; and only what CTR seeks. This is, in my judgment, the true intent behind these Motions. They have nothing at all, or very little, to do with any nobility on CTR’s part in upholding this Court’s dignity or prestige or the sanctity of its orders, and everything to do only with wanting Sergi out of the way.

Though Mr. Seervai does, with considerable dexterity, steer clear of actually saying this out loud, and approaches his case somewhat elliptically by saying that the final relief is in my discretion, I have no manner of doubt that his clients could not possibly care less about an incarceration of Sergi's directors or an attachment of its properties, but most certainly want its opposition to the suit to be struck out. Why else has CTR piled motion on motion like this? Why else does one see such ferocity in CTR's demand for striking out Sergi's defence? What is to be made of the fact that in none of these Motions are Sergi's directors made parties, though the first relief is for their imprisonment? All this points in only one direction: that it is the third relief that CTR chases. What, if anything, is it that CTR gains from this relief, beyond immediate success in this very suit?

19. The answer is not to be found by reading these Motions in isolation, but by setting them in context. That requires a retreat from their minutiae and a look at how the parties are placed, and what the consequences of such an order might be. When I do so, I find this, and it is uncontroverted: that CTR and Sergi are not just two competitors in a crowded field; they are the *only* two competitors in their field, evidently one that has a narrowly targeted, niche market. Sergi has consistently denied infringement of CTR's patent; true, I have found otherwise in CTR's principal motion for injunction (the so-called final final order of 23rd October 2015), but Sergi is in appeal. Even that is not the whole of it. Sergi has filed a Counter-Claim, demanding the revocation of CTR's patent. It also has (or had) a pre-grant opposition, a post-grant opposition and a separate application to the Controller of Patents for

revocation. The consequence of granting CTR this relief of striking out Sergi's defence is obvious, and immediately obvious: to put it brutally, it knocks Sergi right out of the market. With its defence gone, its Counter-Claim goes; and with that go all its oppositions and, very likely, its appeal.

20. While that consequence is not in itself a reason to *refuse* relief, it is certainly a reason to be even more circumspect in the granting of it, and to hew even more closely to both the letter and the spirit of the principle voiced by the Supreme Court in *Food Corporation of India*. Most certainly, this is not a relief to be granted lightly, or on the basis of conjecture, surmise or inference. Yet, as we shall see, this is precisely what Mr. Seervai would have me do. I cannot. I will not. For the reasons that follow, and they are many, I propose to dismiss all four Motions.

FACTUAL BACKGROUND

21. The plethora of orders and applications makes necessary a short history of the matter.

- (a) On 5th November 1996, Sergi's director, Phillipe Magnier, filed an Indian Patent Application for registration of an invention entitled "**Method and Device for Preventing/Protecting Electrical Transformer Against Explosion And Fire**" under the Patents Act. This was then licensed to Sergi.

- (b) On 14th December 2002, Sergi obtained Patent No.189089 in respect of this application. Sergi claims to hold corresponding patents in various international jurisdictions.
- (c) Three years later, on 16th November 2005, CTR filed an Indian Patent Application No. 1425/MUM/2005 for the registration of an invention it called “A SYSTEM AND METHOD FOR PREVENTING AND/OR DETECTING EXPLOSION AND/OR FIRE OF ELECTRICAL TRANSFORMERS”.
- (d) CTR was granted its Patent No. 202302 on 3rd August 2006 under Section 43 of the Patent Act for “A SYSTEM AND METHOD FOR PREVENTING, PROTECTING AND/OR DETECTING EXPLOSION AND/OR FIRE OF ELECTRICAL TRANSFORMERS.”
- (e) On 20th January 2010, Delhi Transco Ltd (“DTL”) floated tender T/SP.II/2009/44 for the purchase of 64 fire systems. The tender notice specified a techno-commercial bid opening date of 16th February 2010 and a price bid opening date of 16th March 2010. The former was later postponed to 15th March 2010 and the latter to 28th September 2010.
- (f) On 12th February 2010, CTR filed the present Civil Suit No.1 of 2010 before the Thane District Court as an action in patent infringement against Sergi.

- (g) CTR made an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (“CPC”) for an ad-interim injunction restraining Sergi from infringing CTR’s Patent. This application, numbered as Exhibit “5” before the Thane District Court, was Notice of Motion No. 497 of 2014, the one I finally decided on 23rd October 2015.
- (h) On 15th February 2010, a handwritten *purshis* or application seeking urgent *ex parte* ad-interim reliefs was filed on CTR’s behalf before the Thane District Court.⁶ This *purshis*, numbered as Exhibit 9, says that for the purpose of ad-interim *ex parte* relief only, CTR restricted itself to an application to restrain Sergi from selling its product to DTL. This is a crucial document to all these Motions. I will address it separately.
- (i) On 15th February 2010, the Thane District Court granted *ex parte* ad-interim reliefs against Sergi and its distributor (the 2nd defendant to the Suit) “**in terms of the *purshis* Ex. 9**”.⁷
- (j) On 12th March 2010, Sergi submitted its bid to DTL’s tender. It says it told DTL about the 15th February 2010 order of the Thane District Court. CTR had also

⁶ NM 193, *p.* 38.

⁷ NM 193, *p.* 35-37. “Order below Ex. 5”

submitted a bid. DTL opened the technical bids on 15th March 2010.

- (k) On 23rd March 2010, CTR filed what is now NM 193, the First Contempt Application. Sergi filed two Affidavits in Reply. In the first of these, it undertook not to “sell” its products to DTL till the restraint was lifted.⁸
- (l) On 28th September 2010, DTL opened the price bids. Sergi was declared to be the lowest bidder, L-1.
- (m) On 2nd December 2010, DTL placed a Purchase Order on Sergi.⁹ On 9th December 2010, CTR moved the Thane District Court, once again alleging contempt. The Court passed an order restraining Sergi from acting further on the Purchase Order.¹⁰ On Sergi’s appeal, this Court remanded the matter on 24th December 2010 to the Thane District Court. Before that Court, Sergi sought leave to file or submit its drawings with DTL. That leave was refused on 28th December 2010. Sergi appealed again. On 11th January 2011, Sergi was granted permission to submit its drawings to DTL.

⁸ NM 193, paragraph 16, *p.* 63.

⁹ NM 192, *pp.* 16-22.

¹⁰ Sergi Order Compilation, Tab 2.

- (n) On 25th February 2011, the Thane District Court allowed CTR's application for interim relief, Ex. 5.¹¹ Sergi appealed and ultimately moved the Supreme Court.
- (o) On 17th March 2011, the Supreme Court stayed the 25th February 2011 order and listed the matter after six weeks.¹²
- (p) The Thane Court's reasoned order on Ex.5 followed on 19th March 2011.¹³
- (q) On 2nd May 2011, the Supreme Court disposed of the Special Leave Petitions before it *inter alia* staying the Thane Court's order for a further four weeks, giving Sergi liberty to amend its appeal since the reasoning for the 25th February 2011 was now available.¹⁴ That stay was further extended for two weeks on 20th June 2011.¹⁵
- (r) On 27th June 2011, a learned single Judge of this Court (Bhatia J) continued the stay of the 25th February 2011 order and also declined to revive the ad-interim order

¹¹ Sergi Order Compilation, Tab 4.

¹² Sergi Order Compilation, Tab 5.

¹³ Sergi Order Compilation, Tab 6.

¹⁴ Sergi Order Compilation, Tab 7.

¹⁵ Sergi Order Compilation, Tab 9.

of 15th February 2010.¹⁶ CTR filed a Special Leave Petition against this order, and another Special Leave Petition in relation to another order dated 6th June 2011 (Gavai J) about the transfer of the suit to this Court. The previous interim orders, including, therefore, the stay on the 25th February 2011 injunction, were continued till 26th July 2011.¹⁷ That stay was extended on 25th July 2011 to 2nd August 2011.¹⁸

- (s) On 23rd August 2011, another learned single Judge of this Court (Mrs. Dalvi J) disposed of Sergi's appeal against the 25th February 2011 order. She held that the appeal was infructuous in view of Sergi's contention that, following the filing of its Counter-Claim, the Thane District Court no longer had jurisdiction, and the suit and the Counter-Claim would both have to be transferred to this Court under the proviso to Section 104 of the Patents Act. The Court held that "whether or not the order of injunction dated 25th February 2011 would be in force or not ... can only be seen by the Court having the original jurisdiction."¹⁹

¹⁶ Sergi Order Compilation, Tab 10.

¹⁷ Sergi Order Compilation, Tab 11.

¹⁸ Sergi Order Compilation, Tab 12.

¹⁹ Sergi Order Compilation, Tab 13.

- (t) On 1st October 2011, the Thane District Court directed the Suit and Counter-Claim to be transferred to this Court.
- (u) By an order of 15th November 2011²⁰, slightly modified on 28th November 2011²¹ (Vazifdar J, as he then was). In these, the Court directed that CTR's application for ad-interim reliefs in contempt would have to be heard in the normal course. The Court noted the statement made by Sergi that it would manufacture and sell its products in accordance with its know how and patent and on the basis of material in the public domain, and that Sergi would not infringe CTR's patent. By this time, incidentally, another front had opened up, in that there were tenders being floated by RRVPNL and also by Bharat Petroleum Corporation Ltd ("BPCCL"). Both CTR and Sergi seem to have agreed that they would each submit their respective patents, designs and drawings in relation to these tenders. The later order of 28th November 2011 extended the 15th November 2011 to DTL as well.
- (v) On 17th January 2012, Vazifdar J heard an application by CTR that the ad-interim order of 15th February 2010 continued to operate.²² He held:

²⁰ Sergi Order Compilation, Tab 15.

²¹ Sergi Order Compilation, Tab 16.

²² Sergi Order Compilation, Tab 17.

8. *Prima facie*, the orders of the District Court do not operate as on date. In any event, the plaintiff's rights, if any, are protected by the said order dated 15th November 2011 read with the order dated 28th November 2011.

9. No useful purpose in any event would be served by restraining the defendants from supplying the goods to DTL. The plaintiff and its subsidiary are the only other bidders for the DTL contract. The grant of an injunction would deprive the defendants of their valuable rights as in that event, the plaintiff would be awarded the contract by default.

10. The application for ad-interim reliefs is therefore rejected. The notice of motion to be heard in normal course.

(w) I pause here to note first that this order expressly recognizes what I have addressed earlier, viz., that this is, and always has been, a two-horse race; and that the effect of unseating Sergi automatically works as something like a *coup d'etat* in CTR's favour. Second, that this order makes it clear beyond any shadow of doubt that Sergi was entitled to supply its product to DTL. Third, that there was between 17th March 2011 and this date, no restraint against Sergi at all.

(x) CTR appealed. Sergi made a statement to the Appeal Court that it was not going to enter into a contract with

a third party till 31st January 2012. This, it said, was without prejudice to its rights under ‘the contract already entered into in the year 2010’, obviously a reference to the DTL tender and Purchase Order. The Appeal Court noted this in its order of 20th January 2012.²³

- (y) By this time, CTR had also filed an appeal against Vazifdar J’s order of 15th November 2011. Both appeals were heard and judgment reserved on 15th February 2012. Judgment was pronounced on 16th March 2012. The Division Bench held that the first ad-interim order of 15th February 2010 on the *purshis* at Ex.9 as also the first ‘final’ order of 25th February 2011 were both in the nature of ad-interim orders, and that both were subsisting and binding on Sergi as ad-interim orders. The two orders in appeal were set aside, and CTR’s appeals were allowed. Ex. “5”, CTR’s main injunction application (later Notice of Motion 497 of 2014) was treated as pending and the Appeal Court directed it to be heard by the learned single Judge to whom such matters were assigned. On 16th March 2012, the Division Bench stayed the operation of its judgment and order for four weeks, subject to Sergi not entering into a ‘fresh contract’ with ‘another party’ in respect of the goods in question. It was also clarified, and this is important, that the stay was granted

²³ Sergi Order Compilation, Tab 18.

'in order to enable the respondents-defendants to execute the contract entered into with DTL Ltd, which contract was already entered into earlier.'

- (z) Sergi filed a Special Leave Petition. On 25th May 2012, the Supreme Court disposed of that Special Leave Petition.²⁴ It passed several directions, the most material of which for the present purposes is direction 5:

5. Till the Notice of Motion (Exhibit 5) and other applications are not disposed of by learned single Judge, the appellant (defendant in the suit) will continue manufacture and sale of its products as per its patent but without infringing the patent of respondent No.1 - Plaintiff of the Suit, in accordance with the undertaking already given by it before learned Single Judge on 15th November 2011.

- (aa) This is the order, as I have noted earlier, that even today holds the field. On 23rd October 2015, I decided CTR's Notice of Motion No. 497 of 2014 (earlier Exhibit 5). I found for CTR. I stayed my own order. CTR filed Notice of Motion No. 1799 of 2015 to recall that stay. Mr. Chagla then said that Sergi stood by the Supreme Court's direction No.5. I disposed of CTR's fresh Motion on that basis.²⁵ Sergi appealed; the

²⁴ Sergi Order Compilation, Tab 20.

²⁵ Sergi Order Compilation, Tab 21.

Division Bench admitted the appeal, stayed the order of 23rd October 2015, and said that Sergi could continue to manufacture and deal in transformers. There were other directions as well.²⁶ On 16th December 2015, the Division Bench order was set aside on CTR's Special Leave Petition, and the previous order of 25th May 2012 reinstated, with Direction No.5 being reproduced and reiterated.²⁷

TIMELINES AND THE OPERATION OF THE INJUNCTION

22. Since CTR alleges 'repeated' and 'contumacious' breach of restraint orders, the first order of business is, I imagine, to check the timeline and see what order operated and till when. On 15th February 2010 there was an ad-interim order. I will come to what that order actually said, and on what application, immediately next, but for now I will proceed on the footing that there was some restraint against Sergi. That order held the field till 25th February 2011, when it merged into the 'first' final order on CTR's injunction application, Exhibit 5 (later Notice of Motion 497 of 2014). If Sergi is shown to have been in breach of the ad-interim order at all in this period, then there may be a case made out against it; and then arises the question of what action, if any, should be taken. The 'first final' order of 25th February 2011, made on an unexpurgated application, i.e., not on the *purshis* at Ex.9, held the field till 17th March 2011, when it was stayed by the Supreme Court. That stay continued right

²⁶ Sergi Order Compilation, Tab 22.

²⁷ Sergi Order Compilation, Tab 23.

until 23rd August 2011 when Mrs. Dalvi J dismissed Sergi's appeal as infructuous. That dismissal, Mr. Seervai says, inevitably revived the 25th February 2011 injunction; he is correct. This is the second window during which the injunction operated. However, I do not think he is correct in saying that the injunction operated till the Appeal Court's order of 16th March 2012. For, there intervened the orders of 15th/28th November 2011 and the order of 17th January 2012, saying that neither the 15th February 2010 ad-interim order nor the 25th February 2011 order was operative. The Appeal Court reversed only on 16th March 2012. I think it is stretching matters too far to now say, as I think Mr. Seervai does, that the Appeal Court order reversing Vazifdar J must be construed to mean that the interim order of 25th February 2011 was all along operative. Surely not; surely Sergi is entitled to say, given the vicissitudes of litigation and the reversals in fortune, that the 25th February 2011 order revived on Mrs. Dalvi J's dismissal of its appeal, but continued only till 15th November 2011. On that day, Vazifdar J found no evidence of contempt; at least none sufficient to move him to granting any ad-interim relief. But on 17th January 2012, Vazifdar J in terms held that the Thane District Court orders did not operate as on that date. Notably, the application before him was to the effect that the Thane District Court's *ad-interim* order of 15th February 2010 (viz., *not* the first final order on Exhibit 5 of 25th February 2011) continued to operate. This can only mean that CTR too accepted that the 25th February 2011 was no longer operative, and it fell back on the position that the ad-interim order of the Thane District Court had somehow revived. In any case, the Appeal Court treated both orders of the Thane District Court as ad-interim orders, and this opened a third window or period of restraint, one that continued till the

Supreme Court's order of 25th May 2012. In all this, it must be noted that in order after order, including the orders by Vazifdar J and the orders by the Division Bench in appeal on 16th March 2012, exceptions were specifically carved out for Sergi in relation to the DTL tender, referencing this as a contract 'already' or 'previously' entered into, and permitting Sergi to continue supply.

23. These timelines yield the following:

- (a) 15th February 2010 to 25th February 2011:** Thane District Court's ad-interim order on *purshis* Ex. 9 operates;
- (b) 25th February 2011 to 17th March 2011:** Thane District Court's interim order on Ex.5, CTR's application for interim relief, operates. Ad-interim order merges into the interim order.
- (c) 17th March 2011 to 23rd August 2011:** No restraint order. Stay continues.
- (d) 23rd August 2011 to 15th November 2011:** Thane District Court interim order revives, and in operation.
- (e) 15th November 2011 to 17th January 2012:** Thane District Court interim order possibly in operation; perhaps debatable.

- (f) **17th January 2012 to 16th March 2012:** Thane District Court orders held *not* to be operative.
- (g) **16th March 2012 to 25th May 2012:** Thane District Court orders (both) revived as ad-interim orders, but the order of revival itself is stayed and this is done specifically to enable Sergi to complete the DTL tender or contract.
- (h) **25th May 2012:** Order of the Supreme Court with Direction No. 5.

24. A last crucial date: 2nd December 2010. This is the date on which DTL placed a Purchase Order on Sergi. The first question, therefore, is whether on account of this Purchase Order, Sergi was in violation of the Thane District Court's ad-interim order of 15th February 2010, then holding the field. To test this, I should look to the application on which that order was passed. That application is the *purshis* at Ex.9.

RE: PURSHIS AT EX.9

25. This *purshis* at Ex. 9 before the Thane Court turns out to be critical to the present group of Motions, for the prayer in the suit and in the principal injunction application Ex.5 (later Notice of Motion No.497 of 2014) was far more widely worded: it sought a restraint against Sergi from ‘**making, using, offering for sale or selling**’ its allegedly infringing product.²⁸ The *purshis* said:²⁹

for the purpose of the ad-interim *ex parte* relief only, the plaintiffs restrict their case and relief to restrain the defendants from selling the product to “Delhi Transco Limited” in Tender Notice No. T/SP/11/2009/44 and dated 20/1/2010. Hence this *purshis*.

26. The *purshis* thus narrowed down CTR’s ad-interim application by restricting it (a) to DTL; and (b) to a restraint against Sergi from selling its product to DTL.

27. Mr. Seervai and Mr. Chagla are at loggerheads about this, and it is a threshold issue. Mr. Seervai says that the *purshis* must be broadly read or, at any rate, must be read to have confined itself to DTL, eliminating only the relief in respect of other purchasers. It was not, he says, CTR’s ‘intention’ to make a distinction between ‘selling’ and ‘offering for sale’. That, he claims, is too nice a distinction to withstand scrutiny. Mr. Chagla disagrees.

²⁸ NM 193, *p.* 33, prayer (a).

²⁹ NM 193, *p.* 38.

28. As it happens, so do I. Nothing prevented CTR from incorporating in its *purshis* the whole of the restraint it sought but limiting it only to DTL. It chose to not only do that, but also to drop the words ‘offering for sale’. What was Sergi to make of this, especially given that, as I have said, this is, and always has been, only ever a two-horse race? Simply this: that while CTR objected to the sale to DTL, it did not (and possibly rightly) could not object to Sergi’s participation in the tendering process. That wide a restraint would have knocked Sergi out of the reckoning altogether, and left even DTL with a single-candidate choice.

29. I do not propose to ‘interpret’ this *purshis*. I see no reason to. It is enough for the purposes of these Contempt Motions to hold that the *purshis* introduced an ambiguity, and that this ambiguity was generated by CTR itself. It could have been no secret to CTR that Sergi was treating with DTL. CTR did file NM 193, but obtained no order on it. That state of affairs continued till *after* DTL placed a Purchase Order on Sergi, on 2nd December 2010. Seven days later, CTR moved again; it filed another *purshis* and now it said that the Purchase Order was in breach of the ad-interim restraint of 15th February 2010. On this, it obtained an ad-interim order dated 9th December 2010, issuing notice and restraining Sergi from acting further on the Purchase Order.³⁰

30. Sergi takes this point specifically in an Affidavit in Reply in NM 192.³¹ There is no rejoinder.

³⁰ Sergi Compilation, Tab 2.

³¹ NM 192, Sergi Affidavit in Reply by Sunil Goel, *pp.* 23–37, paragraph 12, *pp.* 29–30; paragraph 14, *pp.* 31–32.

31. When Mr. Seervai says, therefore, that in obtaining the Purchase Order or getting it placed Sergi was in contempt and breach, I do not think he is at all correct. Without a wholly impermissible process of interpolating into the order of 15th February 2010 words taken out by the *purshis* at Ex. 9, it is difficult to see how the placing of the Purchase Order was *per se* contempt or disobedience. After all, Sergi had been trucking openly with DTL for several months; CTR filed NM 193, obtained no order, and allowed this to continue. Further, as Mr. Chagla says, if things were as pellucid as this, CTR had no call to make the application of 9th December 2010. That is nothing if not an attempt to roll back its first *purshis* and to *now* demand, after the Purchase Order was placed, that the ad-interim order prohibited even participating in the tender.

32. At the very least, therefore, there is much turbidity about the frame of the ad-interim application in the *purshis* at Ex. 9 and, consequently, the precise sweep of the order on it. To hold that there was contempt of this order requires far too much negotiation with the facts; it can hardly be said to be beyond reasonable doubt.

SERGI'S UNDERTAKING ON AFFIDAVIT "NOT TO SELL"

33. What is to be made of Sergi's statement on affidavit in response to NM 193³² that it undertook not to sell its products to DTL until unrestrained by an order of the Court? Again, this must receive strict construction, given the reliefs. That was an undertaking that needed to be accepted. This is always necessary; a Court may or may not be satisfied with the wording of an undertaking, and unless it is accepted and becomes part of an order, I do not see how it can be said to lead to a charge of contempt. Mr. Seervai says that the acceptance of the undertaking was a formality, and that the occasion never arose, for there was, on 25th February 2011, the order on the injunction application anyway. I do not see how this assists CTR.

34. In any case, that undertaking is perfectly in consonance with the *purshis* at Ex.9, which limited itself to 'selling', but took out the words 'offering for sale'. That ambiguity continued; and the undertaking did not, I notice, include a volunteered statement that Sergi would not further deal or communicate with, or participate in the tender issued by, DTL.

35. In any case, Mr. Seervai submitted (on 26th April 2016) that it is perhaps best left at the actual ad-interim order of 15th February 2010; he does not place his case on the undertaking. That is all to the good.

³² NM 193, paragraph 16, *p.* 63.

THE PURCHASE ORDER AND THE 'SALE' TO DTL: NM 192

36. Did the Purchase Order amount to a 'sale' to DTL by Sergi? Mr. Seervai says there is no other way to see it, and any attempt to portray the Purchase Order as *not* being a sale is the purest mischief. On Sergi's own understanding, he says, was clearly that while it could participate in the DTL tender and bid, it could not 'sell' to DTL. The Purchase Order required the supply of some 64 items of equipment. The Purchase Order is the sale itself; everything that followed is merely supply. Even the tender makes this clear, for it refers to DTL as the 'purchaser'. To this extent, Mr. Seervai says, Sergi's Affidavit in Reply in NM 193 is relevant — not as the undertaking *per se*, but as a demonstration of Sergi's own *understanding* of what it could and could not do.

37. Mr. Seervai relies on the decision of the Supreme Court in *BSNL v Telephone Cables Ltd.*³³ to say that once a Purchase Order is placed, the contract is complete. It is true that the *BSNL* case was also one of a tender and a bid; but the question before the Court seems to have had more to do with when a 'contract' could be said to have been entered into,³⁴ and not when a sale could be said to have been effected. Much the same is also true of the next decision he cited, *Dresser Rand SA v Bindal Agro Chem Ltd.*³⁵

³³ (2010) 5 SCC 213.

³⁴ Paragraphs 25, 26 and 29 of *BSNL v Telephone Cables Ltd*, *supra*.

³⁵ (2006) 1 SCC 751.

38. Mr. Chagla argues that the placing of the Purchase Order resulted in no concluded sale at the time of the NM 192. That sale may have been concluded later, but it was always a conditional sale, and those conditions were fulfilled much later. He refers to Clause 9 of the Purchase Order,³⁶ one that deals with inland transit and storage insurance, to contend that no ‘property’ in the goods passed merely on the placing of the Purchase Order. Similarly, Clause 11 makes it clear that delivery was expected well after the date of the Purchase Order.³⁷ The sale was actually completed only on 9th/10th May 2011, when final delivery was effected. This was after 17th March 2011, when the Supreme Court stayed the Thane District Court’s ‘first’ final order on CTR’s injunction application, Ex.5; and it falls within the 17th March 2011 to 23rd August 2011 to which I have earlier referred, a restraint-free hiatus. Even the prices in the Purchase Order are preliminary. In a matter such as this, Mr. Chagla says, a strict interpretation is necessary, and no Court can or should arrive at a finding of contempt by some circuitous or laborious reasoning. He relies on paragraph 7 of the Supreme Court’s decision in *State of Uttarakhand v Khurana Bros*³⁸ to say that of the essence to a ‘sale’ is the passing of property. A sale may be conditional. In an agreement to sell, no property passes. This is the distinction between an agreement to sell and a sale; for, in the latter, property in the goods passes immediately from the seller to the buyer, while in the former that passing of property or title is at a future and uncertain date. An agreement for sale becomes a sale when the

³⁶ NM 192, pp. 17–48.

³⁷ NM 192, p. 18.

³⁸ (2010) 14 SCC 334

conditions are fulfilled or when the time provided in the agreement lapses.

39. There can be no doubt, Mr. Chagla says, that the sale was not actually completed till 9th May 2011. CTR's entire case on the Purchase Order being a sale is in paragraphs 12 to 16 of NM 192.³⁹ To Sergi's denial in its Affidavit in Reply that it had 'sold' to DTL, CTR filed no rejoinder. Finally, he says, for an order in contempt, it must be shown that the respondent to the action acted in breach. Sergi expressed its interest, and nothing further; and it did so openly because, once again, CTR 'downgraded' its *purshis* and limited it to a sale, excluding the words 'offering for sale'. At the very least, he submits, this is not so clear-cut or so free from doubt as to warrant an order in contempt; and, as the respondent to a contempt action, he does not have to meet any higher bar or standard.

40. Whatever may be the effect of the Purchase Order, and I am not deciding that issue simply because I do not believe it is necessary to do so, I am inclined to accept Mr. Chagla's submission that this is not a matter that can be said to be free from all doubt. The *Khurana Bros* decision seems to me to be far more apposite to the issue at hand than either of the decisions Mr. Seervai cites; and yet again, there is the matter of the emasculated *purshis*, one that Mr. Seervai tries to make whole again. As I have noted, the sale was not completed till much later, around 9th May 2011, during a restraint-free period.

³⁹ NM 192, *pp.* 8–9.

41. Mr. Seervai responds to this by pointing to paragraphs 15 to 20 of the Affidavit in Support in support of NM 665, the Fourth Contempt Motion. Here, CTR says that after it obtained an ad-interim order on 9th December 2010, following the placing of the Purchase Order on 2nd December 2010, Sergi appealed; that appeal failed on 24th December 2010, when this Court remanded the matter to the Thane District Court. That Court, on 28th December 2010, declined Sergi's application for leave to submit its drawings to DTL; Sergi appealed again, and on 11th January 2011, this Court granted Sergi the permission it sought. But, Mr. Seervai says, Sergi had *already* submitted drawings on 24th December 2011 and only re-submitted them as a charade on 12th January 2011. The trouble with this is that Mr. Seervai's reach exceeds any possible grasp: That is the subject matter of a separate Perjury Application No. 1282 of 2011, one that is not before me; and it is certainly no part of the principal case in these Motions.

42. But CTR's troubles do not stop there. While hearing the Motions, I was given to understand, or perhaps I misunderstood, that this Perjury Application was pending. I find, however, that this is not so. That Perjury Application was decided by this Court on 30th October 2012, holding in CTR's favour and directing the Registrar (Judicial) of this Court to file an appropriate complaint before the competent Court to prosecute Sergi and its directors. Sergi filed a Special Leave Petition. That too was disposed of by a very recent order and judgment dated 13th January 2016.⁴⁰ I do not

⁴⁰ *Sergi Transformer Explosion Prevention Technologies Pvt. Ltd. & Anr. v CTR Manufacturing Industries Ltd. & Anr.*, Civil Appeal No. 233 of 2016, (2016) SCC Online SC 419 : MANU/SC/0362/2016.

refer to this as determinative in this Motions, but only for these two reasons. The first is because Mr. Seervai during his further rejoinder in the afternoon of 13 June 2016 repeatedly stressed the point taken in the Affidavit in Support, viz., that Sergi submitted these drawings to DTL even before it was permitted to do so on 11th January 2011. He insisted that this showed CTR's contumacious conduct; and that there was as yet neither explanation nor remorse. But by this time, the Supreme Court judgment of 13th January 2016 had already been delivered and it dealt specifically with all these issues. Some portions of the Supreme Court order must be set out in full:

8. The appellants have claimed that submission of the drawings on 24.12.2010 was an inadvertent mistake arising from the failure to communicate order dated 09.12.2010 "down the line" to the operational personnel. What is important is that in Paragraph 12 of the response filed on behalf of the appellants, the appellants have tendered an unconditional and sincere apology to the court for an inadvertent and unintentional submission of drawings by SERGI on 24.12.2010 in the following words:

... ..

9. The High Court while considering the matter has in our opinion, failed to appreciate the defence that had been set up by the appellants. The explanation offered by the appellants was a plausible one which ought to have been kept in mind by the High Court while examining whether the present was a fit case for prosecution of the appellants. At any rate, the High Court has not adverted to the question whether it was expedient "in the interest of Justice" to launch prosecution against the appellants for the

mistake which according to the respondents was deliberate but unintentional according to the appellants. According to the appellants the mistake occurred out of a certain communication gap between the higher officers of the company and the operational staff. That prosecution cannot be launched just at the asking of a party is well established. A long line of decisions of this Court have examined the circumstances in which the court ought to invoke that power. The High Court has, while considering the question of launching prosecution for perjury, to examine whether it is expedient in the interest of justice to do so, having regard to the totality of the circumstances. Inasmuch the High Court has failed to advert to that aspect and record a finding that it is expedient in the interest of justice to direct prosecution, the order passed by the High Court falls short of the legal requirements.

10. Equally important is the fact that the High Court had by order dated 11.01.2011 examined the question whether the appellants could be allowed to file their drawings before DTL. The High Court had while examining that aspect of the matter clearly observed as under:

“As already stated hereinabove, it is not as if that the product of the appellant is not patented. On the contrary, it is to be noted that the product of the appellant is patented as way back as in 2002 whereas the product of the plaintiff-respondent is patented only in 2006. Though it is the contention of the plaintiff that the product of the appellant is not in conformity with the standards required by DTL, in my view, it will be for the DTL to

decide whether the products are in conformity with the standards or not. At this stage, it is only word against word. It is the contention of the plaintiff that the product of the appellant is not in conformity with the requirements, whereas, it is the contention of the appellant that it is in conformity with the required standards. The application of the plaintiff under Rule 39 Order 1 and 2 is yet to be decided. The contention of the plaintiff that the defendant-appellant is dishonestly using the product of the plaintiff as its own product is not considered even at the stage of grant of injunction after hearing the parties. All orders passed are at ad interim ex-parte stage. In that view of the matter, I find that the learned District Judge has erred in rejecting the application. It is to be noted from paragraph 22 of the Purchase Order that in the event the appellant fails to submit the drawings within the stipulated period, the appellant would be required to face the penal liability. As against this, no prejudice would be caused to the plaintiff inasmuch as the appellant has given clear undertaking reproduced herein above, wherein, it has categorically stated that it shall not claim any equities on account of submission of drawings. Appellant has further undertaken that the drawings to be submitted to DTL shall be in accordance with its patent i.e., Patent No. 189089. It is thus clear that if the appellant fails to submit the drawings, every day's delay would add to the penal charges that would be required to

pay. As against this, no prejudice would be caused to the plaintiff merely by submission of the drawings. The question as to whether the appellant is dishonestly using the plaintiff's product is yet to be gone into even at a prima facie stage"

11. In the totality of the above facts, we are of the view that the High Court has taken a hyper technical view of the matter in directing launch of prosecution against the appellants. From the defence set up by the appellants and the explanation offered by them it appears to us that there was no intention on the part of the appellants to defy the orders by which they have been restrained from taking further steps towards compliance of the purchase order, dated 02.12.2010 issued by DTL, for otherwise, there was no need for the appellants to approach the District Court and the High court for permission to do so.

12. In the circumstances, we are of the view that the present is not a fit case in which the High Court should have directed the institution of criminal proceedings against the appellants.

43. After this, nothing survives in CTR's grievance about the delivery of these drawings. Sergi's explanations have been accepted. Its apology has been accepted. The highest court in the land has held that it is not in the interest of justice to prosecute Sergi. It has found that the conduct of which CTR makes so much was an accident, a lapse. I am therefore unable to understand how any argument relating to Sergi's submission of drawings to DTL survived and were available to CTR when these Motions were argued before me. When the hearing started, the final order from

the Supreme Court on the Perjury Application was already available. Yet, as late as June 2016, on the very last day of hearing, CTR never pointed out to me by CTR; and perhaps understandably, for that order, and its entire context, stood (and stand) outside the frame of these Motions. Sergi, too, had no call to reference it, for the same reason.

44. Despite this, on that last afternoon — I remember it quite distinctly, for Mr. Chagla was himself then unavailable — the point was canvassed with no reference to the 13th January 2016 Supreme Court order and referring only to the averments in CTR's Affidavit in Support of NM 665. I only chanced on that order after I reserved judgment. I found it as the last order in Sergi's compilation of orders, and is included in that set by Mr. Jeejeebhoy, assisting Mr. Chagla, presumably (and, as it happens, fortuitously,) for completeness. But for that inclusion, I might have had to deal with the argument and would never have been alerted to the Supreme Court order. Knowing counsel at my Bar as I do, I will set this down as an inadvertent error of judgment during oral arguments and let it pass at that, and not blame CTR itself either. The alternative is simply unthinkable.

NM 665: THE FOURTH CONTEMPT MOTION

45. This is perhaps the most telling Motion of the four, and it lays bare CTR's competition-killing intent. What is of interest, as Mr. Chagla says, is not what Mr. Seervai seeks, but rather what he does not: he does not press prayers (d) and (e), those that seek,

respectively, a restraint against Sergi from participating in the RRVNL tender, and the appointment of a Receiver. The Affidavit in Support in paragraph 31⁴¹ refers to a tender by BPCL. No claim is made about this. But the averments in this paragraph are crucial to the entire case on contempt: CTR alleges that despite the restraint order of 25th February 2011, Sergi—

acted in blatant disregard and contravention to the Interim Order by supplying its price bid and also entering into an Agreement to supply the ‘infringing product’ to BPCL. The said act of the Defendant No.1 is in complete defiance of the injunction Order restraining it from dealing in the impugned products, which forms the cause of the present Application.

46. I am unable to see how this could be ‘not pressed’. If this goes, almost everything goes. Very much the same is to be said about the case in regard to the RRVPNL tender. Here, the tender was only for inclusion on a list of approved vendors. Mr. Chagla says that Sergi made no application on its own;⁴² and even if it did, nothing turns on it. Paragraphs 32 and 33⁴³ make it clear beyond any doubt that the primary, and possibly sole, reason behind these Motions is to wipe out the competition. No case is made out in contempt even in this Motion, Mr. Chagla says. I agree.

⁴¹ NM 665, *p.* 11.

⁴² NM 665, *p.* 144.

⁴³ NM 665, *p.* 12.

THE EXERCISE OF POWER IN CONTEMPT JURISDICTION

47. Given my view on the four Motions, and the preceding discussion at the beginning on *Food Corporation of India* cited by Mr. Chagla, it is perhaps unnecessary to consider the two authorities Mr. Seervai cites for the approach to be adopted, and the manner in which reliefs are to be moulded. I think it is reasonably safe to say that no one can claim a relief in contempt as a matter of entitlement. That is always a matter of judicial discretion, and it is only that. It follows, therefore, that while a precedent that sets out a general principle of the Court's approach in such matters, and guides the exercise of that discretion, is certainly one to be closely followed, a particular view or action taken in a given case is not necessarily sufficient authority to suggest that that view or action *must* always be adopted. Contempt matters are, after all, hugely fact-dependent and fact-specific; there is no one-size-fits-all relief.

48. I believe that *Balram Singh v Bhikam Chand Jain*,⁴⁴ on which Mr. Seervai places very great emphasis, was a case that turned narrowly on its facts. Balram Singh was the original respondent in a criminal appeal. He was the inventor of a septic tank that went under the trade name "Shanker Septic Tank". At the hearing of that appeal, counsel for the contemnors assured the Court that a particular caption or legend — "Design invented by Shri Bhikam Chand Jain" — would be deleted immediately, and would not be used thereafter in any promotional materials in regard to the sale or

⁴⁴ (1985) 4 SCC 246.

use of “Balaram Septic Tank”. That undertaking was accepted. The Court passed an order on that basis quashing the criminal proceedings. The contemnors did delete the legend or caption in question. But they continued selling the “Balaram Septic Tank” under that name, suggesting, the Supreme Court said, that they had the sole and exclusive right to manufacture and sell it. The contemnors insisted that there was no restraint against them from any such sale, but the assurance was limited to the caption or legend. The Supreme Court took the view that the assurance given to it, and the spirit of that assurance or undertaking, required the contemnors to cease sale of the product in question. The nub of the issue is actually to be found in paragraph 8 of the decision. Here, the Supreme Court notes that while deleting the caption that credited Shri Bhikam Chand Jain as the inventor, the contemnors issued advertisements and brochures with a prominent photograph of Tikam Chand Jain, a partner of the firm. This, the Supreme Court said, was bound to mislead the public. The Supreme Court did not accept the plea of the contemnors for a reduced sentence or their offer to drop the trade description “Balram Septic Tank”. It convicted and fined the contemnors.

49. It is difficult to see what general proposition can or should be culled from *Balram Singh*. If the suggestion is that in every case the Court must, or is even entitled to, proceed on surmise, conjecture and extrapolation, then that is directly contrary to the Supreme Court’s later decision of 2009 in *Food Corporation of India*.⁴⁵ *Balram Singh* suggests nothing of the kind. When it speaks of the ‘spirit’ of

⁴⁵ *Supra*.

an order, it does so in context; and that context is the assurance given to the Court on the basis of which the Court proceeded. This is a very different thing from saying that an order or an application must be loosely or widely construed.

50. Further, *Balram Singh* dealt with a specific undertaking given to the Supreme Court; and that is most emphatically not the case here, since Mr. Seervai was quite clear that he was not basing his case on the undertaking in Sergi's Affidavit in Reply in NM 193 at all, but only used it as a reference to demonstrate a shared understanding of the ad-interim order of 15th February 2010 that preceded it. This is correct, but it also separates this case from *Balram Singh*, where the undertaking was both given *and accepted*, and thus served as the foundation — indeed, the sole foundation — of the entire action in contempt.

51. *Indresh Shamsunder Advani & Anr. v Karishma Suresh Mahtani & Ors.*⁴⁶ was a decision of a learned single Judge of this Court (A. M. Khanwilkar J, as he then was). There, an ad-interim injunction was granted against the plaintiffs in the suit. The prayer was widely worded, as was the order. There was, however, no specific order prohibiting the plaintiffs from continuing with construction, but only one that prevented them from making any claim on the property “in any manner whatsoever”. Khanwilkar J dealt with this in paragraph 14:

14. The next question that needs to be considered is whether the order dated 7th May 2003 prohibited the

⁴⁶ 2005 (1) Bom. C. R. 918

respondents/plaintiff from carrying on construction activity on the disputed property. This Court, on 7th May 2003 granted ad interim relief in terms of prayer Clause 9d) of Notice of Motion No. 1491 of 2003. The relevant prayer clause has already been reproduced above. **The argument canvassed on behalf of the respondents/plaintiff is that there is no specific prohibition regarding further construction on the disputed property. From the relief as couched, to my mind, it is very wide and can be understood to mean preventing the respondents/plaintiff from making any claim in respect of the disputed property, be it as owners, or otherwise.** Reliance has been placed by the Counsel for the defendant on the expression “any manner whatsoever” occurring in the said prayer clause to contend that the same envelopes the situation of the stay of further construction activity on the site. It is possible to accept the said contention. **Assuming that the relief in terms of prayer Clause (d) did not specifically ask for prohibition of further construction from the site, even so, from the conduct of the respondents/plaintiff, it is more than clear that even they believed that the order could be and was being interpreted in that manner, for which reason, they made at least more than one attempt to move this court for vacating the ad interim relief, which was already granted.** That can be seen from the affidavit of the respondents dated 8th May 2003 as well as subsequent application made for permission to continue construction work on 9th May 2003 and the affidavit dated 12th May 2003. **Even thereafter, the respondents/plaintiff kept on moving the Court for early disposal of the Notice of Motion, as the ad interim order was affecting their right to carry on construction activity on the site.**

(*Emphasis added*)

52. I should imagine that the position is exactly reversed in this case. In *Indresh Advani*, the relief was wide and was sought to be narrowly construed by the affected party; in this case, the relief is narrow and it is the person alleging contempt, CTR, the applicant for ad-interim reliefs, who seeks to broaden it. The two are diametrically opposed. Further, in *Indresh Advani*, the affected party (quite naturally) made application after application to achieving precisely that narrowing of the ad-interim order, and this led the Court to the finding that even the plaintiffs' own understanding was that the order was broad enough to interdict construction. Here it is the reverse again: Sergi construed it narrowly, and so, apparently, did CTR; there is no other explanation for its late attempt on 9th December 2010 to regain lost ground and an expanded order.

53. I do not believe, therefore, that either of these cases are authorities for the kind of overbroad proposition Mr. Seervai seems to canvas, and which is this: that in its contempt jurisdiction, a Court must use this broad-brush approach to its orders, to the parties' actions and to the final result. To the contrary, I think the Supreme Court in its 13th January 2016 judgment in Sergi's Special Leave Petition, regarding the submission of drawings to CTL, reiterated a fundamental principle that must guide my hand as well: to do what the interest of justice demands, not what the complainant wants.

54. And just what is it that CTR wants, and how does it put it? If I might be permitted a broad translation of CTR's submissions, they seem to me to amount to no more than this: that I must find some reason — any reason will do — to strike out Sergi's defence. I must ignore the fact that CTR took an *ex parte* ad-interim order on a *purshis* or an application that was considerably watered down and that this itself introduced an ambiguity. That notwithstanding, I must give Sergi no benefit of any doubt. I must ignore, too, the long period during which Sergi was openly and actively bidding and negotiating with DTL; never mind what all that was for, or that CTR certainly was in the know of it. I must also forget that when DTL placed a Purchase Order on Sergi on 2nd December 2010, CTR filed an application on 9th December 2010 seeking to *expand* the ambit of the operative ad-interim order of 15th February 2010. I must overlook that there then followed an order on 11th January 2011 permitting Sergi to submit its drawings to DTL. I must pay no mind to the fact that the final interim order of 25th February 2011 on CTR's injunction application was stayed, and that that stay continued for several months. It should matter not that Vazifdar J held that the previous orders did not operate; and perhaps even less that the Appeal Court's reversal of Vazifdar J's two order was itself stayed, and that self-imposed stay by the Appeal Court on 16th March 2012 was specifically to enable Sergi to continue its contract with DTL. Most of all, I must blind myself to the 25th May 2012 order of the Supreme Court and Direction No. 5 in that order, even if that allowed Sergi to continue selling in a non-infringing way. Never mind, too, that this order holds the field even now. I should, of course, pretend that the findings and observations of the Supreme Court in its judgment of 16th January 2016 in the Sergi

SLP in CTR's perjury application just do not exist. I must ignore the binding ratio of the Supreme Court in *Food Corporation of India*. I must hold that it is immaterial that CTR has consciously not pressed in these very Motions reliefs on the same ground in relation to the BPCL tender. CTR does not, therefore, ask for much: only that I should ignore, overlook and forget all this. I must, instead, CTR says, construe the Thane District Court's orders 'widely' and 'generously', and in accordance with what CTR claims is their 'spirit'. I must use these, or any other reasons that I might pluck out of thin air, never mind where justice lies, and I must do so because, after all, Sergi is a 'serial offender' and it has 'brazenly flouted' orders of various Courts. Above all, what I absolutely must do is strike out Sergi's defence, for that is the proper 'punishment' for these 'wrongs' and this 'contumacious conduct' of so wicked and evil a 'serial offender'. Of course, I should not trouble myself with concerns that any such order striking out Sergi's defence will almost certainly torpedo its Counter-Claim, its revocation applications, its oppositions to the grant, the pending appeal from my own judgment of 23rd October 2015 and, in all likelihood, Direction No. 5 of the Supreme Court order of 25th May 2012, reinstated on 16th December 2015.

55. I will do nothing of the kind. Nothing that CTR says is even remotely persuasive. The manner in which these Motions have been laid and pressed in most unfortunate. It only lends considerable heft to Mr. Chagla's submission that far from Sergi being a 'serial offender', it is CTR which is a manic complainant; and that CTR complains for one reason only: not out of some high-minded concern for this court, but only to get Sergi out of the running. CTR

doth protest too much. These are not an application I can grant in any shape, fashion or form: certainly not the prayers for arrest or attachment, and most emphatically not the prayers for striking out Sergi's defence.

56. Finally, this: Mr. Seervai at one point contended that now that I have decided his main injunction Notice of Motion No. 497 of 2014 for interim relief (originally Ex. 5 before the Thane District Court) in CTR's favour on 23rd October 2014, the orders in contempt and under Order 39, Rr. 2-A and 11 must follow. This is an argument of desperation, one that only needs to be stated to be rejected. Sergi has challenged my judgment in Appeal. It is surely entitled to that. Sergi's Appeal is pending. Sergi might or might not succeed. Sergi has always maintained, and it does so even now, that it has never infringed CTR's patent, and that, in any event, CTR's patent is liable to be revoked. I found otherwise; but mine was a *prima facie* view on a Motion. I might also have been wrong, as Sergi says (and probably says repeatedly in its Memo of Appeal). If I am, it would not be the first time, and almost certainly will not be the last—that is why we have courts of appeal in the first place. The appeals process will tell us in the fullness of time. That is hardly reason to hold that Sergi was always in contempt in the past. I do not think Mr. Seervai is correct in saying that my declining relief because Sergi has appealed my judgment necessarily means that no order would ever be passed in any contempt application. That is surely an over-simplification. An order in contempt must stand on far surer footing than this. The path down which Mr. Seervai would have me travel is far too slippery and much too perilous.

57. Our powers of contempt must, as the Supreme Court says, be exercised sparingly and judiciously. Contempt is a serious business. It is not to be used just to put a bit of stick about. Parties err; all humans do. Even judges. It is in our nature. Error is one thing; defiance and disobedience another. Contempt is neither the first nor the only measure available to a court to set a party right. Before we punish for defiance and disobedience, we always look to see if it is case of error, mistake, misapprehension, ambiguity; if there is a plausible reason or explanation. Where we find any of these, we hold our hands. Above all, a Court's power to punish for contempt is never to be used to pander to an inflated ego, or to give effect to an oblique motive or purpose. It has always been reserved for the most egregious cases. Relief in contempt demand proof beyond doubt; and if there is any doubt at all, that power should not be exercised.

58. All four Motions must be dismissed. The only question is of costs, a matter always in the discretion of a court. In a case like this, I would not have hesitated to impose costs, and they would not have been modest. If I have not imposed costs, it is for the solitary reason that I have earlier found for CTR on merits in its application for interim relief. That should be seen for what it is: a matter of self-imposed restraint, not in any sense an acceptance that there is even a tittle of substance in these Motions.

59. Motions dismissed. No costs.

(G. S. PATEL, J.)