

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 146 OF 2006

Dinesh Govind Joshi .. Appellant

vs.

Bhagwandas Tulsidas Vakani
(since deceased through Legal heirs
and representatives) .. Respondents

AND

APPEAL FROM ORDER NO. 187 OF 2006

Bhagawandas Tulsidas Vakani
(since deceased through Legal Heirs
and representatives.) .. Appellants

vs.

Dinesh Govindji Joshi & Anr. .. Respondents

WITH

CIVIL APPLICATION NOS. 1081 AND 1080 OF 2014

WITH

CIVIL APPLICATION (ST.) NO. 19669 OF 2015

Mr. Haridas for Appellant in AO 146 of 2006 and for the Respondents in AO 187 of 2006.

Ms Neha Vakani, Appellant No.1C - in person in AO 187 of 2006 and Respondent No.1C in AO 146 of 2006.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 25 JANUARY 2017.

Date of Pronouncing the Judgment : 06 FEBRUARY 2017.

JUDGMENT :-

1] Heard Mr. Haridas for the appellant in Appeal from Order No.146 of 2006 and the respondents in Appeal from Order No.187 of 2006. Heard Ms Neha Vakani, appellant No.1C - in person in Appeal From Order No.187 of 2006 and respondent No.1C in Appeal From Order No.146 of 2006.

2] Since, both the appeals arise out of the common judgment and order dated 24 January 2006, it is only appropriate that the appeals are considered together and disposed of by this common judgment and order.

3] These appeals were on board for final hearing on several occasions. On 5 January 2017 the matters were heard for some time but adjourned to 12 January 2017 since, Ms Neha Vakani was not present on the said date. On 12 January 2017, again, Mr. Haridas was heard and the matters were reserved for orders. This is because on 12 January 2017 as well Ms Neha Vakani was not present, despite due notification of the matters on the cause list. On 12 January 2017, the following order was made :

“1] Learned counsel for the appellants in Appeal From Order No. 146 of 2006 hands in a pay order issued by Indian Overseas Bank in an amount of Rs.2,50,000/- in the name of Registrar, High Court, Appellate Side, Mumbai. The Registrar to accept the same and encash the same and keep the amount in deposit.

2] Even today, the respondents in Appeal From Order No. 146 of 2006, who are also the appellants in Appeal From Order No. 187 of 2006 are not present. The matters were heard on the previous occasion, but kept today in order to enable the representatives of late Bhagwandas Vakani to appear and make their submissions and also in order to enable Mr. Dinesh Joshi to deposit an amount of Rs.2,50,000/- in this court.

3] Mr. Haridas, apart from submitting that the Appeal From Order No. 146 of 2006, needs to be allowed has also submitted Mr. Dinesh Joshi is 74 years of age and is suffering from several medical ailments. Mr. Haridas submitted that Mr. Dinesh Joshi is wheelchair bound and therefore not in position to easily attend this Court.

4] Since, the arguments have concluded, the matters are reserved for orders. The Registry to do the needful with regard to pay order for amount of Rs.2,50,000/-”.

4] On 16 January 2017, upon the production praecipe taken out by Ms Neha Vakani the matters were taken up. However, since Ms Neha Vakani had not furnished necessary notice to Mr. Haridas, the matters were posted on 25 January 2016. On 25 January 2017, some preliminary orders were made for correction of the record pursuant to demise of Smt. Kokila Vakani and the matter was re-heard and then reserved for orders.

5] After the matter was reserved for orders, Ms Neha Vakani addressed a letter dated 1 February 2017 to the Registrar (Judicial) stating that the findings forwarded by the Principal Judge of the City Civil Court on 2 June 2006 may also be taken into consideration while deciding this matter. It is to be noted that even after the matter was posted for order on earlier occasion, Ms Neha Vakani addressed a letter dated 16 January 2017, which was however, treated as a praecipe for production. It is really not proper for any party to go on addressing such letters, particularly, after full and adequate opportunities have been afforded. Be that as it may, it is proposed to take into consideration the material on record for the purposes of decision in the two appeals.

6] By the impugned order dated 24 January 2006, the learned trial Judge has ordered the following :

“ORDER

Contempt Notice of Motion is partly allowed.

Defendant – Dinesh Govindji Joshi is held Guilty of breach of injunction order, dated 19th January, 2000 passed by this Court in Notice of Motion No. 214 of 2000 and held guilty of wilful disobedience of Order, dated, 28th March, 2000 passed by this Court in the Notice of Motion No. 214 of 2000 and he is punished under Order XXXIV Rule 2(a) CPC and is directed to

be detained in civil prison for a term of two months. Contempt Notice of Motion as regards prayer clause (b) to (e) stands dismissed.

Defendant is directed to pay compensatory costs of Rs.3,000/- to the plaintiff of deposit the same within one week from today. Defendant be sent to civil prison Byculla to undergo the detention as directed above."

7] The appellant in Appeal From Order No. 146 of 2006, who is represented by Mr. Haridas, impugns the entire order dated 24 January 2006, *inter alia* by contending that he has not willfully disobeyed the orders dated 28 March 2000 and 19 January 2000 and therefore, no order under Order XXXIX Rule 2A of the CPC ought to have been made against him.

8] Ms Neha Vakani, the appellant in Appeal From Order No. 187 of 2006, on the other hand has assailed the impugned order dated 24 January 2006 to the extent it has exonerated Dilip Joshi (respondent no. 2) in Appeal From Order No. 187 of 2006 from the charge of willful disobedience of orders dated 28 March 2000 and 19 January 2000 and further to the extent that both the respondents have been absolved of contempt and no action has been initiated either under section 10 or section 15 of the Contempt of Courts Act, 1971.

9] Mr. Haridas submits that exercise of powers under Order XXXIX Rule 2A of CPC has to be with caution. This is because proceedings under Order XXXIX Rule 2A of CPC are quasi criminal in nature and unless, clear wilful disobedience is established, there is no question of taking any action under the said provision. He submits that in this case the material on record establishes that on the dates of alleged breach, Dinesh Joshi was not even present at the

site and therefore, it can never be held that Dinesh Joshi has either willfully or even otherwise breached the orders dated 28 March 2000 and 19 January 2000.

10] As regards the issuance of cheques, Mr. Haridas submitted that said cheques were issued much prior to 19 January 2000 and therefore encashment by the concerned parties, though after 19 January 2000 cannot constitute any breach of disobedience of injunction order. In any case, Mr. Haridas submits that this is not a case where Dinesh Joshi can be said to have operated the bank accounts and therefore, there is no case of any willful disobedience or breach of any injunction order.

11] Mr. Haridas submits that as against disposal of notice of motion to initiate action under sections 10 or 15 of the Contempts of Court Act, an appeal from order is not maintainable and therefore, the Appeal From Order No. 187 of 2006 is liable to be dismissed as not maintainable.

12] Without prejudice, Mr. Haridas submits that Dilip Joshi was neither a party to the proceedings in which orders dated 28 March 2000 and 19 January 2000 made nor can it be said that such orders were even remotely directed as against Dilip Joshi. In such circumstances, Mr. Haridas submits that the proceedings alleging breach of injunction orders under Order XXXIX Rule 2A of CPC were not even maintainable against Dilip Joshi.

13] Finally, Mr. Haridas submits that Dinesh Joshi is by now 74 years of age and suffers from several medical ailments. He submits that Mr. Dinesh Joshi is wheel chair bound and therefore, not in a

position to even easily attend the court. He submits that Dinesh Joshi through his friends and relatives has arranged and deposited an amount of Rs.2,50,000/- in this court and in case, this court comes to the conclusion that Dinesh Joshi was involved in the willful breach of injunction orders, some suitable fine may be imposed but the sentence of imprisonment directed in the impugned order dated 24 January 2006 be set aside.

14] Ms Neha Vakani submitted that she is aware that “contempt” is a matter between the alleged contemnor and the court. However, she submitted that this is a gross case where the orders made by the trial court on 19 January 2000 and 28 March 2000 were willfully disobeyed by Dinesh Joshi and his brother Dilip Joshi. Therefore, she submits that this was a fit case where action under Order XXXIX Rule 2A of the CPC and the Contempt of Courts Act, was necessary against both the brothers. She submits that in this case a Court Receiver was already appointed by the trial court. This means that the property and affairs of business were “*custodia legis*”. Both Dinesh Joshi and Dilip Joshi have, in disregard of the orders made by the trial court interfered with the legitimate acts and activities of the Court Receiver. In such circumstances, both Dinesh Joshi and Dilip Joshi are liable to be adjudged as guilty for having committed the contempt of the court. Ms Vakani submits that the circumstance the Dilip Joshi may not have been a party to the proceedings in which the orders dated 19 January 2000 and 28 March 2000 were made is an irrelevant circumstance, since, the material on record amply establishes the role of Dilip Joshi in obstructing the implementation of the two orders. There is ample material on record which establishes that Dilip Joshi also obstructed the functioning of the Court Receiver. For all these reasons, Ms Vakani submitted that

Appeal from Order No. 146 of 2006 is liable to be dismissed and Appeal From Order No. 187 of 2006 is liable to be allowed.

15] Without prejudice to the aforesaid, Ms Vakani submitted that it was the desire of her late mother Kokila Vakani that the matter be settled upon equitable terms. Ms Vakani submitted that some efforts were made in the past for settlement. Ms Vakani also very graciously acknowledged the efforts of Mr. Haridas towards the settlement of the matters. Ms Vakani submitted that even now, she is ready for a just and fair equitable settlement of the disputes and therefore, appropriate directions can be issued in this regard.

16] Mr. Haridas submits that he did make attempts at settlement of the disputes and that the parties he represent are not averse to any settlement. He submits that in the proceedings pending before the trial court, such attempts can once again be made.

17] Ms Vakani and Mr. Haridas, however, submitted that now that these appeals from order which relate to the year 2006 have already been argued, the same be disposed of in accordance with law, leaving the parties to explore the possibility of settlement before the trial court.

18] In this case, what is alleged is the willful disobedience of order dated 19 January 2000 and 28 March 2000 made by the trial court by Dinesh Joshi and his brother Dilip Joshi. Admittedly, Dilip Joshi was not a party in S.C. Suit NO. 388 of 2000, in which, the said two orders came to be made.

19] The order dated 19 January 2000 reads as follows:

“ORDER

That pending the hearing and final disposal of the Suit, the Court Receiver, High Court, Bombay, be appointed as Receiver of the assets of the suit firm M/s. Tulsidas Valji & Co. its bank accounts, books of accounts, files, vouchers, papers and other documents, cheque books of all bank accounts and recoveries of the firm with all powers under Order XL, Rule of C.P.C., 1908 including two offices being at 95/97, Bhandari Street, 1st Floor, Koliwada, Mumbai-400 003 and Maruti 800 Car No.MH-01.R-5218.

Till the appointment of the Court Receiver, ad-interim injunction in terms of prayer clause (c). That pending the hearing and final disposal of the suit, the Defendant, his servants, agents or anybody through him, be restrained by an order of this Hon'ble Court from operating the Bank Accounts being (a) A/c. No.No. 339 and F.D.R. A/c. with the New India Co-operative Bank, Sir P.M. Road Branch, Fort, Bombay. (ii) A/c. No.30026 with the Union Bank of India, Mandvi Branch, Bombay. (iii) A/c.No.102068 with the Central Bank of India, Marine Lines Branch, Bombay, (iv) A/c. No.22950 with the Abhyday Co.Op.Bank Ltd., Fort Branch, Bombay, (v) A/c. No.12704 with the Abhydaya Co-Op.Bank Ltd., Kala Chowki Branch, Bombay (vi) The Corporation Bank, Fort Branch, Bombay, (vii) Syndicate Bank, Bharuch Street Branch, Bombay and, (viii) ANG Grindlays Bank and any other account of the suit firm, and/or dealing or disposing of any assets or carrying on any business transaction of the said partnership firm of M/s. Tulsidas Velji & Co.

Receiver to act upon the ordinary copy of the Roznama.

Notice of Motion is returnable on 28/02/2000.

Matter is adjourned to 28/02/2000 for Notice of Motion.”

20] Similarly, the order dated 28 March 2000, reads as follows:

“R O Z N A M A

28/03/2000CORAM: Her Honour Judge Smt. S.S. Joshi.

Advocate Mr. Vaishnawa for Plaintiffs.

Advocate Ms. Kaur holding for Advocate

Chaudhari for Defendant.

Shri. J.S. Mallapurkar – Representative of Court Receiver, present.

Advocate Ms. Kaur submits that Advocate Chaudhari is held up in High Court. Kept back. Again called out. J.S. Mallapurkar, Representative of Court Receiver present.

Vaishnawa, Advocate for Plaintiffs.

Chaudhary, Advocate for Defendants.

Mr. Vaishnawa, Learned Advocate for Plaintiff requested that Defendant be directed to comply with the Order passed by this Court on 19/01/2000. He also contended that the Defendants are not disclosing the true affairs of the partnership tot eh Receiver. He requested for giving necessary directions to the Defendant.

Heard the Learned Advocates.

PER CORAM; Defendants are directed to disclose on oath all the true affairs of the partnership firm such as loans, advances, borrowings, investments, purchases, acquisition of any assets and all other transactions within a period of four weeks from the date of passing of the Order. Adjourned for reply to 28/04/2000.”

21] In paragraph 31 of the impugned order, learned trial Judge has summarised the combined effect of the two orders dated 19 January 2000 and 28 March 2000. The Court Receiver, who was appointed in the matter, proceeded to implement his commission. However, from the various reports made by the Court Receiver, it is apparent that Dinesh Joshi, by his acts of omission and commission failed to cooperate and on some occasions, even obstructed functioning of the Court Receiver in discharge of his commission.

22] The Court Receiver has filed a report dated 25 January 2000, which reads thus:

“Madam (II),

As per appointment fixed with the parties to the suit vide this office letter dated 20th January 2000, I left this office on 24th January 2000 at about 12.30 p.m. alongwith Shri. Jatin Vakani, Plaintiff No.2, Miss. Neha Vakani, daughter of Plaintiff No.1 and Shri. D.P. Diwate, Managing Clerk of the Advocate for the Plaintiffs, for taking possession of the assets of the suit firm

viz. M/s. Tulsidas Valji & Co., including their Bank accounts, books of accounts, files, vouchers, papers and other documents, cheque books of all Bank accounts and recoveries of the firm, including two offices bearing No. 95/97 situated at Bhandari Street, 1st Floor, Koliwada, Mumbai-400 003 and a Maruti 800 Car No.MH-01.R-5218 as per the Order dated 19th January 2000 passed by the Hon'ble City Civil Court at Bombay.

At about 1.15 p.m., we reached at the office premises No.95/97 situated at Bhandari Street, 1st floor, Koliwada, Bombay for the said purpose. Shri. Jatin Vakani, Plaintiff No.2 pointed out the said office premises and requested me to take possession of the assets of the partnership firm as per the said Court's order.

Shri. Jatin Vakani, Plaintiff No.2 also introduced me with Shri. Dilip Joshi, Brother of Defendant, who was present there. We also noticed that 7-8 staff members were present in the office premises. I then showed the said Court's Order to Shri Dilip Joshi and made enquiry about the Defendant. Then Shri. Dilip Joshi informed me that his brother Shri. Dinesh Joshi, Defendant has gone to the Girgaon Court to attend the Case No. 1435 of 1999 in the morning but so far he has not attended the office. Shri Dilip Joshi further informed me that he has tried to contact Shri Dinesh Joshi, Defendant on his mobile phone but was unable to succeed to contact him or nor the said Defendant had contacted him in the office. Shri. Dilip Joshi further informed me that he don't know whereabouts the said Defendant at present.

Shri. Dilip Joshi further informed me that he has not given any instructions by Shri. Dinesh Joshi, Defendant for handing over possession of the suit partnership assets as per the appointment fixed by the Court Receiver and requested me to wait in the office for the said Defendant. We accordingly waited in the office premises for the said Defendant. At about 2.15 p.m., Shri. Jaysingh Joshi, another brother of Shri. Dinesh Joshi, Defendant attended the office premises and informed me that the Defendant has gone to Girgaon Court to attend the Case in the morning but so far he has not reached in the office or not contacted to them in the office on telephone or not contacted on their respective mobile phone and nor he has given any instructions to them for handing over possession of the suit partnership assets to the Court Receiver.

Shri. Jaysingh Joshi and Shri. Dilip Joshi, brothers of Defendant further informed me that they don't know whereabouts the Defendant and also not aware when the

Defendant will come in the office.

We waited in the office of the suit partnership firm upto 3.30 p.m. but Shri Dinesh Joshi, Defendant has not attended at site. At the same time, Shri. Jatin Vakani, Plaintiff No.2 informed me that despite the notice given to the Defendant, the said Defendant did not present in the office of the Court Receiver as per the appointment fixed by the Court Receiver at 11.00 a.m. or not remain present in the office of the partnership firm for handing over possession of the suit partnership assets as per the Court's Order passed by the Hon'ble Court. Shri Jatin Vakani, Plaintiff No.2 further informed me that it is not necessary to wait at site such a long time for the said Defendant and requested me to record the above facts in my site report and leave the office and they will make an application to the Hon'ble Court and will point out the conduct of Defendant for not handing over possession of the suit partnership assets as per the Court's Order.

Accordingly, I prepared my site report in the presence of the aforesaid parties and shown to them. After reading the site report, all the parties have signed the said site report except Shri. Dilip Joshi, who refused to put up his signature thereon. The said site report is attached herewith for your kind perusal. I left the office of suit partnership firm at about 4.00 p.m.

I was engaged on 24th January 2000 between 12.30 p.m. and 4.30 p.m. My attendance may be noted and charged.

I may further add here that I could not take possession of the suit partnership assets as per the said Court's Order as the Defendant was not present at site.”

23] The material on record indicates that the notice was issued to Dinesh Joshi that the Court Receiver would be arriving at site to take possession of the suit premises on 24 January 2000 and Dinesh Joshi was required to remain present at the date and time indicated in the notice. Despite the receipt of notice, Dinesh Joshi remained absent and instead sent his married daughter, at the site. This married daughter, as observed in the Receiver's report refused to cooperate with the Court Receiver. Dilip Joshi, the brother of Dinesh Joshi also arrived at the site and once again, refused to cooperate with the Court Receiver. Learned Trial Judge has accepted the Court

Receiver's report on the aspect of what transpired at the site. Neither Dinesh nor Dilip had produced any material or have otherwise been successful in satisfying the trial court that the events as reflected in the Receiver's report dated 25 January 2000 are not substantially true and correct. It is apparent that the efforts were made to frustrate the orders made by the trial court and even the Court Receiver was not allowed to discharge the duties assigned to him by virtue of his appointment.

24] On 25 January 2000 and on 27 January 2000, once again, non cooperation on the part of Dinesh Joshi was evident. Again, Dinesh Joshi failed to remain personally present and cooperate with the Court Receiver, but rather, sent his married daughter at the site. This married daughter feigned ignorance about court orders and failed to hand over books of accounts, cheque books, files etc. despite being requested by the Court Receiver to do so. The Court Receiver has made yet another report on 27 January 2000 which also substantially reflects the events and acts of omissions and commissions attributable to Dinesh Joshi.

25] On 28 January 2000, again, the same position continued and the events are substantially reflected in Court Receiver's report dated 31 January 2000. Again on this occasion, Dinesh Joshi failed to remain present and put forward his daughter. This daughter once again failed to cooperate with the entreaties of the Court Receiver.

26] Ultimately, when the Court Receiver, armed with the orders made by the trial court was to take possession of the suit premises, one Jayshing Joshi stating that he was the partner of Govindji Narshing and Sons claimed that he was authorised occupant of the

suit premises and on such basis resistance was offered in the implementation of the court orders. Again, the police force had to be summoned and there was further delay. This is again reflected in the Court Receiver's report.

27] From the aforesaid and upon perusal of the Court Receiver's reports, it is quite evident that Dinesh Joshi adopted all means to frustrate the orders made by the trial court. Though required, Dinesh Joshi refused to present at the site. Instead, he sent other persons, including his daughter at the site, who, far from rendering any cooperation to the Court Receiver created obstacles in the execution of the court orders. It is only with great difficulties that the Court Receiver was able to take the possession of the suit premises. The directions with regard to submissions of true and correct accounts or other directions were not at all complied with by Dinesh Joshi both in letter as well as in spirit. On the contrary, steps were taken by Dinesh Joshi to see if the implementation of such orders is frustrated. There is no infirmity in the findings recorded in the impugned order that Dinesh Joshi has willfully disobeyed the orders and therefore, action under Order XXXIX Rule 2A of the CPC is warranted in the facts and circumstances of the present case.

28] On the aspect of issuance of cheques and operation of the bank accounts despite the restraint orders, learned trial Judge, in the impugned order, had held that it cannot be conclusively said that such breach was established, in the absence of proper evidence. On behalf of Vakanis, grievance was made that issues in this regard had been raised by them, but the same were not substantially answered by learned trial Judge in making the impugned order. This court by order dated 21 April 2006 in Appeal from Order No. 146 of 2006,

directed learned trial Judge to record and forward additional findings upon these issues. By order dated 12 May 2006 learned trial Judge has forwarded the findings upon such additional issues.

29] In the order dated 12 May 2006, there is reference to such additional issues, which read thus:

“I S S U E S

1 Could the defendant explain satisfactorily the issue of missing cheque books?

2 Is the defendant's explanation satisfactory, in respect of the remaining seven cheques referred to in the order of the Hon'ble High Court dated 4th April, 06?

3 Did the defendant explain properly the issue of two promissory notes, items no.40 and 41 in the list submitted by the plaintiff before the Hon'ble High Court ?

4 Whether the defendant's explanation is satisfactory in respect of cheques at item nos.42 to 114 mentioned in the list submitted by the plaintiff before the Hon'ble High Court and reference of which is made by the Hon'ble High Court in the order dated 4th April, 06?

5 Could the defendant give satisfactory explanation in respect of cheque nos.97798 and 97800 in the order of the Hon'ble High Court dated 4th April,06 ?”

30] On the first issue, learned trial Judge, upon discussing the material on record has held that it was quite clear that the defendnat, i.e., Dinesh Joshi had concealed selective record and succeeded in keeping the plaintiff guessing and apprehending about more criminal cases against him. In this manner, Mr. Dinesh Joshi succeeded in frustrating the effective implementation of the orders dated 19 January 2000 and 28 March 2000.

31] On the second issue, learned trial Judge has exonerated Dinesh Joshi by recording a finding that the transactions in respect of the cheques had taken place even prior to institution of the suit

and therefore, such transactions could not have been said to be in breach of any injunction order made in the suit.

32] On the third issue, concerning the issue of promissory note, learned trial Judge has held against Dinesh Joshi by observing that his stand being evasive and improper, amounts to willful disobedience of the order of the court. However, upon perusal of the extension submitted by Dinesh Joshi as well as the material on record, it cannot be said that the issuance of two promissory notes, in the facts and circumstances of the present case, constitute any willful disobedience of the order made by the trial court.

33] As regards issue No.4, again, learned trial Judge has concluded that Dinesh Joshi has willfully disobeyed the order dated 28 March 2000. Again, this finding cannot be accepted. In support of this finding, learned trial Judge has basically faulted Dinesh Joshi for the delay in submission of explanation. However, learned trial Judge has accepted that the explanation ultimately furnished by Dinesh Joshi that money drawn from the account was properly accounted. Insofar as issue no.4 is concerned, therefore, it cannot be said that there was any willful disobedience of the order dated 28 March 2000.

34] Again, insofar as issue No.5 is concerned, learned trial Judge has concluded that the explanation in support of cheque No.97798 and 97800 is quite evasive and therefore, there is disobedience of the order dated 28 March 2000. Again, this is not a correct approach, as no finding can be recorded as regards disobedience only because there is some evasiveness in the explanation offered.

35] For action under Order XXXIX Rule 2A of CPC, mere disobedience of injunction orders is not sufficient, but further, such disobedience has to be established as willful. Upon cumulative consideration of the material on record, it is established that Dinesh Joshi willfully disobeyed the orders with regard to render of actions or handing over of possession of the premises and other matters to the Court Receiver. In fact, acts of omissions and commissions on the part of Dinesh Joshi were clearly calculated to frustrate the interim orders and the functioning of the Court Receiver in pursuance of the same. However, on the aspect of operation of bank accounts or issuance of cheques and promissory notes, despite restraint orders, the material on record cannot be the basis to conclusively hold that there was willful disobedience.

36] From perusal of the impugned order, it is seen that the approach of the learned trial Judge is substantially balanced and the finding recorded by the learned trial Judge are substantially in accord approach with the aforesaid findings. It is true that learned trial Judge in its order dated 12 May 2006 has found further acts of disobedience on the part of Dinesh Joshi. However, upon review of such finding, it is not possible to accept such findings in their entirety as indicated earlier. Assessment of evidence in such matters cannot be merely on the basis of preponderance of probabilities, particularly since proceedings under Order XXXIX Rule 2A of CPC can, for certain purposes at least be regarded as *quasi* criminal in nature.

37] In *Food Corporation of India v. Sukh Deo Prasad – (2009) 5 SCC 665*, the Hon'ble Supreme Court has held that the power exercised by the court under Order XXXIX Rule 2A of the CPC is

punitive and akin to the power to punish for civil contempt under Contempt of Courts Act, 1971. The person who 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 XXXIX Rule 2A, 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 2A should be exercised with great caution and responsibility.

38] Insofar as the involvement of Dilip Joshi is concerned, it is true that Mr. Dilip Joshi was also present at the site and did not cooperate wholeheartedly with the Court Receiver. However, that by itself is not sufficient to proceed against Dilip Joshi Order XXXIX Rule 2A of the CPC . Admittedly, Dilip Joshi was not even a party to the proceedings in the suit. The trial court, has held that no case of criminal contempt can be said to have been made out either against Dinesh Joshi or Dilip Joshi and on such basis declined to make a reference under section 10 or section 15 of the Contempt of Courts Act.

39] Normally, an appeal under the Contempt of Courts Act would lie only when positive action is taken and the contemnor is punished or fine imposed in pursuance of such action. In such circumstances, it is quite doubtful as to whether in a case of this nature, the appeal is maintainable against this part of the impugned order. However, even assuming that the appeal is maintainable, there is really no

case made out to interfere with the impugned order, when it says that this was not a case of any criminal contempt warranting action under section 10 or 15 of the Contempt of Courts Act.

40] In this case, although it is true that Dinesh Joshi may have willfully disobeyed the interim orders, it has to be remembered that these are basically civil disputes between parties. The disputes relate to the assets of the partnership and the distribution of proceeds. No doubt, the Court Receiver was appointed for the purposes and in that sense, the property involved was *custodia legis*. There was some obstruction to the functioning of the Court Receiver as well. The obstructions to a Court Receiver whilst in discharge of the duties assigned to him, may in a given case, give rise to an action under the Contempt of Courts Act. However, upon cumulative consideration of the material on record, there is no reason to fault the view taken by learned trial Judge that this was not a fit case for action under section 10 or section 15 of the Contempt Courts Act, 1971.

41] In ***Kanwar Singh Saini v. High Court of Delhi- (2012) 4 SCC 307***, the Hon'ble Supreme Court has held that there is a distinction between a civil and criminal contempt. A mere disobedience by a party to a civil action of a specific order made by the court in the suit is civil contempt for the reason that it is for the sole benefit of the other party to the civil suit. This case remains to the extent that, in such a fact situation, the administration of justice could be undermined if the order of a contempt court of law is permitted to be disregarded with such impunity, but it does not involve sufficient public interest to the extent that it may be treated as a criminal contempt. It was a clear-cut case involving private rights of the

parties for which adequate and sufficient remedy had been provided under CPC itself, like attachment of the property and detention in civil prison, but it was not a case wherein the facts and circumstances warranted the reference to the High Court for initiating the proceedings for criminal contempt.

42] By the impugned order, Mr. Dinesh Joshi has been directed to be detained in civil prison for a term of two months and further, he has been directed to pay compensatory costs of Rs.3000/- to the plaintiffs. As observed earlier, clearly, Dinesh Joshi has breached and defied the orders made by the trial court and therefore, this was clearly a case where action under Order XXXIX Rule 2A of CPC was warranted against him. The imposition of costs of Rs.3000/- is totally inadequate in the facts and circumstances of the present case. In fact, as a result of acts of omissions and commissions, Dinesh Joshi has, to a certain extent, acquired pecuniary benefits as well. No doubt, nature and extent of this benefits will have to be determined in the suit. However, direction for payment of costs to the extent of only Rs.3000/- is neither compensatory nor appropriate. Perhaps, such meagre costs were imposed because they were coupled with the directions that Dinesh Joshi be detained in civil prison for a term of two months.

43] Insofar as the direction for detention of Dinesh Joshi in civil prison for a period of two months is concerned, such a direction might have been justified at the stage when the same was made. However, at this stage, it will not be appropriate to require Dinesh Joshi to suffer civil imprisonment. This is because Dinesh Joshi is now 74 years of age and is stated to be suffering from several medical ailments. It was submitted by Mr. Haridas that Dinesh Joshi

is wheelchair bound and therefore, not in a position to even easily attend the court proceedings. Besides, Dinesh Joshi has arranged from his friends and relatives an amount of Rs.2,50,000/- which has since been deposited in this court, which amount can always be paid by way of fine/compensatory costs to Ms Vakani, in lieu of Dinesh Joshi suffering civil imprisonment, at this point of time. Ms Vakani was, however, insistent that both Mr. Dinesh Joshi and his brother Dilip Joshi suffer imprisonment for their acts of contempt of court and disobedience of interim orders. The issue of contempt as well as sentencing therein is basically a matter between the contemnor and the court. In this case, some action is certainly warranted against Dinesh Joshi under the provisions of Order XXXIX Rule 2A of CPC. However, imprisonment in civil prison, will not be appropriate, at this stage. One of the purposes for which power under Order XXXIX Rule 2A of CPC is to be exercised is for upholding the dignity of the court and instilling due respect for the judicial process. However, such power is not to be used for feeding personal grudge or as an offensive weapon to satisfy private vendetta[#].

44] Upon cumulative consideration of the aforesaid circumstances, the direction for detention of Dinesh Joshi in civil prison contained in the impugned order is set aside. Instead, Dinesh Joshi is directed to pay to Ms Neha Vakani, who is now the legal representative of Bhagwandas Vakani and Kokila Vakani the amount of Rs.2,50,000/-.

45] It is made clear that the aforesaid amount of Rs.2,50,000/- is required to be paid by Dinesh Joshi for having willfully disobeyed and breached the injunction orders made by the trial court in favour of Vakanis. However, this amount does not represent and should not

[#] V.G. Quenim (D through Lrs. And anr. v. Bandekar Brothers Pvt. Ltd. - 2015 (1) Mh.L.J. 421

taken as representing the amounts which Ms Neha Vakani states is due and payable by Dinesh Joshi in the pending litigation. The amounts, according to Ms Neha Vakani, due and payable by Dinesh Joshi would run into Crores of rupees. In fact, Ms Vakani in her letter dated 16 January 2017 seeking leave to be heard has quantified the 'amount at Rs.1.14 crores'. The relevant quote reads thus:

“Should this Hon'ble Court finally come to the conclusion that this Appeal from Order No.146 of 2006 deserves to be dismissed, then the Appellant Dinesh Joshi will have to Purge his Contempt and deposit Rs.1.14 crores + with the Registrar, High Court, Appellate Side, Mumbai (as he has done on 12 January 2017 as per the Order of this Hon'ble Court.)”

46] At this stage, it is not for this court to go into such issues. However, it is clarified that the amount of Rs.2,50,000/- now directed to be paid to Ms Neha Vakani have no nexus with her alleged rights, dues and entitlements in the civil litigation pending between the parties. All these are matters to be decided in the said civil litigation and nothing in the impugned order or for that matter the present order is intended to reflect upon or concern any such matters.

47] The appeals from order are therefore, disposed of with the following order:

a] The impugned order dated 24 January 2006 is modified and direction for detention of Dinesh Joshi in civil prison for a period of two months is set aside;

b] Instead, Dinesh Joshi is directed to pay Ms Neha Vakani sum of Rs.2,50,000/- for having committed willful breaches of the orders made by the trial court;

c] The amount of Rs.2,50,000/- deposited in this court and as recorded in the order dated 12 January 2017, shall be paid to Ms Neha Vakani by the Registrar of this court unconditionally. If any interest is accrued on the said amount, the same can also be paid to Ms Neha Vakani;

d] The aforesaid amount of Rs.2,50,000/- does not represent and should not be taken as representing the amounts, which Ms Neha Vakani states is due and payable by Dinesh Joshi in the pending litigation. Such amount has no nexus with the alleged rights, dues and entitlement of Vakanis in the civil litigation pending between the parties. All these matters are to be decided in the civil litigation in accordance with law and on their merits;

e] Appeal From Order No. 146 of 2006 is therefore, partly allowed. However, Appeal From Order No. 187 of 2006 is dismissed without costs;

f] The civil applications stand worked out or in any case, do not survive and are therefore, disposed of; and

g] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)