IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL APPEAL NO. 18 OF 2016
IN
CHAMBER SUMMONS NO. 735 OF 2013
IN
SUMMARY SUIT NO. 475 OF 2010
WITH
COMMERCIAL NOTICE OF MOTION NO. 3 OF 2016
IN
COMMERCIAL APPEAL NO. 18 OF 2016

Krishna Dushyant Rana, Proprietor
D.B. Rana & Co. .. Appellant
Vs.
Cipla Limited .. Respondent

Dr. Birendra Saraf a/w Ms. Pooja Kshirsagar, Mr. Arun Mehta, Mr. Sanket Shah, Ms Ashwini Pawar i/b Akshar Laws for Appellant.
Mr. Mahesh Londhe a/w Mr. Akshay Udeshi i/b M/s. Sanjay Udeshi & Co. for Respondent.

CORAM : NARESH H. PATIL &
R.G. KETKAR, JJ.

Reserved on : NOVEMBER 16, 2017.
Pronounced on : DECEMBER 19, 2017.

<u>ORDER</u>: [Per R.G. KETKAR, J.]

Heard Dr. Saraf, learned Counsel for the appellant and Mr. Londhe, learned Counsel for the respondent at length.

2. By this Appeal under Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short 'Act'), the appellant, hereinafter referred to as 'defendant', has challenged the judgment and order dated 25/31.08.2016

passed by the learned Single Judge in Chamber Summons No.735 of 2013 in Summary Suit No.475 of 2010. By that order, the learned Single Judge disposed of the Chambers Summons taken out by the respondents, hereinafter referred as 'plaintiffs' and held that defendant has disobeyed the orders made under Order XXI, Rule 41(2) of the Code of Civil Procedure, 1908 (for short 'C.P.C.') and ordered detention of the defendant in civil prison for three months, the maximum period provided thereunder.

3. Plaintiff had instituted Summary Suit No.475 of 2010 under Order XXXVII of C.P.C. against the defendant herein in this Court. Despite service of writ of summons, defendant failed to appear. The Suit was decreed on 18.03.2011. This Court directed the defendant to pay the plaintiff a sum of Rs.3,25,25,687/- and sum of Rs.61,91,398.43/- towards interest @18% p.a from the date of filing of the Suit i.e. 01.01.2010 till the date of the order i.e. 18.03.2011. This Court further directed the defendant to pay the interest @18% p.a. on the principal amount of Rs.2,84,04,480/- from 19.03.2011 till payment or realization. Defendant has not paid any amount. It is the case of the plaintiff that the total outstanding amount as on 31.07.2013 was Rs.5,09,34,745/- which included Rs.3,88,32,102.93/- as per the drawn up decree and Rs.1,21,02,643/- towards interest @18% p.a. from 19.03.2011 till 31.07.2013 on principal outstanding amount of Rs.2,84,04,480/-.

4. Plaintiff took out Chamber Summons No.735 of 2013 on 26.08.2013 inter alia praying for direction to the defendant to file affidavits setting the particulars of all his assets (movable and immovable) as provided under Order XXI, Rule 41(2) of C.P.C. Plaintiff filed affidavit of Paras Doshi, Constituted Attorney of the plaintiff company in support of the Chamber Summons. The Chamber Summons was listed before the learned Single Judge on 09.06.2015. On behalf of the defendant, time was sought to file

affidavit in reply to the Chamber Summons. By order dated 09.06.2015, the learned Single Judge, as and by way of last chance, gave time upto 15.06.2015 and directed the defendant to file and serve a copy of the affidavit in reply upon the Advocate for the plaintiff not later than 12 noon on 15.06.2015. The hearing of the Chamber Summons was adjourned to 18.06.2015. In pursuance of the order dated 09.06.2015, defendant filed affidavit dated 15.06.2015 (first affidavit).

5. On 18.06.2015, the learned Single Judge dealt with the preliminary objection raised on behalf of the defendant-judgment debtor that Chamber Summons is not maintainable. On behalf of the defendant, it was contended that an application under Order XXI, Rule 41 of C.P.C. cannot be filed unless a formal decree was drawn up and remains unsatisfied for a period of 30 days thereafter and without first filing an execution petition under Order XXI, Rule 11(2) of C.P.C. The learned Single Judge referred to the decision of this Court in ***United Phosphorous Limited Vs. A. K. Kanoria***, **AIR 2003 Bombay 97** and held that for entertaining such a Chamber Summons, there was no necessity of filing such execution petition under Order XXI, Rule 11(2) of C.P.C. before filing of an application under Order XXI, Rule 50 or under Order XXI, Rule 41 of C.P.C. In the order, the learned Single Judge also noted that defendant has filed affidavit in reply disclosing certain assets. It was observed that disclosure is totally incomplete and does not contain any particulars. For example, defendant stated that he has Honda Amaze Car. Defendant did not disclose what is the registration number of the car and whether the car is hypothecated or not. Defendant also stated that an amount of Rs.24,000/- is invested in mutual fund and an amount of Rs.42,425/- is invested in shares. Defendant did not disclose in which mutual fund and in which shares he has invested the said amounts. The defendant disclosed that an amount of Rs.11,380/- is to be received from Mahavir Developers. No details are provided as to who is Mahavir

Developers and on what count amount is to be received from it. Defendant mentioned that he has certain bank accounts without disclosing with which branches and account numbers. Therefore, it is quite obvious that an attempt is made to prolong the proceedings and the defendant is also trying to give impression that he has complied with the orders of this Court but at the same time not giving full and complete particulars.

6. In paragraph 2 of that order, it was noted that plaintiff has taken out Chamber Summons in aid of execution or as a step towards the execution. Unless the defendant discloses full particulars, plaintiff will not be able to decide in which Court he should get the decree transferred. Therefore, as and by way of last chance, defendant was directed to disclose in detail and give full particulars of all assets supporting documents and also make a statement that he has made full disclosure of his assets and **he has not suppressed any particulars from the Court**. Defendant was also directed to furnish copies of his annual returns that have been filed in the last five years. By way of last chance, defendant was called upon to disclose all his assets. Further direction was given to serve affidavit to the Advocate for the plaintiff on or before 24.06.2015. Hearing of the Chamber Summons was deferred to 25.06.2015.

7. On 23.06.2015, defendant filed additional affidavit (second affidavit). The matter was heard on 08.07.2015. In paragraph 2, the statement of the learned Counsel for the defendant that he was not given full details by the defendant, even though he had advised him to give full details was recorded. The statement of the learned Counsel for the defendant that when he went through the balance sheet of the proprietary firm, D.B.Rana and Company of the defendant, he found that there are more assets mentioned therein which were not disclosed to him by his client. The learned Judge, therefore, recorded that “it is quite obvious that the defendant is not only being

dishonest with the Court but is also trying to give incorrect instructions to his Advocate."

8. In paragraph 3, the learned Single Judge noted that though the applicant plaintiff has not prayed for, it is a fit case to exercise inherent powers and direct the defendant not to create any third party rights of whatsoever nature of any of the assets mentioned in the balance sheet of D.B.Rana and Company. In paragraph 4, it was stated thus,

> "4. It is also made clear that any breach of this direction will be viewed very seriously and considered as deliberate and willful disobedience of the order of this court and the defendant will be dealt with sternly. As and by way of last chance, defendant is directed to file the affidavit containing all the truthful details and serve a copy thereof upon the plaintiffs on or before 13th July 2015. Stand over to 15.07.2015. Defendant is directed to remain present in court on that date."

9. In pursuance of the order dated 08.07.2015, the defendant filed further additional affidavit dated 13.07.2015 (third affidavit). The matter was heard on 15.07.2015 and was adjourned to 23.07.2015. The defendant was directed to remain present in the Court. On 23.07.2015, the defendant appeared in person and stated that he wanted to change his Advocate. He also undertook to file his affidavit in the registry during the course of the day. The order also recorded statement on behalf of the plaintiff that he was served with a copy of the affidavit but the affidavit still did not contain all the details and that he had written letters to the Advocate for the defendant pointing out deficiencies. Statement of the defendant that he will collect copies of those letters from the counsel for the plaintiff and meet the same with a fresh affidavit was also recorded. The hearing was adjourned to 04.08.2015.

10. Defendant filed additional affidavit dated 08.09.2015 (fourth

affidavit) disclosing the details and/or dealing with the letter dated 21.07.2015 addressed by the plaintiff. The Chamber Summons was thereafter adjourned from time to time on the ground that parties are exploring the possibility of settlement. On 08.06.2016, adjournment was sought on the ground Advocate on record was in personal difficulty. The matter was adjourned to 15.06.2016 with direction to the defendant to remain present in the Court on every subsequent date unless otherwise ordered. It was also made clear that if on the next date, defendant does not remain present, such order as is necessary to ensure his presence will be passed. The matter was heard thereafter from time to time and was adjourned to 25.08.2016. Parties were heard on 25/26.08.2016. On 26.08.2016, the matter was reserved for pronouncement of order on 31.08.2016, on which date the defendant was directed to remain present in the Court. It was also directed that before 4.00 p.m. defendant shall surrender his passport to the Prothonotary and Senior Master, High Court, Bombay under the advise to the Advocate for the plaintiff and report compliance. By the impugned order dated 25/31.08.2016, the learned Single Judge, as indicated earlier, has disposed of the Chamber Summons and ordered detention of the defendant in civil prison for three months, for the breach of orders made under Order XXI, Rule 41(2) of C.P.C. It is against this order, the defendant has preferred this appeal.

11. In support of this Appeal, Dr. Saraf contended that the impugned order is beyond the scope of Order XXI, Rule 41 (2) of C.P.C. He submitted that the learned Single Judge failed to appreciate that defendant has complied with the directions contained in the orders dated 18.06.2015 issued by the learned Single Judge by filing of the detailed affidavits dated 23.06.2015, 13.06.2015 and 08.09.2015 along with the documentary evidence. He submitted that the plaintiff did not file rejoinder disputing the correctness of the assertions made by the defendant in various affidavits.

The learned Single Judge did not give notice as also did not afford opportunity of being heard to the defendant. By the impugned order, defendant is straightway ordered to be detained in civil prison. He submitted that no notice was issued to the defendant to show cause as to why he should not be detained in civil prison. He submitted that basically, order dated 09.06.2015 was not the order XXI, Rule 41 of C.P.C. The first affidavit dated 15.06.2015 was not filed and cannot be construed as an affidavit of disclosure under Order XXI, Rule 41(2) of C.P.C. He invited our attention to the order dated 18.06.2015 wherein the learned Single Judge observed that disclosures were incomplete. By way of last chance, defendant was directed to file affidavit disclosing his assets. He submitted that the learned Single Judge committed error in observing that the direction of filing of an affidavit by way of "last chance" as no order was passed directing the defendant to disclose assets under Order XXI, Rule 41(2) of C.P.C. Thus, the question of giving "last chance" to the defendant did not arise. Dr. Saraf further submitted that the defendant filed second affidavit on 23.06.2015 disclosing the assets and also annexed the balance sheet of the defendant for last four years and copy of the provisional balance sheet for the accounting year 2014-2015. He submitted that the defendant had thus complied with the and obeyed and the order dated 18.06.2015.

12. Dr. Saraf invited our attention to the order dated 08.07.2015 wherein the learned Single Judge observed that the balance sheets disclosed more assets than mentioned in the contents of the affidavit which reflected the dishonest intention of the defendant. He submitted that the defendant had already disclosed the balance sheets, which form part of the affidavit and thus mere non-mentioning of the same in the body of the affidavit does not amount to suppression of any kind and can never be construed as 'dishonest intention'. The learned Single Judge committed serious error in directing the defendant to file one more affidavit disclosing his assets.

13. Dr. Saraf further submitted that after letter dated 21.07.2015, no letter was addressed to the defendant seeking further details/particulars. Plaintiff did not file rejoinder disputing the correctness of the contents of the affidavits filed by the defendant from time to time. In other words, defendant was under bonafide impression that the plaintiff was satisfied that with the disclosures made by him. He submitted that once the defendant had made disclosure, further enquiries in relation thereto are beyond the scope of Order XXI, Rule 41(2). He submitted that the defendant had complied with the provisions of Order XXI, Rule 41(2) as also the directions issued by this Court from time to time. In view thereof, the learned Single Judge was not justified in passing the impugned order.

14. Dr. Saraft further submitted that even assuming for the sake of argument without contending that some false statements were made in the affidavits, plaintiff could have filed separate application for cross-examination of the defendant under Order XXI, Rule 41(1). Defendant could have led evidence to substantiate the assertions made in the affidavits filed by him. He submitted that defendant was not even put to notice about the discrepancies in the fourth affidavit and was not given sufficient opportunity to deal with the same. Defendant could not anticipate the queries in the balance sheet or any other disclosure made in the fourth affidavit which may arise to the plaintiff and/or the learned Single Judge. During the course of hearing when the impugned order was passed, defendant was called upon to produce the documents in support of the averments made in the fourth affidavit. Defendant was not carrying such documents as the plaintiff did not dispute the contents of the fourth affidavit. The objections on the contents of the affidavit and/or balance sheets are factual queries which the lawyer of the defendant could have never been able to and was not able to answer during the hearing when the impugned order was passed. In short, he submitted that the impugned order

grossly violates the principles of natural justice and equity requires that the defendant ought to have been given opportunity of addressing specific queries raised by the learned Single Judge and produce the documents in that regard before passing a drastic order of detention in prison.

15. Dr. Saraf submitted that the learned Single Judge committed serious error in equating proceedings under Order XXI, Rule 41 with criminal contempt proceedings. He submitted that a perusal of the impugned order shows that the learned Single Judge was of the opinion that the defendant had committed criminal contempt as according to the learned Single Judge, defendant interfered with the administration of justice. Dr. Saraf submitted that the learned Single Judge committed serious error in relying upon the decision in ***Advocate General, High Court of Karnataka Vs. chidambara, 2004 Cr. L. J. 493***, which was under the Contempt of Courts Act, 1971. The learned Single Judge also committed serious error in relying upon the decision in ***Bineet Kumar Sing Vs. Unknown, AIR 2001 SC 2018***.

16. Dr. Saraf submitted that the learned Single Judge relied upon the decision of ***Leila David Vs. State of Maharashtra, (2009) 4 SCC 578*** which is not applicable to the present case. The said judgment dealt with the provisions of the Contempt of Courts Act, 1971, and in particular Section 14 thereof. In support of his submissions, Dr. Saraf relied upon the following decisions:

a. ***Muthu Karuppan Vs. Parithi Ilamvazhuthi, (2011) 5 SCC 496,*** and in particular paragraph 17 thereof;

b. ***Suraj Roy Vs. Leela Nath,*** **(2004) 3 Gauhati Law Reports, 312** and in particular paragraph 6 thereof;

c. ***Chhotu Ram Vs. Urvashi Gulati,*** **(2001) 7 SCC 530**;

d. ***Raghuvir Harishchandra Salgaonkar Vs. Saraswati Pundalik Salgaonkar,*** **AIR 1984 Bom. 284,** and in particular paragraph 7 thereof.

e. ***LA 'Builde Associates Vs. Bipinchandra Narandas Dalal*, 2013 (6) ALL MR 497**.

For all these reasons, he submitted that the Appeal requires consideration and the impugned order deserves to be set aside.

17. On the other hand, Mr. Londhe supported the impugned order. He submitted that on 26.08.2013, plaintiffs took out Chamber Summons inter alia praying for issuing direction to the defendant-judgment debtor to file affidavit stating the particulars of all his assets (movable and immovable) as provided in Order XXI, rule 41(2) of C.P.C. and further necessary orders under Order XXI, Rule 41(3) for detaining the defendant in the civil prison. He has taken us through the orders passed by the learned Single Judge from time to time and submitted that defendant was fully cognizant of the fact that the Chamber Summons is essentially one under Order XXI, Rule 41 and he has filed affidavit in reply to the said Chamber Summons. The learned Single Judge, time and again, gave several opportunities to the defendant to set out truthfully all the assets (movable and immovable) in the affidavit. Despite giving several opportunities, the defendant did not disclose all his assets.

18. Mr. Londhe has also taken through-

(i) the Statement of Objects and Reasons of the Code of Civil Procedure (Amendment) Act, 1976, and in particular clause 5 thereof, the decision of the Government to bring forward the Bill for the amendment of the C.P.C., keeping in view, among others, the following basic considerations, namely, that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;

(ii) Sub Clause (xvi), which is to the following effect:

> Sub-clause (xvi) - Rule 41 relates to the examination of judgment debtor as to his property. It would facilitate matters if the Court has the power to call for an affidavit of the assets of the judgment-debtor. The rule is being amended accordingly.
>
> New sub-rule (3) is being added to rule 41 to provide that in case of disobedience of any order made under sub-rule (2), the Court may direct the detention of the defaulter in civil prison for a term not exceeding six months.
>
> (iii) Clause 99 in Appendix E, new Form No. 16A.

19. Mr. Londhe submitted that the learned Single Judge has referred to various decisions in paragraphs 15 to 17. The learned Single Judge, however, did not exercise powers under Contempt of Courts Act, 1971 and in fact, in paragraphs 20 and 21 held that the defendant has deliberately made false statements on oath to the Court and disobeyed the orders made under Order XXI, Rule 41(2) of C.P.C and accordingly, ordered detention in civil prison for three months. He has taken us through the impugned order and submitted that no case is made out for interfering with the impugned order.

20. We have considered the rival submissions advanced by the learned Counsel appearing for the parties. We have also perused the material on record. It is not dispute that the Suit instituted by the plaintiffs under Order XXXVII was decreed on 18.03.2011. Plaintiffs took out Chamber Summons on 26.08.2013 inter alia praying for the following reliefs:

> a) That this Hon'ble Court be pleased to direct the Defendant/Judgment Debtor herein to file affidavit stating the particulars of all his assets (movable and immovable) as provided in Order XXI, Rule 41 Sub Rule (2) of the Code of Civil Procedure;
>
> In case of disobedience of order by Defendant/Judgment Debtor,
>
> b) This Hon'ble Court be pleased to pass necessary orders as provided in Order XXI, Rule 41 Sub-rule 3 of the Code of

> Civil Procedure inter alia detaining the Defendant/Judgment Debtor in the civil prison;

21. The Chamber Summons was listed for hearing on 09.06.2015. On that date, on behalf of the defendant, Counsel sought time to file affidavit-in-reply to the Chamber Summons. As and by way of last chance, the defendant was directed to file and serve copy of affidavit-in-reply upon the Advocate for the plaintiffs not later than 12 noon on 15.06.2015. Hearing of the Chamber Summons was deferred till 18.06.2015. Thus, on the request made on behalf of the defendant for filing reply to the Chamber Summons, time was given by this Court. In pursuance thereof, defendant filed first affidavit dated 15.06.2015. In view thereof, we do not find any merit in the submission of Dr. Saraf that the order dated 09.06.2015 was not the order under Order XXI, Rule 41 of C.P.C. The Chamber Summons was heard on 18.06.2015. On behalf of the defendant, preliminary objection about the maintainability of the Chamber Summons was raised and the same was repelled after considering the decision in **United Phosphorous Limited** (supra). The learned Single Judge perused the affidavit-in-reply filed by the defendant and observed that the disclosure was totally incomplete and did not contain any particulars. The learned Single Judge observed that defendant is attempting to prolong the proceedings and also trying to give impression that he has complied with the orders passed by this Court. At the same time, he did not give full and complete particulars. As and by way of last chance, defendant was directed to disclose in detail and give full particulars of all assets supporting documents and also to make statement that he has made full disclosure of his assets and **he has not suppressed any particulars from the Court**. The defendant was further directed to furnish copies of his annual returns that have been filed in the last five years. Affidavit was to be served on the other side on or before 24.06.2015 and the hearing was deferred till 25.06.2015.

22. In pursuance thereof, defendant filed second affidavit dated 23.06.2015. A perusal of this affidavit shows that in paragraph 19, defendant stated that he has disclosed all immovable and movable assets to this Court and he has given details of assets to this Court, the Summons may be disposed of. In other words, the defendant did not state, as required by order dated 18.06.2015 "**that he has not suppressed any particulars from the Court**". There is deliberate omission to make this statement on oath in the second affidavit dated 23.06.2015. (e*mphasis supplied)*

23. The Chamber Summons was heard on 08.07.2015. Paragraph 2 of that order reads thus,

> "2] Learned Counsel for the defendant states that he was not given full details by his client (defendant), even though he had advised him to give full details. The learned Counsel further states that when he went through the balance sheet of the proprietary firm, D.B. Rana and Company, of the defendant, he found that there are more assets mentioned therein which were not disclosed to him by his client. Therefore, it is quite obvious that this defendant is not only being dishonest with the court but is also trying to give incorrect instructions to his Advocate".

24. A perusal of the above paragraph clearly reveals that the learned Counsel for the defendant stated that he was not given full details by the defendant even though he had advised him (defendant) to give full details. The further statement that the Counsel went through the balance sheet of the proprietary firm, D.B. Rana and Company of the defendant he found that there are more assets mentioned therein which were not disclosed to him by his client was recorded. Thus, the learned Single Judge has recorded the statements made by the learned Counsel for the defendant before the Court. It is in that context, the learned Single Judge observed that the defendant is not only being dishonest with the Court but is also trying to give incorrect

instructions to his Advocate. As and by way of last chance, defendant was directed to file the affidavit containing all the truthful details and serve copy thereof upon the plaintiffs on or before 13.07.2015. The learned Single Judge also made it clear in the beginning of paragraph 4 that any breach of this direction will be viewed very seriously and considered as deliberate and willful disobedience of the order of this Court and the defendant will be dealt with sternly.

25. In pursuance thereof, defendant filed third affidavit dated 13.07.2015. A comparison of the first and second affidavit vis-a-vis third affidavit will show following glaring discrepancies:

> In the first and second affidavits, defendant disclosed Honda Amaze Car. In the third affidavit, in addition to his car, defendant disclosed that Honda City bearing registration No. MH-02-AL-3006 belongs to him. Hyundai I-20 bearing registration No. MH-04-DY-8137 belongs to him. Skoda Laura I bearing registration No. MH-48-A-7470 was purchased by him in or around June 2012. Skoda Laura II bearing registration No. MH-48-P-9046 was purchased by him in or around September, 2012. Apart from this, Pulsar I bearing registration No. MH-02-AX-759 and Pulsar II bearing registration No. MH-02-AB-9298 are purchased by him. Defendant also disclosed other investments which were not earlier disclosed in the first two affidavits.

That apart, defendant did not make statement to the effect that **he has not suppressed any particulars from the Court**. *(emphasis supplied)*

26. On 23.07.2015, defendant was present in the Court and stated that he wanted to change his Advocate. He undertook to file his affidavit in the

Registry during the course of the day. Grievance was made on behalf of the plaintiff that he was served with a copy of the affidavit but the said affidavit did not contain all the details. The Advocate for the plaintiff had written letters to the Advocate for the defendant pointing out deficiencies. Defendant therefore, stated that he will collect copies of those letters from the Counsel for plaintiff and meet the same with a fresh affidavit. In view thereof, hearing was deferred to 04.08.2015.

27. The defendant filed fourth additional affidavit dated 08.09.2015 disclosing the details and/or dealt with the letter dated 21.07.2015. The Chamber Summons was thereafter heard on 25/26.08.2016 and by the impugned order, the learned Single Judge has held that the defendant has disobeyed the order passed under Order XXI, Rule 41 (2) of C.P.C and ordered his detention in civil prison for three months.

28. Order XXI, Rule 41 reads thus,

> “ ORDER XXI
> EXECUTION OF DECREE AND ORDERS
>
> 41. Examination of judgment-debtor as to his property.--(1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that--
>
> (a) the judgment-debtor, or
> (b) where the judgment-debtor is a corporation, an officer thereof, or
> (c) any other person,
>
> be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.
>
> (2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the

> application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.
>
> (3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release."

29. A perusal of the Statement of Objects and Reasons and sub-clause (xvi) of Clause 73 shows that by amendment, the Court is empowered to call for an affidavit of the assets of the judgment-debtor. New sub-rule (3) was added to provide that in case of disobedience of any order made under sub-rule (2), the Court is empowered to detain the defaulter in civil prison for a term not exceeding six months. A period of six months is substituted by the period of three months. A perusal of the above provision does not indicate that affidavit disclosing assets is to be repeatedly filed i.e. more than on one occasion. In other words, once the judgment debtor is directed to file affidavit, it is expected of him to disclose all the movable and immovable assets in the affidavit. In this regard, it is necessary to consider clause 8 of Form No.16A under Order XXI, Rule 41(2). Clause 8 requires giving of assets particulars and reads thus -

8. I possess the following:-

(a)	Banking accounts;	Give particulars.
(b)	Stocks and shares;	
(c)	Life and endowment policies;	
(d)	House property;	
(e)	Other property;	
(f)	Other securities;	

30. Thus, it is expected of the judgment-debtor to file affidavit disclosing all his movable and immovable properties in one affidavit and not more than one affidavit. The very fact that the defendant was required to file affidavit after affidavit, clearly indicates that he did not disclose all his movable and immovable assets in the first instance.

31. Dr. Saraf relied upon the decision of **Muthu Karuppan** (*supra*), and in particular paragraph 17 thereof. In paragraph 17, the Apex Court observed that the contempt proceedings being quasi criminal in nature, burden and standard of proof is the same as required in criminal cases. The charges have to be framed as per the statutory rules framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities, equally, the court cannot punish the alleged contemnor without any foundation merely on conjectures and surmises. As observed above, the contempt proceeding being quasi criminal in nature require strict adherence to the procedure prescribed under the rules applicable in such proceedings. In our opinion, the said decision is not applicable as admittedly the present proceedings are not contempt proceedings. The learned Single Judge has held that defendant has disobeyed order passed under Order XXI, Rule 41 of C.P.C.

32. Dr. Saraf further relied upon the decision in **Suraj Roy** (*supra*), and in particular paragraph 6 thereof. In paragraph 6, Gauhati High Court referred to the decision in *Joshi Girjadharji Vs. Rao Sanwal Das Shahpuri*, **AIR 1958 Allahabad 639** wherein it was held that the persons disobeying an injunction should not suffer imprisonment on mere suspicion. There must be positive proof of the fact that he deliberately disobeyed an injunction before a Court should deprive him of his property or send him to imprisonment. He relied upon the decision in **Chhotu Ram** *(supra)*, and in

particular paragraph 4 thereof. In paragraph 4, the Apex Court referred to the decision of *V.G. Nigam Vs. Kedar Nath Gupta*, **(1992) 4 SCC 697** where the Apex Court held that it would be too hazardous to sentence in exercise of contempt jurisdiction on mere probabilities. He also relied upon the decision in **Rahguvir Harischandra Salgaonkar** *(supra)*, and in particular paragraph 7 thereof. I paragraph 7, it was held that the proceedings under Order XXXIX Rule 2A are in the nature of quasi-criminal proceedings since the contemnor stands to be imprisoned as a consequence thereof. It is, therefore, necessary that he must have a clear idea and notice, as in a criminal case. In our opinion, these decisions do not advance the case of the defendant as they are not applicable to the facts of the present case.

33. Dr. Saraf relied upon the decision in the case of ***LA'Builde Associates Vs. Bipinchandra Narandas Dalal***, **2013 (6) ALL MR 497**. In paragraph 4 of that decision, submission on behalf of the respondent that applicant in Chamber Summons did not file any rejoinder denying the correctness of the contents of the assets and properties disclosed by the judgment debtor in the affidavit filed under Order XXI, Rule 41 of C.P.C. and the judgment creditor cannot cross-examine the judgment debtor on the contents of the said affidavit filed in response to the order passed by the Court were noted. It was further submitted that if the Court wants to ask any question to the witness to ascertain correctness of the contents of the affidavit filed by the judgment debtor, the court can do so under Order XXI, Rule 41 but such witness cannot be called upon by the judgment creditor for cross-examination. In paragraph 5, the learned Single Judge observed that the directions issued under Order XXI, Rule 41 are not empty formalities but are issued with specific purpose of collecting true and correct information about the affairs and status of the properties and assets of the properties and assets of the judgment debtor which can be sold and realized for the purpose of executing the decree obtained by the judgment creditor.

It was further observed that the Court is empowered to make further inquiry into the authenticity of the averments and contents of the documents under Order XXI, Rule 41 and the scope of inquiry under Order XXI, Rule 41 is not limited as canvassed by the respondent. It was observed that if the court is satisfied prima facie that the averments made in the disclosure affidavit does not disclose true and correct affairs and the correct position of the assets / properties and debts of the judgment debtor, further inquiry into the correctness of such affidavit and contents of documents is permissible under Order 21, Rule 41 of C.P.C.

34. In view thereof, we do not find any merit in the submission of Dr. Saraf that the Court had cross-examined defendant's Advocate during the course of hearing and therefore, defendant could not effectively meet the queries raised by either the plaintiffs or by the Court. In paragraph 8, the learned Single Judge also held that merely because affidavit in rejoinder is not filed by the judgment creditor to the affidavits filed by the judgment debtor, the Court cannot come to the conclusion that what is stated in the affidavit filed in response to the order passed by the Court under Order XXI, Rule 41 is deemed to have been proved and no further enquiry about the correctness thereof would be necessary. In our opinion, it is not necessary that under Order XXI, Rule 41(1), the judgment debtor has to be orally examined. In this regard, it is necessary to refer to Section 165 of the Indian Evidence Act, 1872, which reads thus,

> "165. Judge's power to put questions or order production.- The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:
>
> Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved:

> Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.”

35. In view thereof, we do not find any merit in the submission of Dr. Saraf that the learned Single Judge was not justified in putting questions to the Advocate for the defendant. In our opinion, the said decision in fact is against the defendant.

36. A perusal of the impugned order shows that the learned Single Judge, after referring to various affidavits filed by the defendant from time to time, observed that the conduct of the defendant is that at every stage has been filing false affidavits. The defendant has been filing false affidavits with impunity.

37. In paragraph 12, the learned Single Judge also noted that the contents of paragraph 9 of the fourth affidavit dated 08.09.2015 wherein the defendant stated that flats No.801 and 802, referred in paragraph 8, were attempted to be sold at distress sale price by the Standard Chartered Bank in order to recover its dues. Defendant and his mother were compelled to sell the said flats. However, no evidence or details were annexed to the affidavit to justify these averments. It was noted that in paragraph 11 of the fourth affidavit, it was stated that defendant had fully disclosed all the particulars of all the assets and properties and if the flats were sold in April 2015, the said flats were not disclosed in the first, second and third affidavits and for the first time were disclosed in the fourth affidavit. In paragraph 15, the learned Single Judge recorded that

he had given a very long rope to the defendant to come out clean, to come out honest, to come out truthful and be transparent to the Court but every opportunity given has been abused by the defendant. Repeatedly, false statements were made. The attempt was to drag on the matter so that the defendant can get away. We are fully agree with the conclusions drawn by the learned Single Judge. In paragraph 18, the learned Single Judge noted that at every stage, whenever affidavits were filed, the defendant was made aware that he should be truthful in his affidavit. In paragraph 20, the Counsel representing the defendant on 08.07.2015 and also thereafter conceded that the defendant was not truthful. He also did not tender apology. In the light of the aforesaid discussion, we do not find that any case is made out for interfering with the impugned order. At one stage, we were inclined to impose exemplary costs on the defendant. Having regard to the fact that he has been already ordered to be detained in civil prison, we refrain from imposing costs on the defendant. Appeal fails and the same is dismissed. Pending Motions, if any, stand disposed of accordingly.

(R. G. KETKAR, J.) **(NARESH H. PATIL, J.)**

38. After pronouncement of the order, learned Counsel for the appellant prays for continuation of ad-interim order granted on 31.08.2016 by this Court for a period of 8 weeks. Learned Counsel for the respondent opposes the said prayer.

39. In the facts, we are inclined to grant the prayer. The ad-interim order granted on 31.08.2016, and continued from time to time, is continued for a period of 8 weeks from today.

(R. G. KETKAR, J.) **(NARESH H. PATIL, J.)**

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