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

RESERVED ON: 02.03.2016
PRONOUNCED ON: 03.06.2016

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+ CONT.APP.(C) 11/2013, CM APPL.19743/2013

RAJ PAL YADAV

..... Appellants

Through: Mr. Peeyosh Kalra, Advocate along with
appellant in person.

Versus

MURLI PROJECTS PVT. LTD.

..... Respondents

Through: Mr. Dayan Krishnan, Sr. Advocate with
Mr. Karan Luthra, Ms. Aayushi Sharma
Khazanchi and Ms. Aakshi Lodha, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.

1. The appellant in these proceedings was arrayed as second defendant in a suit (CS (OS) 3037/2012- hereafter "the suit"). He is aggrieved by the order, dated 03.12.2013 of the learned Single Judge sentencing him to simple imprisonment for 10 days. He was held guilty of committing contempt on 13.05.2013 for repeatedly violating undertakings given to this Court. The court had, however, deemed it appropriate to provide the appellant with reasonable opportunity to be heard before imposing sentence. The appellant's conduct in the intervening period from 13.05.2013 to 03.12.2013 was taken into consideration by the single judge, while passing

of the impugned order. The appellant exercised his statutory right to appeal after having served sentence from 03.12.2013 to 06.12.2013. The learned Single Judge suspended his sentence for a period of 4 days until 10.12.2013. In the appellate proceedings, on 10.12.2013, this Court ordered interim stay of sentence.

2. The brief facts of the case are that the appellant is an actor and has acted in several Hindi films. He along with his wife (third defendant) founded and incorporated a company by the name “Shree Naurang Godavari Entertainment Ltd.” (the first defendant- hereafter) and Shree Naurang Godavari Edutainment Pvt. Ltd. (fourth defendant- both the first and fourth defendants hereafter referred to as “the company”). The appellant, for the purpose of producing a film “*Ata Pata Lapata*” sourced ₹15 crores independently. The plaintiff in the suit showed interest in investing in the film and proposed to advance a sum of ₹5 Crores towards it. The appellant contended that the plaintiff created a unilateral agreement, much to the detriment of the appellant, on 30.05.2010 for the purpose of advancing the loan. In terms of the agreement, the defendants were to repay the loan amount of ₹5 Crores by 31.03.2011. In addition, they were to pay ₹3 Crores out of which ₹2.50 crores were towards return of the said loan including interest, cost etc. payable in four installments of ₹50 lakhs, ₹60 lakhs, ₹70 lakhs and ₹70 lakhs by 31.03.2011, 30.04.2011, 31.05.2011 and 30.06.2011 respectively. The remaining ₹50 lakhs was repayable by 31.03.2011 towards management cost of arranging funds, administrative expenses, office expenses, documentation charges etc. The respondent claimed 30% interest p.a. in case of delayed payment by the defendants. Towards the said

agreement the defendants issued 10 post-dated cheques aggregating to a total value of ₹ 8 crores to the plaintiff as security and also executed a promissory note for the said amount. This ₹ 8 Crores was also secured by way of “laboratory letter” which conveyed the rights on the negatives of the film in favour of the plaintiff. The music audio and video rights, CD/DVI/ Internet rights, satellite rights, channel rights, export/international rights etc. were also assigned in favour of the plaintiff as security.

3. The film was delayed due to unforeseen circumstances as a result of which it could not be released on the scheduled date- 31.12.2010 and consequently amounts due could not be paid. This led to several supplementary agreements (dated 21.09.2011, 04.04.2012 and 09.08.2012) between the plaintiff and the appellant towards repayment of the said loan amount of ₹8 crores. These three documents, alleged the appellants-defendants were obtained under duress. Under the first supplementary agreement the defendants undertook to pay an additional sum of ₹1,38,06,332 towards 30% interest per annum and as a result 6 fresh post-dated cheques were issued by them to the plaintiff towards a total revised sum of ₹9,38,06,332. Again on 04.04.2012 the defendants agreed to pay an enhanced sum of ₹ 10,72,52,745 owing to default in previous payment in 6 installments by 30.09.2012. Out of this ₹40 lakhs were transferred to the plaintiff by way of RTGS on 30.04.2012. Finally, a third supplementary agreement was entered into on 09.08.2012 which required the defendants to pay a revised total of ₹ 11,10,60,350 in 8 installments to the plaintiff by 28.02.2013.

4. The appellant alleges that the plaintiff in a hurried manner without waiting for the last date of payment to elapse, filed a suit CS (OS) No. 3037/2012 for permanent and mandatory injunction before this Court. The plaintiff also filed an application under Order 2 Rule 2 of the Civil Procedure Code (“CPC”) seeking permission to institute a separate suit for recovery of the amount due and payable by the defendants; the defendants have not contested the suit.

5. An interim order was made in CS (OS) 3037/2012 on 03.10.2012 whereby the Court while issuing summons restrained the defendants not to create any third party interest in the negative prints of the films and were neither allowed to assign music, audio and video rights, CD/DVI/Internet Rights, satellite rights, channel rights, export/international rights to anyone without the previous permission of the Court. On 11.10.2012 the learned Single Judge, after hearing both the parties, directed that PVR Pictures Ltd., with whom the defendant had entered into an agreement to exhibit the film, was to instead of remitting the amount to the defendants remit the sum of ₹11 Crores (which was due from the defendant to the plaintiff) to the Registrar General of this Court. The Court also directed that the defendants/appellants were to enter into similar agreements with other distributors/ exhibitor to pay the dues first to the Registrar of the Court and as soon as the defendants’ dues were made good, the obligation upon them would end. Subject to these conditions the Court allowed the appellant to release his film.

First Contempt by the Appellant

6. The plaintiff alleged that despite the interim order of 03.10.2012, the music and audio CDs of the film were made freely available for sale on various websites, in clear contempt of the order of this court. Thus, the plaintiff filed an application under Order 39 Rule 2A read with Section 151 of the CPC being I.A. No. 19802/2012 for contempt of court and recall of order dated 11.10.2012. The Court after hearing the parties, disposed of the said application with the following consent order on 01.11.2012:

“After arguments, it has been agreed between the parties that the film Ata Pata Lapata shall be released by the defendants only after giving an undertaking that the cheques which they have issued to the plaintiff, when presented to the Bank on due date, would be honoured to the extent of Rs. 7 crores. ”

7. On 02.11.2012, the defendants filed separate undertakings before this Court in compliance with the order of 01.11.2012 whereby it was assured by the defendants that they would pay dues to the extent of ₹ 7crores. Based on these undertakings the first contempt petition filed by the plaintiff was disposed of. Relevant portion of the undertaking has been extracted below:

"I, undertake that the cheque(s) in favour of the plaintiff, the extent of Rs. 7, 00, 00,000/- (Rupees Seven Crores) shall be honoured as and when presented on the due date as mentioned in the cheques, if no amount of is deposited in this Hon'ble. Court as per the undertakings given by M/s PVR pictures Ltd., M/s, Phantom Films Pvt. Ltd., and Yellow and Red Music.

I, further undertake that, if, however the amount deposited in this Hon'ble Court as-per the undertakings given M/s PVR pictures Ltd., M/s Phantom Films Pvt. Ltd., and Yellow and Red/Music does not total to a sum of Rs.7,00, 000/- (Rupees Seven Crores) the balance sum of money, shall be honoured by the' cheques issued by

the defendants in favor of the plaintiff as and when presented on their due date”

Second Contempt by the Appellant

8. Though the film released it failed at the box office; resultantly costs could not be recovered, leading to default of the undertakings made to this Court. Thereafter, the plaintiff filed a second application for contempt of court, I.A. No. 5427/2013 before this Court. On 05.04.2013 the Court while issuing bailable arrest warrants against the defendants held as under:

“On a prima facie view, it becomes clear that the defendants do not have sanctity for the assurances and undertakings given by them to this Court in the present proceedings and that is also more evident from the fact that they had succeeded in setting adverse order against them when the first application under Order 39 Rule 2A CPC was moved by the plaintiff. Thereafter, they have repeated violation of the undertakings given by them to this Court. This conduct of the defendants justifies requiring their personal presence in Court this time. ”

9. On the next date of hearing the appellant tendered an apology before this Court and made a prayer seeking time from the court to clear his dues. Orders were reserved on 10.04.2013 and in the meanwhile the plaintiff moved application I.A. No.6684/2013 informing the court that a fresh settlement had been entered into by the parties. Under the settlement, the defendants agreed to pay the principal sum of ₹5 Crores by 31.07.2013 towards which 3 post-dated cheques were issued to the plaintiff. It was further agreed that the remaining dues were to be paid in three installments by September 2014. The defendants also agreed to execute fresh undertakings before this Court agreeing to pay this amount; in the event of

non-payment, the contempt proceedings in I.A. No. 5427/2013 would stand revived. The defendants urged that the contempt proceedings initiated against them be purged and that no order be made in the contempt matter, which was reserved by the Court. On the date of consideration of the application (I.A.6684/2013), the plaintiff sought and was allowed to withdraw it, though with costs.

10. On 13.05.2013, the Court passed an order in I.A. No. 5427/2013 holding the defendants guilty of breach of undertakings; they were found to be in contempt of this Court. Though the defendants admitted breach of undertakings, they urged that the breach was not willful or intentional but was due to unfavourable circumstances into which they got entangled. The Court observed that the defendants in support of their claim that they were suffering losses did not produce any affidavit. This, coupled with the fact that they were defaulting time and again with the payment and not fulfilling their undertaking resulted in an adverse finding against the defendants that the defaults were in fact willful. The Court considered the apology rendered by the defendants, but having regard to the overall circumstances, held them guilty of contempt. The Court was of the opinion that it could not- in view of such conduct, again record the undertakings of the defendants; if it did so the impression would be that violation of undertakings given to the Court carry no consequence. On the point of sentence, the Court deemed it necessary to give the defendants a reasonable opportunity to be heard and listed it for another date. The Court finally held:

“As far as apology tendered by the defendants is concerned, that can, in the facts and circumstances of the case, only be a factor for consideration by this Court while considering the question of punishment to be awarded to the defendants but they cannot get

exoneration from being held guilty of committing wilful breach of the undertakings given by them and total discharge. That may be one of the mitigating circumstances, as held by a Full Bench of this Court in “State vs Bhavani Singh”, AIR 1968 Delhi 208. If defendants are discharged, then they would succeed in getting premium for their acts of breach of solemn undertakings and assurances given to this Court and the plaintiff, in the process will be left with unfulfilled promises of the defendants only and the money payable to it shall remain in the bank accounts of the defendants. That merciful and benevolent decision, if taken by this Court, would convey to the public at large that the Courts cannot ensure enforcement of the undertakings given to them by the litigants.”

11. In terms of the agreement arrived at on 21.04.2013, the appellant was to pay a sum of ₹5,00,00,000/- by 31.07.2013. The defendants preferred an appeal against the order, dated 13.04.2013. In appeal, the Division Bench, on 06.08.2013, without setting aside the order of 13.04.2013, recorded the revised arrangement between the parties, whereby it was agreed that the defendants would pay the amounts due in three installments by 25.09.2013. It was further agreed by counsel for the parties that upon receipt of the entire amount agreed in terms of the settlement, all disputes would be deemed to be settled and in the event of non-compliance by the defendants, the plaintiff was at liberty to seek enforcement and execution of the undertakings in accordance with law. It was specifically directed by the Division Bench that the undertakings given by the defendants dated 21.04.2013 would be treated as undertakings given to the court; in these terms the appeal was disposed of.

12. Once again the defendants failed to honour their fresh undertakings and consequently contempt proceedings were revived on the point of punishment. The Court continued giving leeway to the defendants to

perform the undertakings though the defendants only sought adjournments citing various excuses. The learned Single Judge had directed personal presence of defendant nos. 2 and 3 during Court proceedings. However on 02.12.2013, owing to the non-appearance of the third defendant, the single judge enquired about her whereabouts from the second defendant. He, along with his counsel intentionally made misleading statements in this regard. It was initially stated that the third defendant was present outside the court premises with their infant son. When the single judge demanded her presence in Court, the appellant/ defendant changed his statement that his wife was in Ghaziabad and that he had to bring her from there. To facilitate this, the matter was adjourned till 4 p.m. of the same day. However this time neither of the defendants (second and third defendants) were present. The Court took serious exception to their absence and listed the matter for the next day i.e. 03.12.2013 and held as under:

“At 4:00 pm, neither Defendant No. 2 nor Defendant No. 3 are present. Given the previous conduct of Defendants 2 and 3, as has been observed in the earlier order, and considering that these are in fact the proceedings in contempt, the Court takes a very serious view of the absence of Defendant No.3 in Court today and of Defendant No. 2 after the lunch recess.

3. Although the Court was inclined to issue non-bailable warrants to secure the presence of Defendants 2 and 3, learned counsel appearing on their behalf plead for one opportunity and pray that the case may be kept for 3rd December 2013 at 10.30 am. It is made clear that both Defendants 2 and 3 should remain in Court on 3rd December 2013 at 10:30 am.

4. List on 3rd December 2013 at 10:30 am.”

In these circumstances, when, on 03.12.2013, the case was taken up for hearing it was pointed out by the plaintiff's counsel that the third defendant

had flown in from Mumbai to Delhi only in the afternoon of 02.12.2013 and was neither in Delhi nor in Ghaziabad as stated by the counsel for the defendants on the preceding day when the Court had made enquiries regarding her whereabouts. Counsel for the defendants, after initially stating that defendant no.3 was in Ghaziabad, claimed she was unaware that defendant no 3 reached Delhi only later in the evening on 02.12.2013. When the appellant, was asked about the correctness of the plaintiff's assertion, a contradictory version was given; he admitted that the third defendant had in fact taken a flight from Mumbai to Delhi on 02.12.2013 in the afternoon and was neither outside the Court nor in Ghaziabad. Counsel for the defendants repeatedly urged that the statements made by her in Court were in terms of instructions received from the defendant. *Per contra*, Mr. Yadav asserted that despite repeatedly asking his counsel to state the truth she did not do so. The Court however refused to interfere in their internal controversy.

13. Matters did not end here. The defendants along with their advocate filed a joint affidavit before this Court on 02.12.2013, shown to be sworn before the Oath Commissioner. Counsel for the defendants verified the affidavit as being signed by them in her presence as well as in the presence of the Oath Commissioner. Since admittedly the third defendant was not in the city it is beyond the bounds of reason to believe that she was present before the oath commissioner; the impugned order highlights that the defendant, their advocate as well as the Oath Commissioner of this Court had made false statements and were deliberately misleading the Court. Owing to these events, the Court restrained Ms. Janhavi Prakash, advocate for the defendants, from appearing on their behalf. Under the circumstances, the Court refused to display any further lenience towards the appellant and

sentenced him to ten days simple imprisonment immediately. As far as the third defendant was concerned since she was with infant, the Court sentenced her till the rising of the Court; she remained at the Registrar General (RG's) room till the Court's closing hours. Contempt notices were issued to the defendant's advocate as well as the oath commissioner. Relevant portion of the impugned order of 03.12.2013 is as under-

“Learned counsel for the Plaintiff informed the Court that on enquiries made by them it was revealed that Defendant No.3 was not in Delhi and not even in Ghaziabad as was told by learned counsel for the Defendants, but flew in from Mumbai by an afternoon flight. The Court enquired of the two counsel for the Defendants whether this was correct. However, counsel for the Defendants were not prepared to tell the Court the truth. After initially asserting that Defendant No. 3 was in fact in Ghaziabad yesterday, i.e. 2nd December 2013, counsel later attempted to say that they were unaware whether in fact Defendant No. 3 had flown in from Mumbai on 2nd December 2013. The Court had the impression at that stage that the learned counsel for the Defendants were not prepared to speak the truth before the Court and decided to question Defendant No. 2 himself about the factual position. Defendant No. 2 candidly stated that Defendant No. 3 had in fact taken a flight from Mumbai to Delhi on 2nd December 2013 in the afternoon. It is, therefore, apparent that Defendant No. 3 was yesterday not present in Delhi or even in Ghaziabad as was informed to the Court yesterday.”

14. It was thereafter observed:

“7. An even more serious contempt has been committed yesterday by Defendants 2 and 3 and this time along with an Advocate and an Oath Commissioner. A joint affidavit dated 2nd December 2013 has been tendered yesterday in Court by Defendants 2 and 3 and shown to be sworn before an Oaths Commissioner, on Ms. Reshma Gehlod, Sl. No. – HC-73/2012. The Signature above the rubber stamp ‘I identify the Deponent who has signed in my presence’ is that of Ms. Janhavi Prakash, Advocate. If indeed Defendant No. 3 was not even present in

Delhi much less in Court, it is inconceivable that such an affidavit could have been affirmed with the seal of the Oaths Commissioner on the basis of identification by counsel. Therefore, apart from Defendants 2 and 3, prima facie both the Oaths Commissioner as well as the counsel who purportedly, identified Defendant No.3, one of the deponents, has falsified the record of the Court.

8. The Court is satisfied that no further leniency can be shown to either of the appellants in these proceedings. The Court accordingly sentences Defendant No. 2 to ten days simple imprisonment beginning forthwith and directs the Naib Court of this Court to take him into custody and to take the further steps in that regard. As far as Defendant No. 3 is concerned, she and Defendant No. 2 have an infant. The Court is, therefore, prepared to take a more lenient view. Defendant No.3 is sentenced till rising of the Court today. She will remain in the room of the Registrar General ('RG') of the Court till the closing hours of the Court. The RG has been asked by the Court to ensure that there is no discomfort caused to the infant in any manner."

The plaintiff pointed out that a previous order of the Court requiring the defendant to furnish details of moveable and immoveable assets had not been complied with. The Court directed that the same be duly complied with and attached Bank Accounts jointly owned by the defendants in pursuance of powers under Order 39 Rule 2A of the Civil Procedure Code. During the course of proceedings, the Counsel for the defendants sought to tender demand drafts totaling ₹20 lakhs to the plaintiff. However the same was rejected by the latter as being too meagre a sum compared to the outstanding dues of ₹9 Crores.

15. On 06.12.2013, the appellant moved an application seeking suspension of sentence to appeal against the order of 03.12.2013. The Court, allowing the application, suspended the appellant's sentence for four days; from the evening hours of 06.12.2013 till 4.30 pm on 10.12.2013. Staying the

order dated 03.12.2013, it was further directed that in the event that no order was passed by the Division Bench by 4.30 PM on 10.12.2013 the appellant would have to surrender and serve out the remainder of his sentence. When the appeal was listed before the Court on 10.12.2013, interim relief suspending the sentence was granted.

16. In the course of proceedings in Cont. App (C) 11-2013, on 24.07.2014, based on an affidavit filed by defendant no. 3, further efforts were made towards repayment, by sale of land of which she was co-owner. Thereafter, on 20.05.2014 an amount approximating ₹38 lakhs which was lying in bank accounts of the appellant were disbursed to the respondent. The parties also chose to mediate the dispute however, mediation efforts failed.

17. Learned counsel appearing for the appellant contends that the earlier order of the Division bench in FAO (OS) 267/2013 passed on 06.08.2013 disposed of CS(OS) No.3037/2012. Reliance has been placed on *Kanwar Singh Saini v. High Court of Delhi* (2012 (4) SCC 307) to urge that the application by the plaintiff under Order 39 Rule 2A CPC was not maintainable. It was submitted that contempt proceedings did not survive as the order of 13.05.2013 merged with the order of the division bench. It was also pointed out that the said provision did not enable a party to invoke contempt jurisdiction of the Court as it is by way of an execution provision. Counsel urges that in the eventuality of non-compliance of terms of settlement, the plaintiff/respondent could have sought enforcement and execution of the undertaking in accordance with law, at the most treating the said undertaking as a decree of the Court which could be executed as per the

procedure prescribed in the CPC; non-compliance could not be treated as contempt of court especially since it was not willful.

18. Counsel highlighted that the appellant could not be treated as a contemnor, as his inability to repay the amounts to the plaintiff was due to force of circumstances. The major reason for flop of *Ata Pata Lapata* was that initially the defendants were given 745 screens for release of their movie but due to the screens issue between two big movies "*Jab Tak Hai Jaan*" and "*Son of Sardar*", the number of screens for the appellants' movie was further reduced to 135 screens only.

19. It was thereafter urged that even if the appellants were guilty of contempt of Court, procedure under Section 14 of the Contempt of Courts Act had to be followed. It was submitted that the Single Judge did not follow the procedure prescribed by the provision, before passing the impugned order of 03.12.2013. Reliance has been placed on *Dr. L.P. Mishra V. State of U.P* (AIR 1998 SC 337). It is argued that no show- cause notice as mandated under Section 14 of the Contempt of Courts Act, 1971 was issued to the appellant.

20. Counsel for the plaintiff urged this court not to interfere with the sentence and order of the Single judge. It was pointed out that the court had earlier recorded failure of the appellant to honour his commitments and undertaking; the cheques furnished by him were repeatedly dishonoured. The appellant and his wife, despite full knowledge that they were answerable for their conduct, deliberately chose to practice deception to the extent of filing a false affidavit. In these circumstances, this court should not interfere with the findings and sentence of the learned single judge.

Findings

21. The records and previous orders in the suit would reveal that the allegations about the appellant violating the undertakings given to court, were made long ago. On 01.11.2012, the court recorded the appellant's undertaking and permitted release of his film. The cheques given by him, however were dishonoured. This led to the order dated 05.04.2012, which *inter alia*, recorded as follows:

“it is now alleged by the plaintiff that the cheques given to the plaintiff on being presented have been dis-honoured and that necessitated filing of the second contempt application.

On a prima facie view, it becomes clear that the defendants do not have any sanctity for the assurances and undertakings given by them to this Court in the present proceedings and that is also more evident from the fact that they had succeeded in setting adverse order against them when the first application under Order 39 Rule 2-A CPC was moved by the plaintiff. Thereafter, they have repealed violation of the undertakings given by them to this Court. This conduct of the defendants justifies the requiring their personal presence in court this time.”

22. The court therefore, issued notice to the appellant and his wife, returnable on 10.04.2013. On that day, the appellant was present; however his wife's absence was sought to be supported by a medical certificate. The appellant's counsel admitted to the violation of undertaking:

“Learned senior counsel for the defendants has submitted that there can be possibly no defence to the show cause notice issued to the defendants by this Court for their having violated the undertakings given to this Court not once but twice and by getting the cheques given to the plaintiff in terms of the undertakings dishonoured and so all the defendants are offering their unconditional and unqualified apology to this Court and they do not wish to file any reply to this contempt application and to contest it. It is also submitted that the

dispute between the parties was purely of a commercial nature and the defendants have already suffered huge losses in their venture for producing a movie. The defendant No, 2, who, is present in person, also feels highly apologetic and personally also tenders his unconditional and unqualified apology as also on behalf of his wife. He makes a prayer that he will do genuine efforts to collect money from all possible sources to clear the dues of the plaintiff for which he as well as his counsel see/c some time, Learned senior counsel has also submitted that the defendants have already submitted before this Court that they do not have wished to contest the suit also. He requests for accepting the apologies of the defendants.

23. Though the court reserved orders in the application (IA 5427/2013), the plaintiff, sought its withdrawal because the appellant assured it that the amounts would be paid. The plaintiff moved IA 6684/2013 for permission to withdraw the earlier application urging violation of undertaking. The court permitted withdrawal of the said application, admonishing the plaintiff and saddling it with costs. On 13th April, 2013, the court recorded its order, holding that the appellant had willfully breached the undertakings given by him:

“After having given undertakings to the Court that the dues of the plaintiff shall be cleared within the agreed period and having assured the encashment of the cheques the defendants had no business to breach those undertakings and the assurances/undertakings and to get the cheques dishonoured on the ground of insufficiency of funds in their bank account. It is not even being put forth by the defendants that when they gave the post dated cheques to the plaintiff they were expecting some miracle to happen bringing crores of rupees in their bank account for the encashment of those cheques. And their cheques, which they gave to the plaintiff during the pendency of this suit, got dishonoured not once but twice. In these circumstances, the submission of the learned senior counsel for the defendants that there was no wilful and deliberate breach of the undertakings given to the Court cannot be accepted.....In any event, this Court cannot be

persuaded again and again to record undertakings of defendants. That way there would be no end to recording of undertakings on behalf of defendants since they would set an impression that violation of undertaking given to Court carries no consequences and they can keep on giving the undertakings and committing breaches also.

As far as the apology tendered by the defendants is concerned, that can, in the facts and circumstances of the case, only be a factor for consideration by this Court while considering the question of punishment to be awarded to the defendants but they cannot get exoneration from being held guilty of committing willful breach of the undertakings given by them and total discharge. That may be one of the mitigating circumstances, as held by a Full Bench of this Court in "State vs Bhavani Singh ". AIR 1968 Delhi 208. If defendants are discharged, then they would succeed in getting premium for their acts of breach of solemn undertakings and assurances given to this Court and the plaintiff, in the process, will be left with unfulfilled promises of the defendants only and the money payable to it shall remain in the bank accounts of the defendants. That merciful and benevolent decision, if taken by this Court., would convey to the public at large that the Courts cannot ensure enforcement of the undertakings given to them by the litigants.

24. The court recorded yet another undertaking by the appellant, dated 24.05.2013. That was in terms of another settlement, dated 21.04.2013 by which the appellant was to pay the amount of ₹5 Crores, by 31.07.2013. That was not done; in the meanwhile, an appeal was preferred against the above order of 13.05.2013, holding the appellant in contempt. That appeal (FAO 267/2013) was disposed of on 06.08.2013, recording that the parties had agreed for rescheduling the payment of ₹5 Crores and that the rest of the agreement would be honored. The Division Bench's order, *inter alia*, is as follows:

"It is further agreed by counsel for the parties that upon receipt of the entire amount agreed in terms of the settlement, all disputes should be

deemed settled and that the present appeal can be disposed off. Counsel for the respondent further states that in the event of default by the appellant, it would be open to the respondent to seek enforcement of the undertaking given to this Court on 21.4.2013 (these are found at page nos. 508 to 511 of the paperbook). In the eventuality of non-compliance of terms of settlement, the respondent can seek enforcement and execution of the undertaking in accordance with law.

The appeal is disposed off accordingly. rights of the parties especially of the respondents to seek remedial action for breach of the settlement terms, is expressly reserved.”

25. The appellant's first contention was that the court should not have proceeded under the Contempt of Courts Act and rather that the most appropriate remedy was under Order 39 Rule 2A. In this context, it would be relevant to notice that the Supreme Court, in *Tayabbhai M. Bagasarwalla & Ors. Vs. Hind Rubber Industries Pvt. Ltd.*, AIR 1997 SC 1240, dealt with a case of disobedience of an injunction passed under Order 39 Rule 1 C.P.C., wherein the contention was raised that the proceedings under Order 39 R. 2A cannot be initiated and no punishment can be imposed for disobedience of the order because the civil court, which granted the injunction, had no jurisdiction to entertain the Suit. The Supreme Court rejected the argument. It was held that a party aggrieved by the order can ask the court to vacate the injunction pointing out that it had no jurisdiction - or even appeal to the higher court for setting aside that order. Yet, as long the order exists, the party cannot be permitted to disobey it or avoid punishment for disobedience on any ground, including that the court had no jurisdiction, even if ultimately the court comes to the conclusion that the court had no jurisdiction to entertain the Suit. The party, who willingly disobeys the

order and acts in violation of such an injunction, runs the risk for facing the consequence of punishment. In *Sameer Khan Vs. Bindu Khan*, AIR 1998 SC 2765, the Supreme Court held that under Order 39 Rule 2-A C.P.C., a civil court can either order detention for disobedience of the party flouting the order or attaching his property; if the circumstances and facts of the case so demand, even both steps can be resorted to. The Supreme Court held that:-

"But the position under R.2A of Order 39 is different. Even if the injunction order was subsequently set aside the disobedience does not get erased. It may be a different matter that the rigor of such disobedience may be toned down if the order is subsequently set aside. For what purpose the property is to be attached in the case of disobedience of the order of injunction? Sub-rule (2) provides that if the disobedience or breach continues beyond one year from the date of attachment the Court is empowered to sell the property under attachment and compensate the affected party from such sale proceeds. In other words, attachment will continue only till the breach continues or the disobedience persists subject to a limit of one year period. If the disobedience ceases to continue in the meanwhile the attachment also would cease. Thus, even under Order 39 Rule 2-A the attachment is a mode to compel the opposite party to obey the order of injunction. But detaining the disobedient party in civil prison is a mode of punishment for his being guilty of such disobedience."

26. This court holds the appellant's argument that the single judge should have proceeded only under Order 39 Rule 2A, to be insubstantial. Both – those provisions as well as provisions of the Contempt of Courts Act cannot be considered to be mutually exclusive; they are complementary to each other. Moreover, the court, which was seized of the suit, is this Court, which by Article 215 is a court of record, able to proceed to enforce its orders and also commit those defying them, for contempt. Neither of the two sets of

provisions contain anything indicative of impediments of the kind the appellant seeks this Court to read into them.

27. As far as the other argument, on merits, that the appellant was not afforded opportunity goes, the series of events, which preceded the impugned order, shows that the appellant defaulted from his commitments on several occasions. The Court had already recorded that the appellant was guilty of contempt for the reason that he had willfully breached and violated the undertakings given by him. The order on sentence was not pronounced; however, in the meanwhile, another arrangement was arrived at, in terms of which a fresh undertaking (dated 21.04.2013) was furnished by the appellants. The order recording contempt was sought to be appealed against; the appeal was disposed of in view of another arrangement between the parties by which the sum of Rs. 50,000,000/- was payable within a particular time. Even this commitment was defaulted. In this background, the court recorded as follows, on 23.11.2013:

“4. In terms of the undertaking dated 21st April 2013 given by the contemnors before the Division Bench, they were to make a payment of Rs. 10 crores. On 6th August 2013, the Division Bench noted that the contemnors had agreed to make the payment of Rs. 5 crores on or before 31st July 2013 by way of three cheques dated 5th September 2013 (for Rs.2 crores); dated 25th September 2013 (for Rs. 3 crores) and another cheque of the same date for Rs. 20 lakhs and that the undertaking given by both contemnors on 21st April 2013 would be treated as “undertaking given to the Court”. It was further added by the Division Bench that “in the eventuality of non-compliance of terms of settlement, the respondent can seek enforcement and execution of the undertaking in accordance with law.”

5. Barring the above modification, the order dated 13th May 2013 passed by this Court holding the contemnors guilty of contempt was affirmed by the Division Bench. This Court had, on 10th September 2013 after noting that the cheque dated 5th September 2013 for Rs. 2

crores had been dishonoured, required the personal presence of the two contemnors on 17th September 2013 “for the purpose of awarding of punishment not only in terms of the order dated 13th May 2013 but also for being in repeated breach of the undertakings given, including the undertaking given to the Division Bench as recorded in its order dated 6th August 2013”.

6. Thereafter the Court noted on 17th September 2013 the plea of the contemnors that they will produce before the Court “an affidavit of the prospective buyer of the satellite rights” and granted time till 23rd September 2013.

7. After hearing the contemnors on that date, the matter was fixed for 23rd October 2013 for orders.

8. On 23rd October 2013, the contemnors tendered to the Plaintiff a demand draft in the sum of Rs.60,60,350 and counsel for the contemnors stated that they would make “payment of a further substantial sum to the Plaintiff within four weeks”. Accordingly the orders on punishment were deferred.

9. The history of this litigation shows that the contemnors have repeatedly been in breach of the undertakings given by them to the Court obviously seeking to draw maximum mileage from the indulgence being granted by the Court from time to time, so as to enable them to make the payment of the outstanding amount. Even now counsel for contemnors is not prepared to state whether the entire outstanding amount will be paid to the Plaintiff in terms of the undertakings given by the contemnors. She only states that one month’s time may be granted.

10. The contemnor (Defendant No. 2) is present in Court and states that he has some film assignments from which he is expecting payments to be released in January 2014. He states that he is making every effort to clear the dues. He pleads for one more opportunity to be granted to him to clear the dues of the Plaintiff.

11. The contemnor Mr. Rajpal Navrang Yadav will, by the next date, file an affidavit giving the details of the films for which he is expecting payments. The affidavit will disclose the name of the film, name of the producer, the agreed payment he is expected to receive and the time by which he will receive such payment. He would also disclose in his affidavit the amounts he has earned in the last three years from various film assignments. He will enclose a statement of all his bank

accounts for the last three years. The contemnor No. 2 (Defendant No. 3) will also file a similar affidavit enclosing the statement of all the bank accounts for the last three years. The statement of bank accounts of the company (Defendant No. 1) for the last three years will also be placed on record along with an affidavit of Mr. Rajpal Navrang Yadav. Advance copies of all the affidavits shall be given to the counsel for the Plaintiff.”

28. In these circumstances, when the appellant was afforded abundant opportunities to make amends, the conduct which he displayed was deplorable, to put it mildly. On 02.12.2013, he was present in court but his wife was not. A little background is necessary here. The third defendant, i.e., the appellant's wife, is a director and had furnished undertakings to the court. Her presence was deemed necessary. She never applied to the court, seeking exemption. On the day of hearing, i.e., 02.12.2013, it was made out as if she was in Delhi; the case was fixed in the latter half to enable her presence. When it was in fact taken up for hearing, neither of the defendants (i.e. second and third defendants) were present. Earlier that day, it was submitted to the learned single judge that the third defendant was in a hotel; later it was stated that she was in Ghaziabad. On the next day, however, it transpired that she was not in Delhi at all, but had reached the city only much after 4 p.m. on 02.12.2013.

29. Cumulatively viewed, the court's conclusion that the appellant willfully misrepresented and was absent when he had to be before it, given the series of duplicities practiced by him in furnishing undertaking after undertaking and not honoring any one of them, naturally led the court to conclude that he was neither sincere in honoring any of them, nor was the court able to repose confidence in his word. The deception practiced on the

court, repeatedly on 02.12.2013, vis-à-vis his presence and his wife's presence, was contumacious. The court also caught the defendants on the wrong foot, vis-a-vis the affidavit dated 02.12.2013. The single judge quite correctly reasoned that if indeed the second defendant was right that his wife was not present that day in Delhi, she could not have affirmed an affidavit, which was sought to be relied on.

30. Section 14 of the Contempt of Courts Act prescribes the procedure for punishment for contempt-when it occurs in court, in the presence of counsel and judges. That procedure no doubt requires notice in writing and opportunity to the contemnor to explain her or his conduct. Yet, the procedural requirement of issuing notice in writing and seeking explanation cannot be one said to be carved in stone. The court may require the alleged contemnor to answer to his conduct and record his explanation. If the court is of opinion that there is justification for the conduct, it may not pursue the matter further; however, if the explanation is *ipso facto* false, the court may well proceed to punish the litigant.

31. In *Leila David v State of Maharastra* AIR 2010 SC 862, the Supreme Court observed as follows:

“Although, Section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and wilful contumacious incident takes place in front of their eyes and the public at large...”

32. In that case, the conduct of the litigant was unacceptable as she threw footwear at the judges. However, she did not furnish any worthwhile explanation and instead insisted that her case should be heard on merits. In

the present case, the long history of the litigation shows that repeated undertakings were breached; when called upon to answer why action should not be taken, the appellant and his wife gave false and evasive replies; these included affirming a false affidavit. In these circumstances, this court is of the view that the complaint about failure to follow the procedure prescribed cannot be countenanced; the appellant was furnished appropriate and adequate opportunity to explain his conduct, but instead he resorted to falsehood.

33. For the above reasons, it is held that the findings and sentence imposed by the learned Single Judge is unexceptionable. The appellant is hereby directed to surrender before the Jail Superintendent, Tihar Jail on or before 15th July, 2016 to serve out the remainder of his sentence. Consequently, the appeal has to fail; it is, therefore, dismissed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JUNE 03, 2016