

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CONTEMPT APPEAL NO.09/2016 IN
CONTEMPT PETITION NO.165/2013(D) IN
FIRST APPEAL NO.45/2006

1. Smt. Kamrunisha wd/o Mohd. Umar,
Aged 64 years.
2. Shri Mohd. Saleem s/o Mohd. Umar (**deleted**)
3. Shri Wasima Akhtar d/o Mohd. Umar, aged 35 years.
4. Smt.Sabina Akhtar d/o Mohd Umar,
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now after marriage Smt. Sabina w/o Mohd. Quab,
aged 35 years.
5. Shri Mohd. Amin s/o Mohd. Umar,
Aged 33 years.
6. Mohd. Jamil s/o Mohd. Umar,
Aged 31 years.
7. Miss Samin Aktar d/o Mohd Umar, now
after marriage Mrs. Samin Akhtar, w/o Mohd. Shabbir.
8. Smt. Najama w/o Habib Khan,
Aged 64 years,
R/o. New Basti, Jalalkheda, Tahsil Narkhed,
District Nagpur.
9. Miss Naseem Akhtar d/o Mohd Umar, now
after marriage Smt. Naseem Akhtar, wd/o Mohd Sabir.

All Contemnors Nos. 1 to 9 (actually 1 to 7 and 9) are
resident of J 43(i), Central Railway Colony,
Ajni, Nagpur.

.. APPELLANTS

Versus

1. Smt. Karorabai W/O Matafer Gupta,
Aged about 63 years, Occupation-household,
R/o. Tatya Tope Nagar, Nagpur.

2. Shri Suresh s/o Pannalal Jain,
Aged 42 years, occupation- Business and developers,
R/o. E3, Sector 1, Vashi, Navi Mumbai-400 703
3. Shri Dharamdas s/o Melumal Ramani,
Aged 41 years, occupation – Business,
R/o Gopal Nagar, Nagpur.
4. Mohd. Yusuf s/o Mohd. Ishak,
Aged 75 years,
R/o. In front of Sule Primary School,
Parvati Nagar, Nagpur **(deleted)**
5. Mohd. Qamar s/o Mohd. Ishad,
Aged 62 years,
R/o. Plot No.13/14, Jaigurudeo Nagar,
Manewada Road, Nagpur **(deleted)**
6. Smt. Sultana wd/o Mohd. Sharif,
before marriage Ku.Sultana d/o Mohd Ishaque,
Aged 72 years,
R/o. Udhana Yard, Backside of Railway
Institute Udhana, District Surat,
State : Gujrat **(deleted)** **..RESPONDENTS**

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Shri U.P.Dable, Advocate for appellants.
Shri P.P.Kothari, Advocate for respondent no.1.

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CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

Date on which the arguments were heard : 06.09.2021& 17.09.2021

Date on which the judgment is pronounced : 21.09.2021

Judgment : (Per A.S.Chandurkar, J.)

Admit. Heard learned counsel for the parties.

The appellants who have been held guilty of contempt for wilful disobedience of the orders passed by this Court dated 10.04.2006 and 08.02.2008 in First Appeal No.45/2006 have challenged the judgment dated 04.10.2016 passed in Contempt Petition No.165/2013, in this appeal filed

under Section 19 of the Contempt of Courts Act, 1971 (for short, 'the said Act'). While the appellant nos. 1, 4, 7 to 9 have been sentenced to pay a fine of Rs.2,000/- each, the appellant nos.3, 5 and 6 have been sentenced to undergo simple imprisonment for 15 days and to pay fine of Rs.2,000/- each within ten days, in default with further simple imprisonment for a period of one week.

2. The facts giving rise to the contempt proceedings are that one Mohammad Samad had filed R.C.S.No.2259/1992 which was re-numbered as S.C.S.No.139/1999 seeking a declaration that the sale deed executed in favour of the respondent no.1 on 03.09.1991 was not binding on him. This suit was decreed on 17.12.2005. The respondent no.1 herein challenged this judgment by filing First Appeal No.45/2006 in this Court. On 10.04.2006 the Court accepted the statement made on behalf of the original plaintiff that he would not alienate the suit property or create third party interest therein during pendency of the appeal. On 08.02.2008 the legal representatives of Mohammad Samad were restrained from creating third party rights in the suit property. However in breach of these orders, the legal heirs of the original plaintiff on 28.04.2008 alienated the suit property by executing a sale deed. On getting knowledge of the fact that the suit property had been alienated, the respondent no.1 filed Contempt Petition No.165/2013. After considering the defences raised by the alleged legal representatives of the original plaintiff who had come on record of the first appeal and who had alienated the suit property, the

learned Single Judge recorded a finding that the appellants were guilty of having committed contempt on account of wilful disobedience of the orders passed in the first appeal. The contemnors who were ladies were sentenced to pay fine while the other contemnors were sentenced to undergo simple imprisonment for a period of 15 days along with fine of Rs.2000/- each. It is this judgment that is challenged in this contempt appeal.

3. Shri U.P.Dable, learned counsel for the appellants submitted that the learned Single Judge was not justified in recording a finding that the appellants had wilfully disobeyed the order of injunction dated 10.04.2006 by executing the sale deed of the suit property on 28.04.2008. According to him, after the order dated 10.04.2006 was passed, the respondent in First Appeal No.45/2006 Mohd. Samad expired on 26.08.2006 and thereafter the appellants were substituted as legal heirs of the said deceased on 28.04.2007. Prior to such impleadment the appellants had executed a document of power of attorney in favour of the respondent no.14 in the contempt petition. According to him, the appellants had raised a defence before the learned Single Judge that the appellants were not aware of the undertaking given by Mohd. Samad that third party rights in the suit property would not be created. The learned counsel representing the appellants had not informed them that such an undertaking had been given by the original respondent nor were they informed of the order dated 08.02.2008 and therefore it could not be said that they had wilfully disobeyed and breached the undertaking by executing the sale deed dated

28.04.2008. He also submitted that the contempt proceedings were filed beyond the period of limitation prescribed by Section 20 of the Act of 1971. The sale deed was alleged to have been executed on 28.04.2008 while the contempt petition was filed on 11.07.2013 which was beyond the period of one year from the alleged contempt. The learned counsel placed reliance on the decision in *Pallav Sheth Vs. Custodian and others 2001 (4) Mh. L.J. 1* in that regard. Without prejudice to the aforesaid, it was submitted that some of the appellants being ladies who were illiterate they were not aware of the legal consequence of their bona fide act. According to him all the appellants had sought to tender unconditional apology for their act and hence the order of conviction as passed in the contempt petition be set aside.

4. Shri P.P.Kothari, learned counsel for the respondent no.1 opposed the aforesaid submissions. He submitted that on 10.04.2006 an undertaking was given by both the parties which included Mohd. Samad that no third party rights would be created in the suit property. After the death of Mohd. Samad, the appellants themselves appeared and prayed that they be impleaded in proceedings as legal heirs of deceased Mohd. Samad. This application was allowed and on 28.04.2007 the appellants were impleaded as legal heirs in the first appeal. The fact that the appellants themselves appeared before this Court in the said proceedings indicated that they had knowledge about the same and therefore it could not be said that they were not aware of the undertaking given by the deceased which was accepted by the Court. Despite the aforesaid undertaking and the subsequent order

dated 08.02.2008, the suit property was sold on 28.04.2008 by the power of attorney holder of the appellants. After recording a finding that there was wilful breach of the said undertaking, the learned Single Judge had convicted the appellants for having committed breach of the same. No steps were taken by the appellants to purge the contempt and hence no leniency ought to be shown to them. He therefore submitted that the appeal was liable to be dismissed.

5. We have heard the learned counsel for the parties at length and we have perused the records of the case. It is an admitted position that in First Appeal No.45/2006 an undertaking was given by Mohd. Samad that he would not alienate or create any third party rights in the suit property which undertaking was accepted on 10.04.2006. During the pendency of the first appeal, said Mohd. Samad expired on 26.08.2006. The respondent no.1 therefore moved Civil Application No.983/2007 seeking appointment of an appropriate person for representing the estate of deceased Mohd. Samad. According to the respondent no.1, Mohd. Samad did not leave behind any legal heirs. On 21.02.2007 the Court directed publication of a notice under provisions of Order XXII Rule 4A (2)(a) of the Code of Civil Procedure, 1908. Pursuant to the said public notice issued in the first appeal the present appellants filed pursis bearing Stamp No.3843/2007 and stated that they were legal heirs of the deceased and that they desired to contest the said proceedings. On 24.10.2007 the appellants were impleaded and brought on record in place of deceased Mohd. Samad keeping open the

question as to their actual interest in the estate of the deceased. The counsel for the appellants representing them in the first appeal was discharged on 15.01.2008 and on 08.02.2008 an order restraining the parties in the first appeal from alienating the suit property was passed. The suit property came to be sold by the appellants vide sale deed dated 28.04.2008. On getting the knowledge of the aforesaid sale deed through the intervention application filed by the purchaser of the said suit property in February 2013, the respondent no.1 filed Contempt Petition No.165/2013 on 12.07.2013.

6. Insofar as the aspect of filing the contempt petition within limitation is concerned, it has been found that the respondent no.1 got knowledge as regards alienation of the suit property and execution of the sale deed by the appellants in view of the application for intervention filed by the purchaser thereof. This application having been filed in February 2013, the contempt petition was filed within a period of one year from the date of knowledge of breach of the undertaking/order. The fact that the period of limitation would commence from the date when knowledge of the alleged breach is got has been considered by the Hon'ble Supreme Court in ***Pallav Sheth*** (supra) and on that premise it has been rightly held that the contempt proceedings were filed within limitation.

7. The record of First Appeal No.45/2006 indicates that after the death of Mohd. Samad on 26.08.2006 the respondent no.1 moved Civil Application No.983/2007 seeking appointment of any appropriate person for

representing the estate of Mohd. Samad as according to the respondent no.1 he had died without leaving any legal heirs. On 21.02.2007 the Court issued notice of the said application in view of the provisions of Order XXII Rule 4A (2)(a) of the Code. Pursuant to the said notice on 09.04.2007 the present appellants moved a pursis expressing their intention to contest the first appeal as legal representatives of Mohd. Samad. On 24.10.2007 the Court considered the application that was moved by the respondent no.1 for appointing any appropriate person to represent the estate of the deceased and permitted substitution of the names of the appellants in place of the deceased for that purpose. The question as to whether the persons substituted were in fact residuaries of the deceased under Mahomedan law was kept open. It is in this manner that the appellants were impleaded in First Appeal No.45/2006 as representing the estate of deceased. Thereafter on 08.02.2008 this Court while considering the prayer made by the respondent no.1 for appointing a Receiver on the suit property passed an order directing all parties to the first appeal including the heirs of deceased - Mohd. Samad/present appellants not to create any third party interest in the suit property. They were specifically directed not to alienate the property in favour of any person until the decision of the first appeal.

From the aforesaid, it becomes clear that initially on 10.04.2006 the parties of the first appeal including Mohd. Samad undertook not to alienate the suit property or create any third party interest therein during pendency of the appeal. After the death of Mohd. Samad the appellants got themselves impleaded in the first appeal by stating they were the legal heirs

of the deceased. They were permitted to be brought on record as legal representatives for representing the estate of the deceased and thereafter on 08.02.2008 the said legal representatives were restrained from alienating the suit property or creating any third party rights therein. It may be noted that the impleadment of the appellants was pursuant to the provisions of Order XXII Rule 4 A (2)(a) of the Code and subsequent thereto on 08.02.2008 a prohibitory order was also passed against the said legal representatives. It thus becomes clear that by virtue of these orders, it was not open for the appellants to have taken any steps whatsoever for alienating the suit property or creating third party rights therein. Despite that the suit property was sold on 28.04.2008.

8. For determining as to whether the appellants are guilty of wilful disobedience of the order passed by this Court in First Appeal No.45/2006 on 10.04.2006 as well as the order dated 08.02.2008, it would be first necessary to peruse the pleadings in the contempt petition. A perusal of Contempt Petition No.165/2013 indicates that the petitioner has pleaded passing of the order dated 10.04.2006 and a breach thereof by the present appellants in view of execution of sale deed of the suit property on 28.04.2008. Reference to the breach of order dated 10.04.2006 in the said contempt petition can be found in paragraphs 3, 12 and 13 of the same. The prayer in the said contempt petition reads as under :

“Prayer :- It is therefore most humbly prayed that this Hon’ble Court be pleased to take cognizance of the contempt of this Hon’ble Court’s order dated 10th April

2006 in F.A.No.45/2006 committed by the respondents and they be punished for the contempt of Court.”

In response to the aforesaid averments, a reply was filed by the appellant nos. 1, 3 to 9 on 03.12.2014. In the said reply a stand has been taken that the appellants were not aware of the order dated 10.04.2006 passed in first appeal nor the statement or undertaking given by the counsel for the said parties. It is further pleaded that Mohd. Samad before his death had not informed the appellants of any such order of injunction being passed. It was denied that the appellants were guilty of committing contempt of this Hon'ble Court.

9. On 11.03.2014 the petitioner filed counter affidavit on record in response to the reply filed by the respondent no.13 in the said contempt petition. In that counter affidavit a reference has been made to the subsequent order dated 08.02.2008 passed in First Appeal No.45/2006 restraining the respondents in the First Appeal from creating any third party interest in the suit property. Thereafter on 17.02.2015 the Court was pleased to frame charges in the contempt petition. As per the charges framed, it was alleged that the appellants had disobeyed the orders dated 10.04.2006 and 08.02.2008 passed in First Appeal No.45/2006 and had created third party interest in the suit property. In response to the aforesaid charges as framed, the appellants filed further reply along with affidavit of the appellant no.1. This reply is dated 04.10.2016. As regards the order dated 10.04.2006, it was pleaded that the appellants were not aware of that

order or of any statement or undertaking given by the counsel for the parties as the appellants were not parties to the appeal at that point of time. It is then stated that on 15.01.2018 the earlier counsel representing the appellants was discharged. On account of internal differences amongst them the appellants could not engage any counsel and the proceedings remained unattended. It has been specifically stated by them in paragraph 9 of the reply that the appellants had not committed any breach of undertaking or order as they are not aware about the same. It would be necessary to reproduce the stand taken in paragraph 9 which reads as under :

“9..... It is also a matter of record that on the day when the order was passed the answering respondents were not represented before this Hon’ble Court. Therefore, it cannot be said that these respondents have committed breach of any undertaking or order as they were not aware about the same. It is not disputed that these respondents were being represented by the same counsel however it is denied that these respondents were aware of the undertaking given for and on behalf of deceased Mohd. Samad. As already submitted above, the counsel had not informed these respondents about any such undertaking given by him on behalf of deceased Mohd. Samad or any in the injunction order was passed by this Hon’ble Court. The order of injunction is subsequent to the power of attorney which was executed by these respondents in favour of the respondent no.14.”

10. From the aforesaid pleadings of the parties in the contempt petition, it becomes clear that when the contempt petition was filed on 11.07.2013 the petitioner had prayed that cognizance of the contempt committed only as regards the breach of the order dated 10.04.2006 in First

Appeal No.45/2006 be taken. Reference to the order dated 08.02.2008 can be found to have been made only in the counter affidavit filed by the contempt petitioner on 12.03.2014. Thereafter on the charges being framed in the contempt petition on 17.02.2015, the appellants in their response to the aforesaid charges took the specific stand in their reply dated 04.10.2016 that they were not aware of the order dated 08.02.2008 passed in First Appeal No.45/2006 since they were not represented by any counsel before the Court. It thus becomes clear that in the contempt petition the petitioner did not refer to the order dated 08.02.2008 nor did he make any prayer for taking cognizance with regard to its wilful disobedience. The Contempt Petition was not amended to include the prayer as regards breach of the subsequent order dated 08.02.2008. In the absence of any prayer made in that regard, the charge was framed against the appellants for committing breach of the orders dated 10.04.2006 and 08.02.2008. This charge was denied by the appellants. On such denial it was thereafter necessary for the contempt petitioner to have pleaded as to the manner in which the appellants were aware of the order dated 08.02.2008 and that despite having knowledge of the same, that order was wilfully disobeyed. There are however no averments whatsoever in that regard in the contempt petition. Even if it is held that by virtue of the subsequent counter affidavit of the contempt petitioner dated 12.03.2014, reference was made to the order dated 08.02.2008, the contempt petitioner has not placed on record any material to indicate the fact that the appellants were aware of the order dated 08.02.2008 despite the fact that they were not represented by any

counsel on that date. It is thus clear that without there being any pleading in the contempt petition as regards “wilful disobedience” of the order dated 08.02.2008 by the appellants, the charge was framed against them in that regard. Similarly, in the absence of any material whatsoever to indicate knowledge of that order by the appellants, they have been held guilty of violation of the order dated 08.02.2008.

11. It is well settled that for constituting “civil contempt” as defined by Section 2(b) of the Act of 1971, there should be wilful disobedience of any order passed by the Court. Mere disobedience of an order without the same being shown to be wilful or deliberate cannot result in commission of “civil contempt” so as to result in a finding that such person is guilty of having committed “civil contempt”. Reference in this regard can be made to the observations made by the Hon’ble Supreme Court in paragraph 15 in ***Anil Ratan Sarkar and ors. vs. Hiral Ghosh and ors. (2002) 4 SCC 21*** as under :

“15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a “civil contempt” within the meaning of Section 2(b) of the Act of 1971 --- the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation --- the act of acts cannot be ascribed to the otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise.”

Similarly in *Niyaz Mohammad and others Vs. State of Haryana and others (1994) 6 SCC 322* it has been observed that before a contemnor is punished for non-compliance of the direction of a Court, the Court must be satisfied that such disobedience was wilful and intentional.

Equally well settled is the position that a charge of contempt being quasi-criminal in nature, the proof in that regard must be one beyond reasonable doubt. A clear case of actual knowledge of the order passed and its deliberate wilful breach ought to be brought home. Even a slightest doubt as regards absence of knowledge of the order passed or absence of any material to show such wilful disobedience or deliberate breach would result in granting of benefit to the alleged contemnor.

12. We may note in this regard that the learned Single Judge while holding the appellants guilty of having committed contempt of this Court has in paragraph 9 of its judgment proceeded on the basis that since the appellants came on record of First Appeal as legal heirs of Mohd. Samad and being party to the appeal, it had to be treated that they were aware about the orders passed in the proceedings unless they pleaded and substantiated that they were not aware of the orders. It has been further observed that on such impleadment as parties and on being represented by lawyer/lawyers it had to be considered that they were aware about the proceedings and the orders passed in the first appeal. It is on that basis that a finding has been recorded that the appellants had wilfully disobeyed the orders passed by this Court on 10.04.2006 and 08.02.2008. For the reasons stated hereinabove,

we are not in a position to sustain this finding especially when in response to the charges as framed the appellants had raised a specific defence that they were not aware about the orders passed on 10.04.2006 and 08.02.2008 in first appeal. Having raised this defence, the initial burden to prove the fact that the appellants had knowledge of the order dated 10.04.2006 and 08.02.2008 was on the contempt petitioner. If such material to prove the charges as framed was brought on record by the contempt petitioner, the burden thereafter would have shifted on the appellants to substantiate their defence. However in the absence of any material placed on record by the contempt petitioner to support the charges, there was no occasion for the appellants to substantiate their defence. They could not have been called upon to substantiate a negative aspect.

This conclusion of ours is supported by the following observations of the Hon'ble Supreme Court in paragraph 8 of the judgment in ***The Aligarh Municipal Board and ors. Vs. Ekka Tonga Mazdoor Union and Ors. 1970 (3) SCC 98*** which are as under :

“8. In order to bring home a charge of contempt of Court for disobeying orders of Courts those who assert that the alleged contemners had knowledge of the order must prove this fact beyond reasonable doubt. As observed earlier it is of course not necessary to prove formal service of the order by official routine and knowledge of the exact order aliunde would suffice. In case of doubt, however, benefit ought to go to the person charged.”

13. Insofar as the order dated 10.04.2006 is concerned, we may note that as per this order a statement on behalf of Mohd. Samad had been made

that he would not alienate the property or create any third party interest therein. This undertaking given by Mohd. Samad came to an end with his death on 28.04.2006. Thereafter the steps were taken under the provisions of Order XXII Rule 4A (2)(a) of the Code to enable the estate of the deceased being represented. As per this provision on appointment of any person deemed fit to represent the estate of the deceased for the purposes of the suit, any order subsequently made in the suit would bind the estate of the deceased to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit. In other words, any order passed subsequent to such permission being granted by the Court to a person found fit to represent the estate of the deceased would bind the estate of the deceased.

In the present proceedings such order was passed on 08.02.2008 and all the parties to the first appeal including the heirs of deceased Mohd. Samad were directed not to create any third party interest in the suit property. It is no doubt true that by virtue of this order the estate of the deceased was bound and the appellants as heirs of Mohd. Samad were restrained from creating any third party interest in the suit property. However as noted above, in the contempt petition the contempt petitioner did not pray for holding the appellants guilty of wilful disobedience of the order dated 08.02.2008. At the cost of repetition in response to the charges framed, the defence raised by the appellants has not been attempted to be dislodged. This was all the more necessary in the backdrop of the admitted position that by the order dated 15.01.2008 passed in the first appeal the

counsel representing the appellants was discharged from representing them and it was noted by the Court that there was no representation on behalf of the appellants herein in that first appeal. In this backdrop therefore the order dated 08.02.2008 having been passed in their absence, it was incumbent upon the contempt petitioner to have at least pleaded and placed on record some material to indicate actual knowledge of the order dated 08.02.2008 by the appellants especially when a defence in that regard had been raised. On this count therefore it is held that the contempt petitioner has failed to prove the charge that the appellants were guilty of “wilful disobedience” of the orders dated 10.04.2006 and 08.02.2008. We find that in the absence of any material to hold that firstly, the appellants had knowledge of the order dated 08.02.2008 that was passed in their absence and without any representation before the Court and secondly, in the absence of any material whatsoever to record a finding that such disobedience by the appellants of alienating the suit property on 28.04.2008 was “wilful disobedience” under Section 2(b) of the Act of 1971, it cannot be held that the appellants are guilty of committing civil contempt.

14. To substantiate the contention that the appellants had knowledge of the orders passed on 08.02.2008 in First Appeal No.2006 the learned counsel for the respondent relied upon the decision in *Ahmad Sayid Vs. Mohammnd Musslin 1996(38) DRJ 517*. However in the facts of the present case, the ratio of the aforesaid decision cannot be made applicable to the case in hand. As regards the submission made on behalf of the

appellants that the remedy available under the provisions of Order XXXIX Rule 2A of the Code being available for raising the grievance as to breach of the order of injunction, contempt jurisdiction ought not to be exercised, the learned counsel for the respondent has rightly relied upon the decision in ***Chandrashekhar Govind Daiwatkar Vs. Ramdas Govindrao Daiwatkar 2002 (4) BLR 276*** wherein it has been held that in view of the provisions of Section 22 of the Act of 1971, the provisions of the Act of 1971 are in addition to and not in derogation of the provisions of any other law relating to contempt of Courts. It was open for the respondent to have invoked the contempt jurisdiction of this Court.

15. For the aforesaid reasons the contempt appeal deserves to be allowed and is accordingly allowed. The judgment dated 04.10.2016 passed in Contempt Petition No.165/2013 is set aside. Accordingly, Contempt Petition No.165/2013 stands dismissed with no orders as to costs.

JUDGE

JUDGE

Andurkar..