BABU RAM GUPTA A

v.

SUDHIR BHASIN & ANR.

April 12, 1979 B

[S. MURTAZA FAZAL ALI AND A. D. KOSHAL JJ.]

Contempt of Courts Act 1971—*S.* 2(*b*)—*Consent order passed at the instance of the parties and undertaking given by one of the parties—Effect of breach—Distinction between—When amounts to contempt of Court.*

Pending the decision of a dispute between the parties referred to an arbitrator, C the High Court passed with the agreement of the parties a consent order appointing a receiver. The Court's order directed that the receiver should take charge of the property forthwith from the appellant and submit periodical reports to the Court regarding the running of the business. Without making an express direction to the appellant that the property in his possession should be handed over to the receiver, the High Court directed the appellant not to interfere with the receiver in the running of the business D and that the appellant should give to the receiver all co-operation that the receiver might require.

In a petition filed before the High Court the respondent alleged that by failing to hand over possession of the property to the receiver, in terms of the consent order the appellant had committed breach of the undertaking given to the court and thereby committed an offence punishable under E S. 2(b) of the Contempt of Courts Act.

The High Court held the appellant to be guilty of contempt of court and sentenced him to undergo civil imprisonment.

In appeal to this Court the appellant contended that there was no breach of the undertaking on his part because he had given no express or implied F undertaking to handover possession of the disputed property to the receiver.

Allowing the appeal

HELD : 1. The act of the appellant in not complying with the terms of the consent order did not amount to an offence under S. 2(b), however improper or reprehensible his conduct might be. [693 G]

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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. H It is not open to the Court to assume an implied undertaking when there is none on the record. [690 C-D, 691 G]

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. [691 H, 692 C]

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 failed 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. [693 D-E[

5. If it is held that non-compliance of a compromise decree or consent order would amount to contempt of court the provisions of the Code of Civil Procedure relating to execution of decrees may not be resorted to at all by the parties. [693 C]

6. In the instant case no application or affidavit or undertaking was given by the appellant that he would cooperate with the receiver or that he would hand over possession of the property to the receiver. The consent order did not incorporate expressly that any such undertaking had been given either by the appellant or by his lawyer before the Court. In the absence of such an undertaking it cannot be said that he wilfully disobeyed or committed breach of such an undertaking. The High Court assumed that the appellant had given an undertaking to carry out its directions. [692 E-G]

Bhatnagar & Co. Ltd. v. *The Union of India,* [1957] SCR. 701, *The Aligarh Municipal Board & Ors.* v. *Ekka Tanga Mazdoor Union & Ors.* [1970] 3 SCR. 98; referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 501 of 1978.

From the Judgment and Order dated 27-10-1978 of the Delhi High Court in Criminal Original No. 61/77.

K. B. Asthana, Satish Chandra, Sarat Chandra and *P. D. Sharma* for the Appellant.

Miss Seita Vaidialingam for respondent 1.

Nemo for respondent 2.

The Judgment of the Court was delivered by

FAZAL ALI, J.—This is an appeal by the contemner under section 19 of the Contempt of Courts Act, 1971 against a Division Bench decision of the Delhi High Court dated 27th October, 1978 convicting the appellant under section 2(b) of the Contempt of Courts Act, 1971 A (hereinafter referred to as the Act) and sentencing him to detention in civil prison for a period of four months.

A detailed narrative of the facts culminating in the order impugned is to be found in the judgment of the High Court and it is not necessary for us to repeat the same all over again except giving a brief resume B of the important facts in order to appreciate the points of law that arise in the appeal. It appears that there was a partnership between Sudhir Bhasin and Jagatri Lal Bhasin as a result of which a firm under the style of Sitapur Theatres with its Head Office at Delhi was constituted. The partnership deed was executed as far back as 19-11-1965 and clause 25 of that deed contained the usual arbitration C clause. Disputes arose between the partners as a result of which an application under section 20 of the Arbitration Act was made before the High Court and the High Court on hearing the application referred the dispute to the sole arbitration of a retired Judge of the Allahabad High Court. Along with the aforesaid application, the respondent Sudhir Bhasin had filed an application for appointment of a receiver D as he apprehended that the appellant would misappropriate the funds of the partnership property. The application for appointment of a receiver was allowed and the respondent Sudhir Bhasin himself was appointed as a receiver of Laxmi Talkies, Sitapur. Thereafter the appellant being aggrieved by this order filed an appeal before the E Division Bench of the Delhi High Court. In the appeal it appears that a consent order was passed with the agreement of the parties by which Shri Mahabir Prasad, Advocate and Secretary, Bar Association of Sitapur was appointed as a receiver of the Laxmi Talkies pending the decision of the arbitrator and was directed to run the said cinema after taking possession from the appellant. This order passed by the High F Court may be quoted in extenso as it forms the solid basis for the proceedings for contempt taken against the appellant by the High Court :

> "After hearing the learned counsel for sometime on previous hearings, a suggestion has been mooted that if the G receiver is changed, the applicant would not prosecute the present appeal except to the extent of getting the Receiver changed. We accordingly directed the Registrar to address letters to the District Judges, Sitapur and Lucknow to send names of three Advocates each from whom we could pick out one name for appointment as a Receiver in place of H Sudhir Bhasin, who had been appointed Receiver by the learned Single Judge. Three names have been received from

A the District Judge, Sitapur. Shri S. C. Bhattacharya, President of the Bar Association, is not acceptable because he had been connected with the Cinema in question in the capacity of a Receiver previously. *With the consent of the learned counsel of the parties, we therefore, appoint Shri Mahabir Prasad, Advocate and Secretary of the Bar Association, Sitapur, to be the Receiver of Laxmi Talkies pending decision of the disputes between the parties which have been referred to arbitration.* The Receiver so appointed, will take charge of the Laxmi Talkies forthwith from the appellant, who is at present running the said Cinema. Shri Mahabir Prasad will run the Cinema himself through such Managers as he may appoint. He will be responsible to keep account, make disbursements and deposit the net proceeds in a Bank account to be opened by him in the name of Laxmi Talkies. *The Receiver will submit quarterly reports to this Court regarding the running of the business of the said Cinema.* The first report should be submitted to this Court on or before 14th August, 1977. Each subsequent report should be submitted by the middle of the month in which the quarter gets completed.

The appellant is directed not to interfere with the Receiver appointed or with the business of the running of the Laxmi Talkies. He will, however, give to the Receiver appointed, all cooperation that the Receiver may require.

The licence for running the Cinema will be taken out by the Receiver in the name of Laxmi Talkies. He will approach the Deputy Commissioner, Sitapur for issue of this licence accordance with the above direction of this Court......".

(Emphasis ours)

A perusal of the order extracted above clearly shows that there was no express direction to the appellant to hand over possession to the receiver although certain directions were given by the Court to the receiver for filing quarterly reports etc. The only direction given to the appellant was that he would not interfere with the receiver appointed or with the business of running of the Laxmi Talkies. The appellant was also directed to give all cooperation that the receiver may require. There was thus no specific direction to the appellant to hand over possession of the property to the receiver although impliedly this was meant to be done because the order was passed with the consent of the parties.

A In the instant case the gravamen of the charge against the appellant was that he had committed a serious breach of the undertaking given to the Court to hand over possession to the receiver and having failed to honour the undertaking, he was liable to be hauled up for an offence under the Act. The High Court held that the conduct of the appellant was unrelenting and inexorable and he had wilfully dis- B obeyed the order of the Court passed with his consent.

Mr. Asthana, learned counsel for the appellant raised two important contentions before us. In the first place, he submitted that taking the order *ex facie* there is no express or implied undertaking given by the appellant to hand over possession to the receiver and hence the C question of breach of the undertaking on the part of the appellant does not arise, and, therefore, the conviction of the appellant was not legally sustainable. Secondly, it was argued that even assuming that an undertaking was given to the Court, as the appeal before the Division Bench was wholly incompetent, the proceedings before the Division Bench were *non est* and the order passed by the High Court D being a nullity a disobedience of such an order would not attract the provisions of the Act.

Miss Seita Vaidialingam who argued this case before us with great ingenuity and persuasiveness submitted that even if the order of the High Court was void, it was not open to the appellant as a litigant E to assume the role of a Judge and unilaterally decide that the order of the High Court being *non est* he was not bound to obey the same. In other words, It was contended that he having himself filed an appeal before the Division Bench and thereby having invited the Court to pass a consent order which was agreed to by the appellant he could F not by virtue of the rule of estoppel by judgment be heard to say that the appeal filed by the appellant himself being incompetent, the judgment was void, hence the appellant could disobey the same with impunity. In support of her submission, the learned counsel cited the cases of *State of Uttar Pradesh* v. *Ratan Shukla*(1), *Umrao Singh* v. *Man Singh & Ors.*(2), *Joseph F. Maggio* v. *Raymond Zeitz*(3) and G *United States of America* v. *United Mine Workers of America.*(4) While we do find considerable force in the argument of Miss Seita Vaidyalingam, counsel for the respondent we are of the opinion that the point is not free from difficulty and in the view that we have decid-

(1) A.I.R. 1956 All 258.
(2) I. L. R. (1971) 2 Delhi 44. H
(3) 92 L. Ed : 476, 487.
(4) 91 L. Ed. 884, 911.

ed to take on the first point raised by counsel for the appellant, the second point does not fall for determination. We, therefore, refrain from going into this point and leave the matter to be decided in a more proper and suitable case.

Coming to the first point, the contention of Mr. Asthana was that there was no undertaking given by the appellant to the court at all. Our attention has not been drawn by counsel for the respondent to any application or affidavit filed by the appellant which contains an undertaking given by the appellant to hand over possession to the receiver appointed by the High Court by virtue of the impugned order. It is manifest that any person appearing before the Court can give an undertaking in two way: (1) that he files an application or an affidavit clearly setting out the undertaking given by him to Court, or (2) by a clear and express oral undertaking given by the contemner and incorporated by the court in its order. If any of these conditions are satisfied then a wilful breach of the undertaking would doubtless amount to an offence under the Act. Although the High Court observed that the consent order extracted above had been passed on the basis of various undertakings given by the contemner, we are unable to find any material on record which contains such undertakings. It seems to us that the High Court has construed the consent order itself and the directions contained therein as an implied undertaking given by the appellant. Here the High Court has undoubtedly committed an error of law. There is a clear cut distinction between a compromise arrived at between the parties or a consent order passed by the court at the instance of the parties and a clear and categorical undertaking given by any of the parties. In the former, if there is violation of the compromise or the order no question of contempt of court arises, but the party has a right to enforce the order or the compromise by either executing the order or getting an injunction from the court.

In the case of *Bhatnagars & Co. Ltd.* v. *The Union of India*[1] although an undertaking appears to have been given by learned counsel on behalf of his client that certain goods confiscated by the Customs authorities would be sold within a certain period of time, it was interpreted by the petitioner as an undertaking to decide the revision petition within the period fixed, and as this was not done it was argued before this Court that the customs authorities had committed a serious contempt of this Court. Repelling the argument of the petiioner, his

(1) [1957] S.C.R. 701.

Court observed as follows:—

> "The order passed by this Court would show that the learned Solicitor General of India made a statement to the Court indicating that the goods which had been confiscated by the Customs Authorities would not be sold or otherwise dealt with for a month from the date of the communication to the petitioner of the final order that the Central Government may pass in the revisional petition preferred by him before them. Acting on this undertaking, this Court allowed the petitioner a period of one month from the date of the communication to him of the final order which the Central Government might pass on his revisional petition to enable him to file a petition for Special Leave to Appeal if he was so advised. Then the order recorded the undertaking given by the Solicitor-General ....
> Indeed the petition seeks to suggest that the undertaking was that the revisional petition would be disposed immediately in a day or two, and, since the revisional petition was not disposed of within the time mentioned by the Solicitor-General, the petitioner says that all the respondents are guilty of contempt. It is clear that the petitioner's grievance and the prayer for a writ are entirely misconceived. The petitioner is entirely in error in assuming that, on behalf of the Union of India, any undertaking was given that his revisional petition would be disposed of within a day or two. ....The petitioner presumably thinks that the Court's order required that his revisional petition should be disposed of by the Central Government within a month. This assumption is entirely unwarranted".

This decision, therefore, clearly shows that even if there was an undertaking given by the counsel on behalf of his client the undertaking should be carefully construed to find out the extent and nature of the undertaking actually given by the person concerned. It is not open to the Court to assume an implied undertaking when there is none on the record. It was on this ground that this Court negatived the plea of contempt of court. It is well settled that 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 and only in such cases where it is necessary to punish the contemner in order to uphold the majesty of law and the dignity of the courts.

A In the case of *The Aligarh Municipal Board & Ors.* v. *Ekka Tonga Mazdoor Union & Ors.*(1) this Court observed as follows :—

> "It may also be pointed out that in order to justify action for contempt of court for breach of a prohibitive order it is not necessary that the order should have been officially served on the party against whom it is granted if it is proved that
> B he has notice of the order aliunde and he knew that it was intended to be enforced. Contempt proceeding against a person who has failed to comply with the Court's order serves a dual purpose: (1) vindication of the public interest by punishment of contemptuous conduct and (2) coercion
> C to compel the contemner to do what the law requires of him. The sentence imposed should effectuate both these purposes. It must also be clearly understood in this connection 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".

D These are the tests laid down by this Court in order to determine whether a contempt of court has been committed in the case of violation of a prohibitive order. In the instant case, however, as indicated above, there is no application nor any affidavit nor any written undertaking given by the appellant that he would co-operate with the receiver or that he would hand over possession of the Cinema to the
E receiver. Apart from this, even 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
F appellant wilfully disobeyed or committed breach of such an undertaking. What the High Court appears to have done is that it took the consent order passed which was agreed to by the parties and by which a receiver was appointed, to include an undertaking given by the contemner to carry out the directions contained in the order. With due
G respects, we are unable to agree with this view taken by the High Court. A few examples would show how unsustainable in law the view taken by the High Court is. Take the instance of a suit where the defendant agrees that a decree for Rs. 10,000 may be passed against him and the court accordingly passes the decree. The defendant does not pay the decree. Can it be said in these circumstances
H that merely because the defendant has failed to pay the decretal amount he is guilty of contempt of court? The answer must neces-

(1) [1970] 3 S.C.R 98.

sarily be in the negative. Take another instance where a compromise A
is arrived at between the parties and a particular property having been allotted to A, he has to be put in possession thereof by B. B does not give possession of this property to A. Can it be said that because the compromise decree has not been implemented by B, he commits the offence of contempt of court? Here also the answer must be in the
negative and the remedy of B would be not to pray for drawing up B
proceedings for contempt of court against B but to approach the executing court for directing a warrant of delivery of possession under the provisions of the Code of Civil Procedure. Indeed, if we were to hold that non compliance of a compromise decree or consent order amount to contempt of court, the provisions of the Code of Civil
Procedure relating to execution of decrees may not be resorted to C
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, D
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. E
In these circumstances, we are satisfied that unless there is an express undertaking given in writing before the court by the contemner or incorporated by the court in its order, there can be no question of wilful disobedience of such an undertaking. In the instant case, we have already held that there is neither any written undertaking filed
by the appellant nor was any such undertaking impliedly or expressly F
incorporated in the order impugned. Thus, there being no undertaking at all the question of breach of such an undertaking does not arise.

For these reasons, therefore, we are of the opinion that however improper or reprehensible the conduct of the appellant may be yet the act of the appellant in not complying with the terms of the consent
order does not amount to an offence under section 2(b) of the Act G
and his conviction and order of detention in civil prison for four months is wholly unwarranted by law. The appeal is accordingly allowed. The judgment of the High Court is set aside and the order passed by the High Court directing the appellant to be detained in civil prison for four months is hereby quashed and the appellant is
acquitted of the offence under section 2(b) of the Act. H

N.V.K. *Appeal allowed.*