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

+ **CONT.CAS(C) 531/2015**

CENTRAL BANK OF INDIA Petitioner

Through: Mr.Anuj Jain, Advocate with
Mr.Ujjwal Narain, Manager (Law).

versus

SUMAN CHADHA & ORS Respondents

Through: Mr.Vijay Kumar Aggarwal with
Mr.Mudit Jain, Mr.Neeraj Kumar Jha
and Mr.Yash Verma, Advocates with
R-1 in person

Reserved on : 31st May, 2017

Date of Decision: 18th July, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present contempt petition has been filed alleging wilful disobedience and deliberate non-compliance of undertaking dated 08th April, 2015 given by the respondents wherein they undertook to pay Rs.7 crores i.e. Rs.2 crores on 30th April, 2015, Rs.2.5 crores each on 31st May, 2015 and 30th June, 2015.

FACTS

2. The relevant facts of the present case are that on 18th January, 2014 the finance facility limit of respondent No.3-company was enhanced to Rs.20 crores on execution and signing of requisite loan documents by the respondents and one Ms. Neelam Kohli.
3. While immovable property i.e. property No.13A, out of Khasra No.1332/691/442, Gali No.3, Bhola Nath Nagar known as Kanti Nagar, Shahdara, Delhi-110013 (hereinafter referred to as 'Shahdara property') was mortgaged by one Ms. Neelam Kohli on 28th January, 2015, immovable built up property i.e. Plot No.90, Block-I, Pocket-VI, Sector-16, Rohini, Delhi-110085 measuring 107.60 sq. yards (hereinafter referred to as 'Rohini property') was mortgaged by respondent No.2 on 18th March, 2014 for consideration of grant of aforesaid loan facility of Rs.20 crores.
4. On 24th July, 2014, the loan of the respondents was categorized as a Non Performing Asset due to defaults in repayment.
5. On 18th August, 2014, notice under Section 13(2) of SARFAESI Act was issued to the respondents by petitioner-Bank for recovery of Rs.28,82,25,942.24 plus interest.
6. On 05th December, 2014, symbolic possession of Rohini and Shahdara properties under Section 13(4) of the SARFAESI Act were taken over by the respondent-Bank.
7. Aggrieved by the said order, respondents filed S.A. No.367/2014 before the Debts Recovery Tribunal-III, New Delhi (hereinafter referred to as 'DRT-III'), under Section 17 of the SARFAESI Act. However, the DRT-III declined to grant any interim relief against the physical possession of the

aforesaid properties.

8. Appeal being Inward No.684/2014 was filed by the respondents challenging the order dated 19th December, 2014 passed by DRT-III.

9. Since respondents failed to deposit Rs.7 crores being twenty five per cent of the notice amount under Section 13(2) and further as respondents requested to withdraw the said appeal, Inward No.684/2014 was dismissed as withdrawn on 31st March, 2015.

10. On 01st April, 2015, the respondents got an ex parte stay order from DRT-III, New Delhi in S.A. No.367/2014 whereby the petitioner was restrained from taking over physical possession of the properties upon deposit of Rs.5 crores by the respondents within thirty days. The order stipulated that Rs.2 crores would be deposited by 03rd April, 2015.

11. On 03rd April, 2015, respondent No.1 on behalf of respondent No.3 gave a letter to SHO, Police Station Katju Marg, Rohini, Delhi showing his intention to deposit aforesaid amount of Rs.2 crores by way of four cheques.

12. On 05th and 06th April, 2015, the Receiver was unable to take possession of Rohini property due to resistance by the respondents.

13. Thereafter, the respondents challenged the order dated 01st April, 2015 before this Court by way of W.P.(C) 3406/2015 stating that the petitioner and DRT were acting unfairly and unjustly in not accepting their cheques totalling to Rs.2 crores.

14. During the course of hearing of the writ petition on 08th April, 2015, the counsel for the respondents admitted the liability of the respondents to pay the amount demanded by the petitioner-Bank, but sought time to settle the matter. The respondents offered, by way of a statement under oath, to deposit Rs. 7 crores, i.e. twenty five per cent of the notice amount in three

instalments on or before 30th June, 2015. The petitioner-Bank gave its assent to the disposal of the writ petition on the terms offered. Thereafter the Division Bench ordered that the possession of the properties of the respondents shall not be disturbed subject to the respondents depositing Rs.7 crores on or before 30th June, 2015 i.e. Rs.2 crores on 30th April, 2015, Rs.2.5 crores each on 31st May, 2015 & 30th June, 2015 and the respondent No.2 filing her undertaking by way of an affidavit.

15. On 29th April, 2015, respondents gave a letter along with four cheques of Rs.50 lacs each dated 06th May, 2015 to the petitioner-Bank allegedly in compliance with the order dated 08th April, 2015. Respondents' letter dated 29th April, 2015 is reproduced hereinbelow:-

" To

*The Branch Manager
Central Bank of India
Rohini Branch, Delhi-110085*

Respected Sir,

Please find enclosed herewith Four Cheques bearing No.

<i>Ch. No.</i>	<i>Date</i>	<i>Amount</i>
<i>098629</i>	<i>06.05.2015</i>	<i>50,000,00.00</i>
<i>098631</i>	<i>06.05.2015</i>	<i>50,000,00.00</i>
<i>618728</i>	<i>06.05.2015</i>	<i>50,000,00.00</i>
<i>618727</i>	<i>06.05.2015</i>	<i>50,000,00.00</i>
	<i>Total</i>	<i>20,000000.00</i>

Drawn at to Central Bank of India, Rohini Branch Delhi-110085 for Rs.20,000000.00 in compliance with the Hon'ble Delhi High Court order.

*Dated: 29/04/2015
Place: Delhi*

*Thanking You
Yours Faithfully
Parul Polymer Pvt. Ltd.*

Sd/-
(Authorized Signatory)"

16. Accordingly, the possession proceedings for Shahdara property scheduled for 30th April, 2015 were deferred by the petitioner-Bank.

17. On 08th May, 2015, the aforesaid four cheques of Rs.50 lacs each bounced.

18. On 27th May, 2015, a Division Bench of this Court disposed of the petitioner-Bank's CM No.8353/2015 with a clarification that deposit of the cheques by the respondents on 29th April, 2015 was not in conformity and in compliance with the undertaking and order dated 08th April, 2015. The order dated 27th May, 2015 is reproduced hereinbelow:-

"The applicant's grievance is that despite this Court's order dated 08.04.2015 whereby possession was directed not to be taken subject to the non-applicants paying total amount of ₹7 crores on or before 30.06.2015 – of which ₹2 crores was payable by or before 30.04.2015 and the rest spread over in instalments - on or before 31.05.2015 and 30.06.2015, the cheque payments made, by virtue of cheques dated 06.05.2015 (for a total sum of ₹2 crores) have been returned unpaid. Dr. Sarbjit Sharma, learned counsel for the petitioners/non-applicants submits that the matter may be kept on 29.05.2015 (Friday) to enable the non-applicants/petitioners to respond. He further states that the amounts would be remitted within the time/ before last date, i.e. 30.06.2015. The orders of the Court were clear, in that, the writ petitioners had to pay the amount of ₹2 crores on or before 30.04.2015. The deposit of post-dated cheques dated 06.05.2015 is facially not compliant with the order. To compound that, the said cheques have been dishonoured. In these circumstances, it is open to the respondent to take such action as is permissible in law in view of the orders which had directed the petitioners' possession to be left undisturbed subject to fulfilment of the conditions. In other words, the non-fulfilment of the condition of the deposit of

₹2 crores would mean that the respondent is free to take action towards possession apart from other remedies available under law. The application is accordingly disposed off."

(emphasis supplied)

ARGUMENTS OF THE PETITIONER

19. Learned counsel for petitioner-Bank stated that despite the order dated 08th April, 2015 and clarificatory order dated 27th May, 2015, the respondents did not deposit any amount in the loan account maintained by the petitioner. He contended that the respondents wilfully and deliberately disobeyed and defaulted in complying with their undertakings recorded vide order dated 08th April, 2015 in W.P.(C) 3406/2015. He stated that the total outstanding amount upto 10th February, 2015 in the loan account of respondent No.3 was Rs.30,37,50,066/- along with interest.

20. Learned counsel for petitioner also contended that since the inception of the transaction, the respondents had no intention to repay the loans and the order dated 08th April, 2015 was obtained on the basis of a false undertaking with the sole motive to avoid proceedings of taking over the physical possession of the said properties by the Receivers on 10th April, 2015 and 30th April, 2015.

21. He pointed out that till date, the petitioner-Bank had been unable to take complete possession of the Shahdara property under the SARFAESI Act due to third party interest created by the respondents in the form of alleged tenancy.

22. He stated that the aforesaid conduct of the respondents clearly demonstrated that they had no respect for law and by giving the said undertakings, the respondents had not only played a fraud upon the petitioner-Bank, but also upon this Court.

ARGUMENTS OF THE RESPONDENTS

23. Per contra, Mr. Vijay Kumar Aggarwal, learned counsel for the respondents stated that the petitioner was misconstruing the order dated 8th April, 2015, as from the same it was clear that no clear express undertaking had been given for the re-payment of the amount. He stated that from the statement given by the respondent no.1, it was apparent that only some deferment had been sought.

24. He stated that similarly, respondent no. 2 had undertaken to abide by the statement of respondent no. 1, who himself had not given any undertaking. Hence, there was no undertaking by respondent no. 2 also.

25. He submitted that in *Urmila Salwan Vs. Kasturi Lal Bhatia, 2000, Crl.L.J. 284* the Court had held that there was a clear cut distinction between compromise/consent order passed at the instance of the Court and an undertaking given to the Court.

26. Learned counsel for respondents, Mr. Aggarwal stated that the respondents-contemnors had given an unconditional apology before this Court and at best, deferment of taking over possession had taken place and for the same, the respondents were willing to compensate the petitioner bank by paying some amount as interest.

27. Mr. Aggarwal further submitted that no contempt is made out in case of executable orders as the power of contempt is to be used sparingly. He stated that from the very perusal of the Division Bench's order dated 8th April, 2015, it was clear that same was an executable order and hence no contempt was made out. He pointed out that, in any event, as the petitioner had already resorted to alternative effective remedy by filing an execution petition, a contempt petition was not maintainable. According to him, as the

petitioner bank had already initiated the recovery proceedings against the respondents-contemnors, nothing survived in the present petition. In support of his submission, he relied upon a judgment of this Court in ***Nizamuddin Vs. Ramzani, 2015 (219) DLT 235*** wherein it has been held as under:

"12. Moreover, the settled law is that a decree or order which is akin to a decree and is executable, needs to be executed, as per law relating to execution and cannot be enforced under the contempt jurisdiction of the Court. Supreme Court in Babu Ram Gupta Vs. Sudhir Bhasin (1980) 3 SCC 47 held that if it were to be held that non-compliance of a compromise decree or consent order amounts to contempt of the court, the provisions of Civil Procedure Code, 1908 (CPC) related to execution of decrees may not be resorted to at all. It was clarified that the reason why breach of clear undertaking given to Court amounts to contempt of court is that the contemnor by making a false representation to the Court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the Court, thereby obstructing the course of justice and bringing into disrepute the judicial institution; the same cannot however be said of a consent order or a compromise decree where the fraud if any is practiced by the person concerned not on the Court but on one of the parties; in such a case since the offence committed is qua the party and not qua the Court, therefore, the very foundation of proceeding for contempt of Court is completely absent....."

28. He also relied upon the judgment of this Court in ***Saroj Arora & Ors. Vs. Mohinder Pal Singh, 2015 (6) AD (Delhi) 434*** and the Supreme Court in ***Kanwar Singh Saini Vs. High Court of Delhi, (2012) 4 SCC 307*** wherein it has been held that since the petitioner had an effective alternative remedy, a contempt petition would not be entertained.

29. According to Mr. Aggarwal, when liberty to take appropriate action in accordance with law had already been given, then no contempt was made

out. He placed reliance upon the judgment of this Court in ***National Agricultural Coop. Marketing Federation of India Vs. Lalit Mohan, 2008 (151) DLT 99*** wherein it has been held as under:-

“26. It would be interesting to note that the Division Bench concluded its order by recording that if the respondent failed to comply with the order passed by the learned Single Judge within four weeks the aggrieved party i.e. the petitioner will be at liberty to take appropriate action in accordance with law.

27. The action of the respondent from a commercial angle may appear to be demeaning. But, this would fall short of contumacious action as contemplated by law.”

30. Mr Aggarwal contended that there was no wilful disobedience in the present case as despite promising, the respondents’ debtors had not paid. He submitted that wilful means an act or omission which was done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. In support of his submission, he relied upon the judgment of the Supreme Court in ***All India Anna Dravida Munnetra Kazhagam Vs. L.K. Tripathi & Ors., (2009) 5 SCC 417.***

31. Mr. Aggarwal lastly submitted that if this Court was not satisfied with the explanation offered by the respondents-contemnors, then like a criminal trial a specific charge should be framed and the respondents-contemnors should be allowed to cross-examine the individuals who had made statements against the respondents-contemnors. According to him, a complete trial was required, like in a criminal case, before anyone could be convicted under the Contempt of Courts Act. In support of his submission, he relied upon the judgment of the Apex Court in ***Sahdeo alias Sahdeo***

Singh Vs. State of Uttar Pradesh & Ors., (2010) 3 SCC 705 wherein it has been held as under:-

"27. In view of the above, the law can be summarised that the High Court has a power to initiate the contempt proceedings suo motu for ensuring the compliance with the orders passed by the Court. However, contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The alleged contemnor is to be informed as to what is the charge, he has to meet. Thus, specific charge has to be framed in precision. The alleged contemnor may ask the Court to permit him to cross-examine the witnesses i.e. the deponents of affidavits, who have deposed against him. In spite of the fact that contempt proceedings are quasi-criminal in nature, provisions of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") and the Evidence Act are not attracted for the reason that proceedings have to be concluded expeditiously. Thus, the trial has to be concluded as early as possible. The case should not rest only on surmises and conjectures. There must be clear and reliable evidence to substantiate the allegations against the alleged contemnor. The proceedings must be concluded giving strict adherence to the statutory rules framed for the purpose."

REJOINDER ON BEHALF OF THE PETITIONER

32. In rejoinder, learned counsel for petitioner contended that the entire background in which the undertaking had been given by the respondents clearly proved beyond doubt that the pre-designed calculated game plan of the respondents was to give a false undertaking to obtain stay of dispossession and thereafter, not to abide by the undertaking so given.

33. He contended that under oath the respondents had propounded a wrong defence of "payments by debtors". He pointed out that on both the occasions i.e. 03rd April, 2015 and 29th April, 2015, the respondents had taken the defence that the cheques handed over by them were of their alleged debtors i.e. M/s. Remex Enterprises, M/s. Nandini Enterprises, M/s. Countrywide Traders. He, however, stated that upon an enquiry conducted by the Serious Fraud Investigation Office (hereinafter referred to as 'SFIO') in pursuance to an order passed by this Court, it was found that the said companies were conduit/shell companies operating under the control of respondent No.1.

34. Consequently, according to him, respondents had given a false statement in reply to the present contempt petition by alleging that the said cheques were issued by their debtors.

35. Learned counsel for petitioner further contended that even after dishonour of the cheques furnished on 29th April, 2015, no efforts had been made by the respondents to pay the amounts as undertaken to be paid by them. He pointed out that on 27th May, 2015, respondents through their counsel once again undertook to remit the complete amount by 30th June, 2015 – which also they failed to remit.

36. He stated that the objections filed by some of the tenants namely, Mr. Wasim Akram and Mr. Rinku Jain had been initially dismissed with costs, but subsequently, Mr. Rinku Jain had obtained status quo order from this Court qua the Shahdara property.

37. Learned counsel for petitioner stated that the above facts clearly demonstrated that there was a wilful breach of the undertaking and wilful disobedience of the order dated 08th April, 2015 passed by this Court.

SUR-REJOINDER ON BEHALF OF THE RESPONDENTS

38. In sur-rejoinder, learned counsel for respondents stated that no reliance can be placed on the SFIO Report, as the same was merely an investigation and even otherwise, the same was a subsequent act, which was not the subject matter of the present proceedings.

39. Mr. Aggarwal admitted that though there were allegations that subsequent to the order dated 08th April, 2015, a third party interest had been created for the Shahdara property in which only part possession had been taken, yet the same was a disputed question for which evidence would have to be led.

COURT'S REASONING

THE ORDER DATED 08TH APRIL, 2015 AS WELL AS THE STATEMENT OF RESPONDENT NO.1 AND AFFIDAVIT OF RESPONDENT NO.2 CONSTITUTE AN UNDERTAKING AS THE RESPONDENTS HAD MADE A REPRESENTATION/PROMISE TO THE COURT THAT THEY WOULD DEPOSIT RS. 7 CRORES ON OR BEFORE 30TH JUNE, 2015 AND BELIEVING THE SAID REPRESENTATION/PROMISE, THIS COURT HAD ORDERED STAY OF DISPOSSESSION.

40. Having heard learned counsel for parties, this Court is of the view that to reach the conclusion that the statement made by respondents No.1 and 2 on 08th April, 2015 constituted an undertaking or not, it is essential to analyse the order dated 08th April, 2015 as well as the statement of respondent No.1 and affidavit of respondent No.2. Accordingly, the same are reproduced hereinbelow:-

A. Order dated 08th April, 2015

" 1. Issue notice.

2. Mr. Anuj Jain, Advocate accepts notice.

3. The petitioners are aggrieved by the order of DRT on 01.04.2015 whereby the third petitioner was directed to deposit ₹5 crores on or before 30.04.2015. The petitioner's counsel submitted that since there is a dispute as to whether the liabilities are properly classified as NPA, the impugned order should not have directed such drastic conditions.

4. Counsel for the respondent submitted that the petitioner had initially obtained stay against publication pursuant to the demand on 16.12.2014 but the said order was vacated later on 19.12.2014. The petitioners thereafter approached the DRAT which directed deposit of 25% of the notice amount of ₹28,82,25,942.24. The petitioner did not do so and instead withdrew the appeal on 31.3.2015.

5. During the course of hearing counsel for the petitioner Dr. Sharma stated that the petitioners are admitting the liability provided some time is granted in order to settle the matter finally. It was suggested by the counsel that the petitioners may be afforded opportunity of depositing ₹7 (seven) crores i.e. 25% of the notice amount in three instalments on or before 30.06.2015. The first petitioner is present in Court. He is a director of the third petitioner and authorised to depose on its behalf. His statement to above effect has been recorded under oath separately and has been kept on record. The second petitioner is directed to file an affidavit/undertaking within one week confirming the statement of the first petitioner. The counsel for the respondent submitted his assent to the disposal of the writ petition on terms offered.

6. In view of the submission of the parties, it is ordered that the possession of the petitioners over the property in question shall not be disturbed subject to their compliance with the following conditions:

(1) Deposit by the petitioners on or before 30.04.2015 – the sum of ₹2 crores with the respondent bank and thereafter deposit of ₹2.5 crores each on or before 31.5.2015 and

30.06.2015.

(2)The second petitioner shall file an affidavit/undertaking, to comply with the above said arrangement.

(3)In the event of default, the respondent bank shall be at liberty to take recourse to law including the enforcement of further action in follow up of order of appointment of the receiver by the Chief Metropolitan Magistrate (CMM). The order to such effect passed by CMM shall be kept in abeyance to ensure compliance in the meanwhile till 30.6.2015.

7. Petitioners' counsel requests that after compliance of the above order, any application for relief to the bank including the restructuring of the account may be considered reasonably. The bank shall consider such application if made on its merits independently having regard to its applicable policy. This will not in any way preclude the rights of the bank for recovering the amounts due.

8. Subject to the petitioner filing the necessary affidavit/undertaking, copy of which shall be provided to the counsel for the respondent within a week from today, the writ petition is disposed of."

(emphasis supplied)

B. Statement of Respondent No.1

" Statement of Mr. Suman Chadha S/o Jangi Lal Chadha R/o H-3/50 Sector -18, Rohini, Delhi.

I am the petitioner and the director of the third petitioner in this case. I am duly authorised to make a statement on its behalf. I have also filed an affidavit in support of the petition and have taken advice from my lawyer who is present with me in Court.

I hereby state and confirm that the sum of ₹28,82,25,942.24 (Twenty Eight Crores Eighty Two Lakh Twenty Five Thousand Nine Hundred Forty Two and Paise

Twenty Four only) as on 18.8.2014 is due and payable to the respondent i.e. the Central Bank of India as per notice u/s 13(2) of SARFAESI Act. I request that in view of the demand I may be granted relief of some deferment with regard to the repayment of the loan liability. I hereby agree on behalf of self and other petitioners to deposit a total amount of ₹7 (seven) crores with respondent-bank on or before 30.6.2015. An amount of ₹2 (two) crores of the said amount shall be paid on or before 30.04.2015; the balance would be paid in equal instalments i.e. ₹2.5 (Two and a half) crores on or before 31.5.2015 and 30.06.2015.

I also agree and affirm that in the event of default, the bank is free to initiate any such proceedings and avail of legal remedies as are available."

(emphasis supplied)

C. Affidavit/Undertaking of Respondent No.2

"I, Komal Chadha aged about 46 years, w/o Sh. Suman Chadha R/o H3/50, Sector-18, Rohini Delhi, do hereby solemnly affirm and declare as under:

1. That the above petition was filed by me as Petitioner no.2 and my husband, as Petitioner no1. He also signed the Petition on behalf of Petitioner no.3, as Director. I am also one of the directors of petitioner no.3. My husband has made a statement before this Hon'ble Court which I have understood from him.

2. That I affirm the statement made by Mr. Suman Chadha, my husband and undertake to abide by the same."

(emphasis supplied)

41. On analysis of the aforesaid order, statement and affidavit/undertaking, this Court is of the opinion that respondents No.1 and 2 not only admitted their liability to repay the outstanding loan amount of Rs. 28,82,25,942.24 as on 18th August, 2014, but they also sought deferment of

repayment of the said amount on the basis of a clear promise that they would deposit Rs.7 crores on or before 30th June, 2015 i.e. a sum of Rs.2 crores on or before 30th April, 2015 and a sum of Rs.2.5 crores each by 31st May, 2015 and 30th June, 2015. Consequently, in the aforesaid statement and affidavit, the respondents had made a request for deferment of repayment of the loan on the conditions that they would deposit Rs.7 crores on or before 30th June, 2015 and would furnish a settlement proposal for re-structuring the loan amount. It was only in view of the promise of the respondents to deposit Rs.7 crores on or before 30th June, 2015 that the Division Bench **ordered** that the possession of the respondents from Shahdara and Rohini properties would not be disturbed. The conditions on which possession of the respondents was not to be disturbed were clearly mentioned in para 6 of the order dated 08th April, 2015.

42. Moreover, even the Division Bench that recorded the statement of respondent No.1 understood it to be an undertaking as is apparent from the fact that the order dated 08th April, 2015 itself advisedly uses the expression '**undertaking**' thrice.

43. In fact, in the subsequent order dated 27th May, 2015 the same Division Bench clarified that as the condition precedent of deposit of Rs. 7 crores of the order dated 8th April, 2015 had not been fulfilled by the respondents, the petitioner-Bank was free to file legal proceedings towards possession apart from other legal remedies available under law.

44. This Court in *D.K.C. Vs. K.C. & Ors., 227 (2016) DLT 1* has extensively dealt with the concept of an undertaking. The relevant portion of the said judgment is reproduced hereinbelow:-

"54. In the opinion of this Court, definition of civil contempt " under Section 2(b) of the Contempt of Courts Act, 1971 includes breach of an undertaking given to a Court. The Supreme Court after extensively analysing the case law including the case of **Babu Ram Gupta** (supra) cited by the respondent no.1 has succinctly outlined the concept of 'undertaking' in second **Rama Narang (5) vs. Ramesh Narang & Anr., (2009) 16 SCC 126**. The relevant portion of the said judgment is reproduced hereinbelow:-

"35. Black's Law Dictionary, 5th Edn. defines "undertaking" in the following words:

"A promise, engagement, or stipulation. An engagement by one of the parties to a contract to the other, as distinguished from the mutual engagement of the parties to each other. It does not necessarily imply a consideration. In a somewhat special sense, a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. A promise or security in any form."

36. Osborn's Concise Law Dictionary, 10th Edn. defines "undertaking" in the following words:

"A promise, especially a promise in the course of legal proceedings by a party or his counsel, which may be enforced by attachment or otherwise in the same manner as an injunction."

37. In *M. v. Home Office*, All ER at p. 132g, the expression "undertaking" has been dealt with in the following manner:

"[I]f a party, or solicitors or counsel on his behalf, so act as to convey to the court the firm conviction that an undertaking is being given, that party will be bound and it will be no answer that he did not think that he was giving it or that he was misunderstood."

38. *Hudson, In re*, the English court observed as under: (All ER pp. 112 I-113 A)

"An undertaking to the court confers no personal right or remedy on any other party. The only sanctions for breach are imprisonment for contempt, sequestration or a fine."

39. Similarly, in *Shoreham-by-Sea Urban District Council v. Dolphin Canadian Proteins Ltd.* the Court observed as under:

"Failure to comply with an undertaking to abate a nuisance may be visited with a substantial fine."

40. The Division Bench of the Bombay High Court in *Bajranglal Gangadhar Khemka v. Kapurchand Ltd.* had an occasion to deal with similar facts. Chagla, C.J., speaking for the Court, observed as under: (AIR p. 337, para 4)

"4. We are not prepared to accept a position which seems to us contrary to the long practice that has been established in this Court, and, apparently, also in England. There is no reason why even in a consent decree a party may not give an undertaking to the court. Although the court may be bound to record a compromise, still, when the court passes a decree, it puts its imprimatur upon those terms and makes the terms a rule of the court; and it would be open to the court, before it did so, to accept an undertaking given by a party to the court. Therefore, there is nothing contrary to any provision of the law whereby an undertaking cannot be given by a party to the court in the consent decree, which undertaking can be enforced by proper committal proceedings."

41. In *Noorali Babul Thanewala v. K.M.M. Shetty*, a tenant committed breach of undertaking given by him to the Supreme Court to deliver vacant possession of certain premises. The Supreme Court held the tenant guilty of contempt. Hon'ble V. Ramaswami, J., delivering the judgment observed: (SCC pp. 265-66, para 11)

"11. When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party

from acting in breach thereof. The breach of an undertaking given to the court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt.”

42. In Mohd. Aslam v. Union of India this Court dealt with the contempt proceedings raising the issues as to the amenability of the State and of its Ministers for failure of obedience to the judicial pronouncements. In this case, the Chief Minister of Uttar Pradesh had made a statement before the National Integration Council that the Government of Uttar Pradesh will hold itself fully responsible for the protection of the Ram Janma Bhumi-Babri Masjid structures. Upon this statement of the Chief Minister, this Court had passed an order. However, in the contempt proceedings it was alleged that the orders passed on the basis of the statements made have been deliberately and wilfully flouted and disobeyed by the State of Uttar Pradesh. While dealing with the expression “undertaking”, this Court observed as under: (SCC p. 453, para 22)

“The Chief Minister having given a solemn assurance to the National Integration Council and permitted the terms of that assurance to be incorporated as his own undertaking to this Court and allowed an order to be passed in those terms cannot absolve himself of the responsibility unless he placed before the Court sufficient material which would justify that he had taken all reasonable steps and precautions to prevent the occurrence.”

43. In Rita Markandey v. Surjit Singh Arora this Court came to the conclusion that even if the parties have not filed an undertaking

before the court, but if the court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the court ultimately finds that the party never intended to act on such representation or such representation was false, even then the party would be guilty of committing contempt of court. The Court observed as under: (SCC p. 20, para 12)

“12. Law is well settled that if any party gives an undertaking to the court to vacate the premises from which he is liable to be evicted under the orders of the court and there is a clear and deliberate breach thereof it amounts to civil contempt but since, in the present case, the respondent did not file any undertaking as envisaged in the order of this Court the question of his being punished for breach thereof does not arise. However, in our considered view even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the court ultimately finds that the party never intended to act on such representation or such representation was false.”

44. In K.C.G. Verghese v. K.T. Rajendran this Court dealt with the “undertaking” in contempt proceedings arising out of eviction proceedings. This Court held that when at the time of giving the undertaking, the tenant did not indicate that he was in possession of a part of the premises and not the other portion nor was such a stand taken in any of the pleadings before the High Court or Rent Controller, the order of eviction passed against the tenant is equally binding upon the occupant of the other portion.

45. This Court again had occasion to deal with a case in Bank of Baroda v.Sadrudin Hasan Daya. In that case, the Court clearly observed as under: (SCC p. 361g)

“The wilful breach of an undertaking given to a court amounts to ‘civil contempt’ within the meaning of Section 2(b) of the Contempt of Courts Act. The respondents having committed breach of the undertaking given to the Supreme Court in the

consent terms they are clearly liable for having committed contempt of court.”

46. The respondents placed reliance on Babu Ram Gupta v. Sudhir Bhasin. In this case admittedly no application, affidavit or any undertaking were given by the appellant. Therefore, this case is of no assistance to the respondents. In this case, the Court observed that: (SCC p. 53, para 10)

“[E]ven the consent order does not incorporate expressly or clearly that any such undertaking had been given either by the appellant or by his lawyer before the court that he would hand over possession of the property to the receiver. In the absence of any express undertaking given by the appellant or any undertaking incorporated in the order impugned, it will be difficult to hold that the appellant wilfully disobeyed or committed breach of such an undertaking.”

The Court even in this case observed that: (SCC p. 53, para 10)

“In fact, the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemnor by making a false representation to the court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution.”

(emphasis in original)

47. The critical analysis of the decided cases of this Court clearly leads to the conclusion that wilful breach of an undertaking given to the court amounts to contempt of court under Section 2(b) of the Act.

(emphasis supplied)

55. In the present case keeping in view the aforesaid law, this Court is of the view that the respondent no. 1 had given not only full custody of the minor child to the petitioner-mother, but had also undertaken that he would not take the child for

holidays abroad leave alone permanently till such time as the divorce decree was passed. Consequently, this Court is of the opinion that statement of respondent no. 1 under oath in the presence of his counsel constitutes an undertaking and assurance to the Guardianship Court which has been breached.

56. Assuming that respondent no. 1 had not given any specific undertaking/assurance, this Court is of the view that he had certainly induced the Guardianship Court to put its imprimatur to a parenting plan by making a representation and consequently the same constitutes an undertaking. Since in the present case said undertaking has been breached by the respondent-father, he is guilty of contempt."

45. In the present case, this Court is of the view that the respondents had made a false representation/promise to the Division Bench that they would deposit Rs. 7 crores on or before 30th June, 2015 and believing the said representation/promise, the Division Bench had ordered stay of dispossession. Consequently, this Court is of the opinion that statement of respondent No. 1 under oath in the presence of his counsel as well as affidavit/undertaking of respondent no. 2 constitute undertakings and assurances to the Division Bench which have been breached.

46. Assuming that respondents had not given any specific undertaking, this Court is of the view that they had certainly induced the Division Bench to put its *imprimatur* to a settlement plea by making a representation and consequently the same constitutes an undertaking. Since in the present case the said undertaking has been breached by the respondents, they are guilty of contempt.

A CONTEMNOR IS NOT IN A POSITION OF AN ACCUSED AND CONTEMPT PROCEEDINGS ARE SUI GENERAS. CONTEMPT PROCEEDINGS ARE SEPARATE AND DISTINCT FROM CRIMINAL PROCEEDINGS. CHARGE OF CONTEMPT IS TRIED ON SUMMARY PROCESS AND THE COURT IS FREE TO EVOLVE ITS OWN PROCEDURE CONSISTENT WITH FAIRPLAY AND NATURAL JUSTICE.

47. Further, this Court is of the opinion that a contemnor is not in a position of an accused and contempt proceedings are separate and distinct from criminal proceedings. In a criminal trial where a person is accused of an offence there is a Public Prosecutor who prosecutes the case on behalf of the prosecution against the accused, but in contempt proceedings the Court is both the accuser as well as the Judge of the accusation as observed by the Supreme Court in ***Debarata Bandopadhyay Vs. State of West Bengal, AIR 1969 SC 189***. In fact, contempt proceeding is *sui generis*. It has peculiar features which are not found in criminal proceedings. In this view the contemnors do not stand in the position of a person accused of an offence and the Court is free to evolve its own procedure consistent with principles of fair play and natural justice. The Supreme Court in ***Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat & Ors., (1991) 4 SCC 406*** has held so. The relevant portion of the said judgment is reproduced hereinbelow:-

" 12.A criminal contempt is punishable by the superior courts by fine or imprisonment, but it has many characteristics which distinguishes it from ordinary offence. An offence under the criminal jurisdiction is trial by a Magistrate or a Judge and the procedure of trial is regulated by the Code of Criminal Procedure, 1973 which provides an elaborate procedure for framing of charges, recording of evidence, cross-examination, argument and the judgment. But charge of contempt is tried on summary process without any fixed procedure as the court is

free to evolve its own procedure consistent with fair play and natural justice. In contempt proceedings unlike the trial for a criminal offence no oral evidence is ordinarily recorded and the usual practice is to give evidence by affidavits....."

48. A Division Bench of the Allahabad High Court in ***State of U.P. Vs. Deg Raj Singh & Ors., 1983 Crl.LJ 866*** has similarly held as under:-

" 27. A contempt is not an offence within the meaning of Section 5(2) of the Code of Criminal Procedure nor is the contemnor an accused within the meaning of Section 5 of the Oath's Act, or within the meaning of Article 20, Sub-Clause (3) of the Constitution of India. Contempt is an offence to the Court and not to the person who sits as a Judge. Ergo, an insult to the Court if not punished will create a general dissatisfaction in the minds of the public as to the dignity, solemnity and efficacy of the Courts of Justice.

28. A summary and quick mode of meting out punishment to the contemnor if he is guilty is very efficacious in inspiring confidence in public as to the Institution of justice. Without such protection courts would go down in public respect and maintenance of law and order will be in jeopardy. Such need for brevi manu procedure was approved by Hon'ble Justice Mukherjee in Amrit Bazar Patrika Case, 45 Calcutta, page 160."

49. In the present case, this Court while issuing notice on 14th July, 2015 had succinctly recorded the act of contempt complained of and the precise responsibility of the respondents in the act of contempt as well as the date of alleged contempt. The order dated 14th July, 2015 is reproduced hereinbelow:-

"Present contempt petition has been filed alleging wilful disobedience of the undertaking given by the respondents in the order dated 08th April, 2015 wherein they had undertaken to deposit with the petitioner-Bank on or before 30th April, 2015 a

sum of Rs.2 crores and thereafter Rs.2.5 crores each on or before 31st May, 2015 and 30th June, 2015.

Learned counsel for petitioner states that not only the aforesaid amounts were not deposited, but even the cheques deposited by the respondents have bounced due to 'insufficient funds'.

Issue notice to respondents by registered post and dasti, returnable for 05th November, 2015.

The notices to specifically state that the respondents shall be personally present in Court on the next date of hearing."

50. Since none appeared for the respondents on the returnable date despite receipt of notice by respondent no. 1 personally and by respondent No. 2's husband, this Court was inclined to issue warrants against the respondents. But as the counsel for the respondents assured this Court that the matter would be amicably resolved, the case was adjourned. The order dated 05th November, 2015 is reproduced hereinbelow:-

"When the matter was taken up at first call, this Court was informed that none of the respondents were in Station and even summons had been received by their daughter.

However, a perusal of the file reveals that notices/summons had been received by respondent No.1 personally and by respondent No.2's husband by dasti as well as by speed post.

Though this Court was inclined to issue warrants against the respondents No.1 and 2, yet as learned counsel for respondents states that he would ensure that not only the respondents are personally present in Court on the next date of hearing, but the matter is amicably resolved, matter is adjourned to 16th November, 2015."

51. Thereafter the respondents were permitted to file their defence by way of affidavits. Consequently, the principles of natural justice have been fully complied with in the present case. It is pertinent to mention that it is the practice of this Court to hear contempt matters on affidavits and oral evidence is rarely recorded.

52. Moreover, in the present case, this Court is of the opinion that there was no need for examination of any deponent on oath on account of overwhelming evidence and circumstances available on record against the respondents/contemnors.

THOUGH NORMALLY WHEN A PARTY HAS AN ALTERNATIVE EFFECTIVE REMEDY OF FILING AN EXECUTION PETITION A CONTEMPT PETITION IS NOT ENTERTAINED, YET IN THE PRESENT CASE AS THE VIOLATION/BREACH OF UNDERTAKING IS WILFUL AND INTENTIONAL, A CONTEMPT PETITION IS MAINTAINABLE.

53. Though normally when a party has an alternative effective remedy of filing an execution petition a contempt petition is not entertained, yet it is settled law that in an appropriate case where the violation/breach of undertaking is wilful and intentional, a contempt petition is maintainable. As a matter of fact, the Division Bench in the present case vide its order dated 27th May, 2015 had itself given liberty to the petitioner-Bank to take action towards possession apart from other remedies available to it under the law. Accordingly, unlike the case of ***National Agricultural Coop. Marketing Federation of India Vs. Lalit Mohan*** (Supra) the petitioner-Bank had been given liberty to file proceedings other than just to take back possession.

54. The Supreme Court in ***Kanwar Singh Saini Vs. High Court of Delhi, 2012 (4) SCC 307*** has also clarified the position as under:-

"30. In an appropriate case where exceptional circumstances exist, the court may also resort to the provisions applicable in case of civil contempt, in case of violation/breach of undertaking/judgment/order or decree. However, before passing any final order on such application, the court must satisfy itself that there is violation of such judgment, decree, direction or order and such disobedience is wilful and intentional. Though in a case of execution of a decree, the executing court may not be bothered whether the disobedience of the decree is wilful or not and the court is bound to execute a decree whatever may be the consequence thereof. In a contempt proceeding, the alleged contemnor may satisfy the court that disobedience has been under some compelling circumstances, and in that situation, no punishment can be awarded to him. [See Niaz Mohammad v. State of Haryana, Bank of Baroda v. Sadruddin Hasan Daya and Rama Narang v. Ramesh Narang. Thus, for violation of a judgment or decree provisions of the criminal contempt are not attracted.]"

(emphasis supplied)

55. This Court is of the view that by failing to honour their undertakings, the respondents had played a serious fraud on the Court and had obstructed the course of justice and had also brought disrepute to the judicial institution. Consequently, exceptional circumstances exist in the present case which justify filing of contempt proceedings.

THE JUDGMENTS CITED BY LEARNED COUNSEL FOR RESPONDENTS ARE INAPPLICABLE AS IN THE PRESENT CASE THE RESPONDENTS HAD FILED UNDERTAKINGS/AFFIDAVITS/STATEMENTS UNDER OATH.

56. A Coordinate Bench in ***Nizamuddin Vs. Ramzani*** (supra) after following a Supreme Court judgment in ***Babu Ram Gupta Vs. Sudhir***

Bhasin, (1980) 3 SCC 47 drew a distinction between a compromise decree on the one hand and a case where an undertaking had been given to the Court on the other. In **Nizamuddin Vs. Ramzani** (supra), the Court clarified that in **Babu Ram Gupta** (Supra) no undertaking had been given to the Court and no benefit had been obtained by a party and no fraud had been played upon the Court. Since in the present case the order dated 08th April, 2015 is not a compromise decree, the judgments of this Court in **Urmila Slawan Vs. Kasturi Lal Bhatia** (supra), **National Agricultural Coop. Marketing Federation of India Vs. Lalit Mohan** (supra) and **Nizamuddin Vs. Ramzani** (supra) offer no assistance to the respondents.

57. Moreover, the Supreme Court in **Bank of Baroda Vs. Sadruddin Hasan Daya, (2004) 1 SCC 360** specifically rejected the argument that in view of the judgment of the Supreme Court in **Babu Ram Gupta Vs. Sudhir Bhasin** (supra), non-compliance of terms of a consent order cannot amount to contempt and the remedy of the aggrieved party is to apply only for execution. The relevant portion of the said judgment is reproduced hereinbelow:-

*"7. Shri R.F. Nariman, learned Senior Counsel appearing for Respondent 1, has submitted that the contempt proceedings are quasi-criminal in nature and as such the standard of proof required is that of criminal proceedings and the breach or violation has to be established beyond reasonable doubt. If two equally consistent possibilities are present, it would not be right to hold that the offence is proved beyond reasonable doubt. Learned counsel has also submitted that like all criminal cases the burden to establish that the respondents have committed contempt of court is upon the petitioner. In support of his submissions the learned counsel has referred to a decision of this Court in **Mrityunjay Das v. Sayed Hasibur Rahaman [(2001) 3 SCC 739]**. Shri Nariman has further submitted that*

non-compliance with the terms of a consent order or decree cannot amount to contempt of court and the remedy of the aggrieved party is to apply for execution of decree. In support of this submission reliance is placed on Babu Ram Gupta v. Sudhir Bhasin [(1980) 3 SCC 47 : 1980 SCC (Cri) 527 : (1979) 3 SCR 685] wherein it was held as under:

"1. The act of the appellant in not complying with the terms of the consent order did not amount to an offence under Section 2(b), however improper or reprehensible his conduct might be.

2. When a person appearing before a court files an application or affidavit giving an undertaking to the court or when he clearly and expressly gives an oral undertaking which is incorporated by the court in its order and fails to honour that undertaking then a wilful breach of the undertaking would amount to an offence punishable under the Act. An undertaking given by one of the parties should be carefully construed by the Court to find out the nature and extent of the undertaking given by the person concerned. It is not open to the Court to assume an implied undertaking when there is none on the record.

3. While it is the duty of the court to punish a person who tries to obstruct the course of justice or brings into disrepute the institution of judiciary this power has to be exercised not casually or lightly, but with great care and circumspection. Contempt proceedings serve a dual purpose of vindication of the public interest by punishment of the contumacious conduct and coercion to compel the contemner to do what the law requires of him.

4. The reason why a breach of clear undertaking amounts to contempt of court is that the contemner by making false representation would obtain the benefit and if he fails to honour that undertaking he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings the judicial institution into disrepute. The same cannot be said of a consent order or a compromise decree where the fraud is played not on the court but on one of the parties. The offence committed is qua a party and

not qua the court and therefore the very foundation for proceeding for contempt of court is completely absent in such cases.

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12. The submission of Shri R.F. Nariman, learned counsel for the respondents, that this Court having passed a consent decree, the remedy of the petitioner lay in executing the same and there was no occasion for initiating contempt proceedings against the respondents has hardly any merit. The wilful breach of an undertaking given to a court amounts to “civil contempt” within the meaning of Section 2(b) of the Contempt of Courts Act. The respondents having committed breach of the undertaking given to this Court in the consent terms filed on 28-7-1999, they are clearly liable for having committed contempt of court. The fact that the petitioner can execute the decree can have no bearing on the contempt committed by the respondents. The law in England on the subject of breach of undertaking given to court is same. In Halsbury's Laws of England, Vol. 9(1), para 482, it has been stated as under:

“An undertaking given to the court in pending proceedings by a person or corporation (or by a government department or Minister of the Crown acting in his official capacity) on the faith of which the court sanctions a particular course of action or inaction, has the same force as an injunction made by the court and a breach of the undertaking is misconduct amounting to contempt.....”

(emphasis supplied)

THE RESPONDENTS FAILED TO PROVE THEIR DEFENCE EVEN ON THE BASIS OF PROBABILITY THAT THEIR DEBTORS WERE GENUINE.

58. This Court is in agreement with the contention of learned counsel for petitioner-Bank that the undertaking dated 08th April, 2015 and furnishing of repayment cheques before the DRT on 03rd April, 2015 as well as before this

Court on 29th April, 2015 were part of a calculated design to give a false representation to obtain stay of dispossession. In fact, the undertakings given to this Court were not only false to the knowledge of the respondents as they promised to repay Rs.7 crores when they had no money in their bank accounts, but also as the respondents knew on the date they gave the undertaking that they would not be able to honour it.

59. In fact, on 07th December, 2015, when this Court had perused cheques dated 03rd April, 2015 and 06th May, 2015 (annexed along with the respondents' letter dated 29th April, 2015), it had found that all the eight cheques had been filled in by one single person and further despite the earlier set of cheques dated 03rd April, 2015 having not being honoured, the respondents had given an undertaking once again on 08th April, 2015 to this Court to repay Rs. 7 crores. Since, this Court had a prima facie doubt that the respondents' alleged debtors i.e. M/s. Remex Enterprises, M/s. Nandini Enterprises and M/s. Countrywide Traders belonged to the same group of individuals that owned and controlled respondent No. 3, it directed the SFIO to investigate the financial transactions and background of the promoters of respondent No. 3 as well as its debtors to see if they had any business connection or relationship with each other. The order dated 07th December, 2015 is reproduced hereinbelow:-

"Learned senior counsel appearing for respondent no. 1 states that respondent nos. 1 and 3 had undertaken to pay the money in the hope that their debtors would clear their outstandings. He, however, states that the hope of the respondents turned futile as the cheques of the debtors dated 06th May, 2015 were dishonoured.

This Court has perused the four cheques dated 6th May, 2015 alleged to have been given by respondents' debtors. The details in the all the four cheques seem to have been filled by one single person. This Court also finds that similar four cheques dated 3rd April, 2015 had been sought to be furnished before the DRT in a bid to stall the SARFAESI proceedings. It is surprising that despite the cheques dated 03rd April, 2015 not being honoured, the respondents had given an undertaking on 08th April, 2015 to this Court to repay Rs. 7 crores.

Since this Court has a prima facie doubt that M/s. Remex Enterprises, M/s. Nandini Enterprises and M/s. Countrywide Traders belong to the same group of individuals who own and control respondent no. 3-M/s. Parul Polymers Private Limited, the Serious Fraud Investigation Office [for short "SFIO"] is directed to investigate financial transactions and background of promoters of M/s. Remex Enterprises, M/s. Nandini Enterprises, M/s. Countrywide Traders and M/s. Parul Polymers Private Limited to see if they have any business connection or relationship with each other. Let a copy of the entire paper book be supplied to SFIO by the petitioner within one week. SFIO is directed to file its report within six weeks of receipt of this order.

Respondent nos. 1 and 2 shall be personally present in Court on the next date of hearing. It is further directed that respondent nos. 1 and 2 shall not sell any immovable property of theirs or withdraw any amount from their bank accounts in excess of Rs. 20,000/- per month.

List on 11th February, 2016."

60. The SFIO in its report concluded that respondent No. 3's alleged debtors i.e. M/s. Remex Enterprises, M/s. Nandini Enterprises and M/s. Countrywide Traders are conduit and shell companies under the control of respondent No. 1. The relevant portion of the executive summary of the

SFIO report is reproduced hereinbelow:-

" The findings of SFIO are as under:-

a. Page iv - para 7 of Executive Summary-- Remex Enterprises is proprietorship firm of Mr. Vikas Raj R/o Village Khusi Tola, Anchal Bairiya, District Paschim Champaran, Bihar.

b. Page iv - para 8 of Executive Summary - Nandani Enterprises is sole proprietorship firm of Mr. Saroj Singh R/o 133, Area Purana Tola, Mahesra, Village Puraina, Anchal Sikta, District Paschim Champaran, Bihar.

c. Page iv - para 9 of Executive Summary - Countrywide Traders is sole proprietorship firm of Mr. Saroj Singh Singh R/o 133, Area Purana Tola, Mahesra, Village Puraina, Anchal Sikta, District Paschim Champaran, Bihar.

d. Page v - para 12(i) of Executive Summary -reveals that proprietor of these firms were illiterate and poor people and have been lured into opening of the firm in lieu of monthly commissions by Suman Chadha (Director of PPPL). In fact, the affairs of these firms were managed by Suman Chadha for his business interest only.

e. Page v- para 12 (ii) of Executive Summary -that the affairs of Remex Enterprises, Nandani Enterprises and Countrywide Traders were controlled by Suman Chadha. These three firms were incorporated as Shell Entities for laundering of money generated in the business of PPPL. There were no business transactions between the 3 proprietorship firms and PPPL. These 3 entities had mainly acted as conduit.

f. Page 16-17 para 4.6- Background of Investigation - statement of Mr. Madhav Kumar Jha, employee of Suman Chadha, where he stated that 4 cheques (in question) were filled up by him in his own handwriting, cheques were given by Suman Chadha to him, which were blank and signed and

details were filled up at the instance of Suman Chadha and were deposited in the bank.

g. Page 28 - Summary of Findings - Address for Opening of Accounts provided by Suman Chadha, bank accounts opened at the instance of Suman Chadha, bank accounts operated by employees of Suman Chadha, proprietor of Remex Enterprises, Nandani Enterprises and Countrywide Traders used to get commissions for use of their name, Suman Chadha controls their affairs.

h. Page 28 - para 4.25 conclusion - Summary of Findings"it is concluded that affairs of RE, NE, CT were controlled by Suman Chadha, Director of PPPL. These 3 concerns were incorporated as Shell Entities for routing of sales of PPPL. There were no real business transaction of 3 firms with PPPL and acted as conduit for laundering unaccounted cash."

(emphasis supplied)

61. As the learned counsel for the respondents raised a grievance that it had been denied inspection of the SFIO report, this Court on 08th September, 2016 allowed the counsel for the respondents to inspect the SFIO report before the concerned Deputy Registrar.

62. Consequently, the defence taken by the respondents that they had handed over cheques on 3rd April, 2015 and 29th April, 2015 given to them by their debtors believing that their debtors would honour their commitments, is a sham.

63. Undoubtedly, the SFIO report is in the nature of an investigation, but even if the same is ignored, the onus of proving that the respondents' debtors were genuine, would be on the respondents, which they have failed to discharge even on the basis of probability.

64. Consequently, both the respondents are held guilty of contempt.

SENTENCE

65. Coming to the question of sentence, this Court is conscious that the power to punish for contempt must be exercised with circumspection. At the same time, the Court has to act with seriousness where the judicial system is exploited by a party as otherwise the rule of law would disappear. [See: ***Bank of Baroda Vs. Sadruddin Hasan Daya*** (Supra)].

66. Keeping in view the contumacious conduct of the respondents, this Court sentences the respondents to three months simple imprisonment along with a fine of Rs.2,000/- each.

67. Registry is directed to prepare the necessary warrants forthwith.

68. With the aforesaid observations and directions, present contempt petition is disposed of.

69. Order dasti under signature of Court Master.

MANMOHAN, J

JULY 18, 2017

rn/js