

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 01st February, 2023
Pronounced on: 16th March, 2023

+ CONT.APP.(C) 7/2022 & CM APPL. 19604/2022

DEEPIKA CHAUHAN & ANR.

..... Appellants

Through: Mr. Aakarshan Aditya & Mr.
Vibhu Tiwari, Advocates.

versus

SMT. INDRA PASRICHA

.... Respondent

Through: Mr. Asutosh Lohia, Ms. Shiaddha
Bhargava, Mr. Rohit Saraswat, Mr.
Varun Raghavan, Mr. Gaurav
Anand & Mr. Tanishq Srivastava,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. An appeal under Section 19 of the Contempt of Courts Act, 1971 has been filed against the Order dated 19.04.2022 vide which the appellants have been held guilty of contempt and liable for punishment under Section 12 of the Contempt of Courts Act, 1971 for committing breach of consent Decree dated 14.03.2012.

2. The Contempt arises from the Consent Decree dated 14.03.2012 passed in Civil Suit CS (OS) 1547/2006 that was filed by one Sh. R.N.

Kapur for Declaration, Partition, Possession, Permanent and Mandatory Injunction against his sister-in-laws. Smt. Kamla Gupta, Indra Pasricha and Raksha were the three sisters. Sh. R.N. Kapur was married to Raksha (the sister) and they had been residing on the ground floor of the property No. E-54, Panchsheel Park, New Delhi-110017 (hereinafter referred to as “*suit property*”), of which Smt. Indira Pasricha was the owner, having inherited the suit property from her late sister Kamla Gupta vide registered Will dated 04.10.2006. Upon the demise of Smt. Raksha, Sh. R.N. Kapur filed a Civil Suit bearing No. CS (OS) 1547/2006 for Declaration and Partition claiming himself to be the owner of the suit property. The suit was settled vide Settlement Agreement dated 24.10.2011, before the Delhi High Court Mediation & Conciliation Centre in the following terms:

“ii. The defendants agree and undertake that the plaintiff shall continue to live in the entire ground floor of the property bearing No.E-54, Panchsheel Park, New Delhi during his entire life time and they shall not either dispossess him or interfere in his peaceful use and enjoyment of the said portion of the said property.

iii. The defendants further agree and undertake that they shall not sell, alienate or otherwise incumber property No. E-54, Panchsheel Park, New Delhi during the life time of the plaintiff. In case of violation of this condition, the defendants shall be

liable to pay 50% of the value of the said property to the plaintiff forthwith.

iv. The defendants also agree and undertake that they will not carry out any structural changes in the aforesaid property during the life time of the plaintiff. The plaintiff further also undertakes not to part with possession or otherwise create any third party interest in the portion occupied by him during his life time. The parties shall continue to maintain status quo as on today in respect of property No. E-54, Panchsheel Park, New Delhi.

*v. On the aforesaid agreement and undertaking given by the defendants, the plaintiff does not wish to press his claim in the present suit and does not object if the suit is disposed off in terms of the aforesaid undertaking after the same is accepted by the Hon'ble Court. **The plaintiff declares and assures "the defendants that after his death, the defendant shall become the sole and exclusive owner of the entire property no. E-54, Panchsheel Park, New Delhi. The defendant shall, in such event, be entitled to take physical possession of the ground floor of the Panchsheel Park property after the expiry of 3 months from the date of his death."***

3. Accordingly, the suit was decreed on 14.03.2012 in terms of the Settlement Agreement on the joint application under Order XXIII Rule 1 and 3 read with Section 151 CPC filed before the Court. .

4. Sh. R.N. Kapur resided alone along with domestic help, in the ground floor of the suit property. He died on 05.02.2018 **and in accordance with the undertaking/decreed of this Court, the petitioner took possession of the property on 07.05.2018.** After about 17 days i.e. on

the night of 24.05.2018, the respondent received a call from the tenant who was residing on the first floor of the property in question, informing her that the appellants i.e. Deepika Chauhan along with her husband Apurv Harsh/Appellant no. 2, have trespassed into the property in question. Consequently, FIR bearing No.81/2019 dated 09.03.2019 was registered against them at P.S. Hauz Khas under Sections 448/34 IPC. On completion of the investigations, the Charge Sheet dated 16.03.2020 under Section 448/453 read with Section 34 IPC, has been filed against the appellants before the learned Metropolitan Magistrate.

5. The respondent asserted that despite the appellants being made aware of the Undertaking given by Sh. R.N. Kapur in the Court, they refused to vacate the premises, resulting in the filing of Contempt Petition by the respondent.

6. The appellants herein on receiving the Notice of Contempt, appeared and stated that she was the niece of Sh. R.N. Kapur and claimed an independent right to the suit property by virtue of a registered Will dated 05.03.2009 executed in her favour by Late Sh. R.N. Kapur and asserted that the respective title of the parties in respect of suit property, required adjudication in a Civil court. Also, the principle of third party

liability to compel the appellants to hand over the property to respondent No.1, could not be adopted in the Contempt proceedings. Further, the appellant was not even a party of the proceedings in the Civil Suit and no Undertaking had been given by her to the Court of which she could be held liable for '*wilful disobedience*' of the Order of this Court.

7. **Learned Counsel on behalf of appellants** submitted that the respondent has already filed a Civil Suit CS (OS) 1092/2018 for recovery of possession under S.6 Specific Relief Act, 1963 against the appellants before the Court of Additional District Judge, Saket Courts, New Delhi, which is pending adjudication. There can be no Contempt till the ownership in respect of the suit property is decided. It is further contended that the remedy of the respondent does not lie in filing of the Contempt Petition, but is by way of execution of the decree. The appellants have thus, prayed for setting aside the Notice of Contempt and dismissal of the Contempt Petition.

8. **Learned Single Judge** in the impugned Order dated 19.04.2022 observed that though broadly, a person who is not a party to the proceedings cannot be proceeded against for violation of the Order, but a third party cannot seek to absolve themselves if they are informed about

the fact that their conduct amounts to violation of the Orders of the Court and if despite being so informed, they choose to wilfully flout the mandate of the Court, such conduct/ disobedience is subversion of judicial order which strikes at the rule of law on which our system of governance is based. It was further observed that even if it is assumed that respondent No.1 was initially not aware of the Consent Decree, but the moment she was informed, she should have respected the Undertaking given to the Court and not persistently acted in breach of the same. It was concluded as under :

“Respondent No.1 claims ownership of the property in question through the will given by R.N. Kapur which was executed on 05.03.2009, i.e. before the decree was passed on 14.03.2012 which was passed in pursuance of the Settlement Agreement which was based upon the undertaking that had been given by R.N. Kapur. The undertaking given by R.N. Kapur before this Court will undoubtedly take precedence over the Will executed by him prior to giving the said undertaking. This Court is of the opinion that the undertaking given to the Court has to be respected and cannot be permitted to be circumvented by saying that the respondents were not parties to the suit and have not given the undertaking. In view of the above, the contention of Mr. Mehrotra that the Respondents cannot be held liable for the contempt of the Court as they were not parties to the Suit and had not given the undertaking to the Court cannot be accepted.”

9. Aggrieved by the said Order, the present Appeal has been preferred.

10. The *main grounds of challenge* are that the appellants were not party to the suit between Late Sh. R.N. Kapur and Smt. Indra Pasricha, the respondent herein. Appellant No.1 Deepika Chauhan being the adopted daughter/ legal heir of Late Sh. R.N. Kapoor, was residing in the suit property since her childhood and had been taking care of her adopted father till his demise. Thus, there is no question of trespass and the claim of the respondent herein that the appellants had broken open the locks and illegally and unlawfully trespassed into the suit property in the night of 24.05.2018 at around 7 P.M, is refuted and claimed to be false.

11. It is further asserted that Consent Decree dated 14.03.2012 passed in terms of Order dated 14.03.2012 neither settled the title of the suit property nor determined the rights of the parties and hence, no conclusion can be drawn sans the examination of the lawful title qua the property, that the appellants are the trespassers.

12. Further, contempt under the provisions of the Act deals with “*wilful disobedience*” of the Order passed by the Court. No order of punishment is warranted if it is established that the party was under a misapprehension about the scope of Orders or there was an unintentional wrong. In the present circumstance, the appellants have never intended to disobey the

Orders of the Court. Thus, the impugned Order dated 19.04.2022 holding the appellants guilty of contempt and liable for punishment under Section 12 of the Contempt of Courts Act, 1971, is liable to be set aside.

13. The **respondent in her brief note** had submitted that the appellant no.1 has claimed herself to be the adopted daughter of Sh. R.N. Kapur, but has failed to place on record any legal/governmental address proof like Aadhar Card, Voter ID Card, Driving License or her own bank account wherein Sh. R.N. Kapoor was mentioned as her father, to substantiate her claims. The respondent has been able to ascertain that the said appellant's name does not even feature on the electoral rolls of the suit property. Instead, she is a voter in Assembly Constituency of "77-Gurgaon" which rebuffs her assertion that she had been residing in the suit property since childhood. Rather, it reinforces that she has forcibly entered into the suit property. However, in arguendo even if the case of the appellant is taken to be true, the alleged Will of Late Sh. R.N. Kapur does not act in supersession of the Settlement Agreement dated 24.10.2011. The appellants despite being made aware of the decree of this Court have continued to wilfully and with malafide intention defy the Orders of this Court. It is therefore, argued that the impugned order does not suffer from

any infirmity and the appellants are liable for punishment under Section 12 of the Contempt of Courts Act, for the contempt of the Orders of the Court.

14. Submissions heard.

15. The facts as stated, are that Indra Pasricha, Raksha and Kamla were the three sisters. Indra Pasricha, the respondent inherited the property in question from her late sister Kamla Gupta by virtue of a Will. Sh. R.N. Kapoor, (brother-in-law of Indra Pasricha) along with his wife Raksha, resided on the ground floor of the suit property and continued to do so even after the demise of his wife Raksha.

16. Eventually differences arose and Mr. R.N. Kapur filed a Civil Suit C.S. (OS) No.1547/2006 claiming himself to be the owner of the ground floor of the suit property. The matter was settled in the Mediation Centre and a Settlement Agreement dated 24.10.2011 was recorded giving him right to continue in possession till his demise and three months thereafter shall be entitled to take physical possession, and the defendant (*respondent herein*) shall become the sole and exclusive owner of the entire property no. E-54, Panchsheel Park, New Delhi. After his demise, the appellants entered the Suit premises claiming appellant no.1 to have

always been in possession being the adopted daughter of Late Sh. R.N.Kapur.

17. Two questions have emerged for determination which are:

- i) *Whether non-compliance of a Consent Decree amounts to contempt of Court? and*
- ii) *Whether the appellant's continued alleged possession of the suit property even though she was not a party to the Civil Suit in which Undertaking was given, would amount to contempt?*

I. *Whether non-compliance of a Consent Decree amounts to contempt of Court:*

18. The first contention raised by the Appellants is that the breach of Undertaking recorded or forming part of a compromise Decree, does not amount to Contempt of Court and the appropriate remedy is by way of Execution.

19. It would be apposite to refer to Section 2(b) of the Contempt of Courts Act, 1971 which reads thus:-

"2. Definitions. -

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court."

20. Analysed, the definition provides for two categories of cases, namely: (1) *wilful disobedience to a process of Court; or (2) wilful breach of an undertaking given to Court.* The Civil Contempt thus, canvasses both; wilful disobedience as well as breach of Undertaking. No

distinction is statutorily drawn between an order passed after an adjudication and an order passed by consent. The legislative intention in separately providing for both clearly was to distinguish between the two and create distinct classes of contumacious behaviour.

21. To begin, a reference may be made to Halsbury's Law of England- Fourth Edn. Vol. 9. page 44 (para 75) wherein the law on Contempt by breach of undertaking is thus stated:

“An undertaking given to the Court by a person or corporation in pending proceedings, 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.”

22. The aspect of breach of an Undertaking was first considered in the case of Bajranglal Gangadhar Khemka and Anr. v. Kapurchand Ltd. AIR 1950 Bom 336. It was observed by Bombay High Court that the expression "*a party undertakes*" has borne the meaning that the Undertaking has been to the Court and has the effect of an order of Court. When a court passes a decree, it puts its imprimatur on the terms of the compromise and makes them a rule of the Court. Such an undertaking given to the courts in a consent decree, can be enforced by proper committal proceedings. It would be open to the party aggrieved by the

non-compliance with the order to come to Court and ask for committal of the party in case of default.

23. The Apex Court explained in Aligarh Municipal Board & Ors. Vs. Ekka Tanga Mazdoor Union & Ors. 1973 SCC 98 that it must be clearly understood that to employ a subterfuge to avoid compliance of a Court's Order about which there could be no reasonable doubt, may in certain circumstances aggravate the contempt. Certain instances were given to understand whether a person can be held guilty of Contempt of Court. To explain what may amount to contempt, instance was given that where a defendant agrees to pay the amount and decree for Rs.10,000/- is passed against him, but he fails to pay the decretal amount, he cannot be held guilty of Contempt of Court. In another instance, where the parties agreed that the possession of the property be handed over to A by B, but subsequently A fails to implement the decree, then too it is not a case of Contempt of Court but the appropriate remedy is to approach the executing Court for recovery of possession. ***It is only where an Undertaking is given to the Court by making a false representation to obtain a benefit for himself and if he fails to honour the Undertaking, he plays a serious fraud with the Court and obstructs the course of***

justice and brings disrepute to the judicial institution. The same cannot be said for a consent order or a Compromise Decree where the fraud, if any, is practised by the person concerned not on the Court but on one of the parties. The offence committed by the person is qua the other party and therefore, the very foundation for proceeding under Contempt of Court is completely absent in such cases. In such circumstances, unless there is an express Undertaking given in writing before the Court by the Contemnor or incorporated in the order of the Court, there can be no question of wilful disobedience of such an Undertaking.

24. Similar observations were made by the Apex Court in Babu Ram Gupta vs. Sudhir Bhasin & Anr. SC 1979 AIR 1528 which are:

“...Indeed, if we were to hold that non-compliance of a compromise decree or consent order amounts to contempt of court, the provisions of the Code of Civil Procedure relating to execution of decrees may not be resorted to at all. In fact, the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemner 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. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practised by the person concerned not on the court but on one of the parties. Thus, the offence committed by the person concerned is qua the party not qua the court, and, therefore, the very foundation

for proceeding for contempt of court is completely absent in such cases."

25. The Supreme Court in the case of Bank of Baroda v. Sadruddin Hasan Daya and Anr (2004) 1 SCC 360, observed that a breach of Undertaking given to the court would amount to "Civil Contempt" within the meaning of Section 2 (b), Contempt of Courts Act, 1971. However, the court shall also look at the specific terms of the Undertaking while deciding whether or not the Respondent had violated the consent decree. While exercising their power for contempt, the courts observed that the power to punish for contempt must always be exercised consciously, wisely and with circumspection. *At the same time, the Court should act with seriousness and severity where justice is jeopardized by a grossly contemptuous act of a party.* If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society

26. In the case of *Re: Vinay Chandra Mishra (1995) 2 SCC 584*, the Apex Court held that `judiciary apart from the function of adjudicating the

disputes between the parties which is essential to peaceful and orderly development of the society and to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land has an additional duty to ensure that the dignity and authority of the Courts is respected and protected at all costs'.

27. The Apex Court while referring to the case of Babu Ram Gupta vs. Sudhir Bhasin & Anr. 1979 AIR 1528 differentiated between a person playing fraud on the court thereby obstructing the course of justice and a person playing fraud on one of the parties and observed that while it is open to the court to see whether the subsequent conduct of the alleged contemnor would tantamount to an aggravation of the contempt already committed, the very determination of an act of contempt cannot simply be based upon the subsequent conduct.

28. To encapsulate, the nature of Undertaking is the determinative factor of whether the impugned conduct amounts to contempt. If the parties arrive at a settlement and one party undertakes to do some act and a decree is made in terms of the undertaking given in the settlement, then it cannot be construed as an Undertaking to the Court entailing invocation

of Contempt jurisdiction. However, when a person by virtue of an undertaking given in the court, even though recorded in consent decree, enjoys a benefit and thereafter refuses to abide by it, it amounts to committing a fraud on the Court and bringing down the majesty of the Court which cannot be permitted under any circumstances, and the Contempt action would necessarily be warranted to ensure the compliance and punishment of the guilty.

29. The facts involved in this case may now to be examined on these aspects. The suit was disposed of on the Settlement Agreement, wherein Late Sh. R.N. Kapur gave an undertaking which read as under:

“the plaintiff declares and assures the defendants that after his death, the defendant shall become the sole and exclusive owner of the entire property no E-54, Panchsheel Park, New Delhi. The defendant shall, in such an event be entitled to take physical possession of the ground floor of the Panchsheel Park property after the expiry of 3 months from the date of his death.”

30. Essentially, Late Sh. R. N. Kapur, by way of the Undertaking dated 24.10.2011 not only admitted and acknowledged the ownership of the respondent herein but also sought time to reside in the property till his demise, after which the respondent could take the possession. Sh. R.N.Kapur, thus gained the advantage of residing in the property for about

seven years till his death on 05. 02.2018. The respondent waited patiently for restoration of possession of her property for seven years and even then she is compelled to initiate Civil and Criminal action solely to get back the possession of her property in terms of the Undertaking. The undertaking was explicitly given to the Court that the possession may be delivered/taken after the demise of Sh. R.N. Kapur and thus, any violation of the same comes within the realm of contempt as has been rightly held by learned Single Judge.

II. Whether the appellant's continued alleged possession of the suit property even though she was not a party to the Civil Suit in which Undertaking was given, would amount to contempt?

31. The factors relevant for deciding on willful disobedience of an Undertaking were narrated by the Apex Court in the case of Suman Chadha and Another vs Cental Bank of India 2021 SCC OnLine SC 564 are:

- “(i) the nature of the undertaking made;*
- (ii) the benefit if any, reaped by the party giving the undertaking; and*
- (iii) whether the filing of the undertaking was with a view to play fraud upon the court or to hoodwink the opposite party”.*

32. According to the Respondent, though they had taken the possession

of the suit property on 07.05.2018, however, the appellants intruded into the property in the night of 24.05.2018 and forcibly assumed possession. The explanation of the appellant no. 1 is **three fold**; *firstly* she is claiming to be an adopted daughter of Late R.N. Kapur and is asserting her ownership rights by virtue of a Will dated 05.03.2009 executed in her favour by Sh. R.N. Kapur, which is prior to the settlement/ undertaking; *secondly* that she has always been in possession since the lifetime of Late Sh. R.N.Kapur; and *thirdly* she being a stranger/ third party to the undertaking cannot be held bound by it.

33. The said appellant though has claimed herself to be having an independent title being the adopted daughter who has been residing and taking care of Late Sh. R.N. Kapur since childhood but as rightly observed by learned Single Judge, not a single document whatsoever has been produced wherein Late Sh. R.N. Kapur has been mentioned as her father or her address is that of the suit property. The appellant claim of independent title under Will allegedly executed by of Late Sh. R.N. Kapur in her favour is not tenable in the present proceedings and this is not the appropriate forum and she is at liberty to establish her independent title in appropriate proceedings.

34. The appellant's claim that she is not bound by the undertaking given by Late R.N. Kapur is equally specious as any rights including possession as alleged by her are through Late Sh. R.N. Kapur who had already agreed to delivery of possession after his demise. All the rights being alleged by the appellant are through Late Sh. R.N. Kapur and she is bound by deeds and statements/Undertakings given by him during his lifetime. The appellant is not a third party untouched by the undertaking given by her predecessor in interest, as asserted by her.

35. The question whether the legal heirs/ successors would be bound by the Undertaking given by the deceased during his life time came up for consideration in the case of Prabhakara Adigaa vs Gowri and Ors., AIR 2017 SC 1061. The Apex Court observed that the expression "*action personalis moritur cum persona*" which means "a personal right of action dies with the person" does not apply to such actions where after the death of the party, the relief granted could still be enjoyed and the demise has not rendered the relief, nugatory. It would be against the public policy to ask the decree-holder to litigate once over again against the legal representatives of the judgment-debtor when the cause and injunction survives.

36. On the same analogy, the plea of being a third party who has not given any Undertaking, is most frivolous since the appellant's claim to possession is through Late Sh. R.N. Kapur, who had undertaken to vacate the property; the appellant cannot claim a better standing for herself. The appellant's continuation in possession is clearly in violation of the undertaking given to the Court and learned Single Judge has rightly held the appellants guilty of Contempt. The appellants have no right to continue in possession and law mandates her to honour the undertaking and vacate the suit property.

37. The *third limb of the defence* was that the sine qua non of "wilful and contumacious disobedience" was missing in so much as the appellant were not aware of the Undertaking given by Late R.N. Kapur.

38. The act must be wilful to be held as "civil contempt" under Section 2(b) of the Act and proof of mere disobedience is not sufficient, as has been observed by the Supreme Court in the case of Indian Airport Employees Union vs . Ranjan Chatterjee and Ors . MANU/SC/0048/1999; Maninderjit Singh vs. UOI (2012) 1 SCC 273 and Kapildeo Prasad Sah and Ors. v. State of Bihar and Ors. AIR1999 SC 3215. The element of wilfulness is an indispensable requirement to bring home the Contempt

within the meaning of the Act observed the Supreme Court in the case of Sushila Raje Holkar v. Anil Kak, MANU/SC/7555/2008.

39. The Supreme Court in Ashok Paper Kamgar Union v. Dharam Godha and Ors. 2004 CriLJ 1239 , explained that 'wilful' means an act or omission which is 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. It signifies the act done with evil intent or with a bad motive for the purpose.

40. In Anil Ratan Sarkar and Ors. v. Hirak Ghosh and Ors. MANU/SC/0175/2002 : 2002CriLJ1814, the Supreme Court referred to the case of Chhotu Ram v. Urvashi Gulati &Anr. (2001 (7) SCC 530) and observed that power to punish a person for contempt is undoubtedly a powerful weapon in the hands of Judiciary but that by itself operates as a string of caution and cannot be used unless the Court is satisfied beyond doubt that the person has deliberately and intentionally violated the order of the Court.

41. It will also be relevant to refer to the following observations of this Court in Kanwar Singh Saini v. High Court of Delhi (2012) 4 SCC 307

wherein willful and intentional disobedience was defined as a foundational factor to hold a person guilty of contempt. It was observed :

*“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.”*

42. The Supreme Court in the recent case of U.N. Bora and Ors. Vs Assam Roller Flour Mills Association and Ors.(2022)1SCC101 referred to the above-mentioned principles on wilful disobedience and held that where it was not a case of intentional violation or wilful disobedience of the order passed by this Court, there was no reason to initiate contempt action against the Respondent. Instead, it would be open to the parties to pursue their claim(s) in execution proceedings or any other proceedings, as may be permissible in law in respect of the issue(s) under consideration. In such proceedings, all aspects can be considered by the

concerned forum/Court on merits in accordance with law.

43. Similar facts as under consideration, arose in the case of Chhaganbhai Norsinbhai v. Soni Chandubhai Gordhanbhai (1976) 2 SCC 951, wherein the Supreme Court held that undertaking by the Defendant to handover the keys of the premises and vacate the premises within a specified time and to further pay mense profits and not part with its possession, *were express Undertakings which were incorporated in the Order*. Upon non-compliance of the undertaking by the defendant, the Court upheld the order of the High Court to convict the contemnor and sentence him to Civil jail.

44. To conclude, '*Contempt*' is an extraordinary jurisdiction under the Contempt of Courts Act, 1971 which is invoked by the courts sparingly and in compelling circumstances, as it is one of the foremost duty of the courts to ensure compliance of its orders. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is one of the foremost duty of the courts to ensure compliance of its orders and where blatant disregard is writ large, in such compelling circumstances is left with no option but to resort to contempt action. It is

only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished. Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority.

45. Applying these principles to the facts in hand, it is abundantly evident that the alleged act of forcible entry into the suit premises in the night of 24.05.2018 by the appellants, is a contumacious and wilful act of breach of Undertaking. Their defence of being unaware would not come to their rescue for the simple reason that their persistence and insistence to continue in possession, is clearly contumacious for which they have been rightly held guilty of contempt by learned Single Judge.

46. We agree with the conclusion of learned Single Judge holding the appellants guilty of Contempt. The appeal is accordingly dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

MARCH 16, 2023
va/pa