A RITA MARKANDEY

v.

SURJIT SINGH ARORA

SEPTEMBER 27, 1996

B [DR. A.S. ANAND AND M.K. MUKHERJEE, JJ.]

Contempt of Court Act 1971—Sections 2 (b), 2 (c) and 12—Agreement arrived at between parties regarding time for vacating the premises—Supreme Court embodied terms of said agreement and granted time subject to the usual C *undertaking to be filed by the respondent—Non filing of usual undertaking by the respondent and failure to hand over vacant possession of the suit premises—Making deliberate attempts to impede the administration of justice by filing false affidavits—Held, the respondent not liable for contempt of breach of the order granting time based on agreement since he has not filed* D *the undertaking—However, Respondent held guilty of criminal contempt of Court for having not only made deliberate attempts to impede the administration of justice but also for delaying the delivery of possession by filing false affidavits—Apology tendered before Court not genuine and bonafide—Respondent in custody for some days pursuant to Court's order—Fine of Rs. 2000 imposed.*

E

In a rent control matter, the respondent filed an appeal before this Court with the leave of this Court. It was dismissed with a direction that as agreed to by both the Counsel, time to hand over vacant possession was granted till 31st March 1995 subject to the usual undertaking to be filed by the respondent.

F

On the respondent's failure to hand over the vacant possession of the suit premises within the time granted the present contempt petition was filed.

G **Disposing of the petition, this Court**

HELD: 1. The respondent did not comply with the order of this Court dated October 5, 1994 and that his assertion in both his affidavits filed on September 28, 1995 and January 8, 1996 that he had handed over vacant possession of the suit premises to the petitioner on October 14, 1995 H **was false for, as the report of the Rent Controller discloses, such posses-**

sion was given only on March 7, 1996. [64-D] A

2.1. Law is 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 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, 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. [64-F-G] B C

2.2. However, in the instant case, the respondent herein cannot be held liable for contempt on this score because the order in question clearly indicates that it was passed on the basis of the agreement between the parties and not on the representation of the respondent made before the Court. It was the petitioner who agreed to the unconditional extension of time by four weeks for the respondent to vacate and this Court only embodied the terms of the agreement so arrived at, in the order. Thus, the respondent cannot in any way be held liable for contempt for alleged breach of the above order. [65-A-C] D E

3. By filing false affidavits the respondent had not only made deliberate attempt to impede the administration of justice but succeeded in his attempts in delaying the delivery of possession. Hence, the respondent is held guilty of criminal contempt of Court. [66-D] F

Dhanajay Sharma v. *State of Haryana,* [1995] 3 SCC 757, referred to.

4. The apology tendered by the respondent is not genuine and bonafide for in his earlier affidavit filed on January 8, 1996 he had also offered a similar unconditional apology but falsely reiterated that he had vacated the suit premises on November 14, 1995. The record however shows that following his arrest pursuant to the non-bailable warrant issued by this Court, the respondent was in custody for some days till he was released on bail under orders of this Court. Considering this aspect of the matter and the fact that he has now handed over vacant possession of the suit premises, this Court does not wish to send him behind the bars again G H

by imposing substantive sentence. At the same time, he should be punished with fine not only for the wrong done by him but also to deter others from filing such false affidavits. Accordingly, he is sentenced to pay fine of Rs. 2000, in default of payment of which he will suffer simple imprisonment for one month. The fine, if realised, shall be paid to the petitioner as compensation. [66-E-H]

CIVIL APPELLATE JURISDICTION : Contempt Petition (C) No. 286 of 1995.

In

Civil Appeal No. 3056 of 1989.

From the Judgment and Order dated 5.1.85 of the Punjab & Haryana High Court in C.R. No. 50 of 1985.

R.K. Talwar and Goodwill Indeevar for the Petitioner/Appellant.

K.S. Bhati for the Respondent.

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. The instant proceeding for contempt stems from a petition filed by Prakash Lal Sharma under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 before the Rent Controller, Chandigarh on September 9, 1985 seeking eviction of the respondent herein from one room and garage (hereinafter referred to as the 'suit premises') on the ground floor of House No. 1572, Sector 18-D, Chandigarh. The Rent Controller allowed the petition and aggrieved thereby the respondent filed an appeal which was dismissed. Against such dismissal he filed a revision petition in the High Court but without success. Thereafter, with the leave of this Court, he filed an appeal, being Civil Appeal No. 3056 of 1989 which was ultimately dismissed by this Court on October 5, 1994 with the following order:

> "Delay condoned. We find no merit in this appeal which is accordingly dismissed. However, as agreed to by both the learned counsel, time to hand over vacant possession to Smt. Rita Markandey is granted till 31st March 1995. This shall be subject to the usual undertaking to be filed by the appellant-tenant within four weeks

from today." A

On the respondent's failure to handover vacant possession of the suit premises on or before March 31, 1995 to Smt. Rita Markandey (hereinafter referred to as the petitioner), the daughter of Prakash Lal Sharma, who had died in the meantime, in terms of the above order she put in an application for execution of the eviction order before the Rent Controller, B Chandigarh in or about the month of May, 1995. On that application a notice was issued to the respondent asking him to show cause why the eviction order should not be executed. In showing cause the respondent asserted that he was in occupation of three rooms, one garage, one store, one kitchen, one bathroom and a toilet on the ground floor of the house C in question - and not only of the suit premises - and therefore the eviction sought for was impermissible. Other contentious issues of fact and law against the execution were also raised.

Before, however, the matter could be further pursued by the Rent Controller, the petitioner filed the petition, out of which the instant D proceeding arises. In paragraph 8 of the petition the petitioner has averred, *inter alia* as follows:

> "The contemnor was shown indulgence by this Court by giving him 6 months time, but on the contrary he has by his conduct E flagrantly misused rather abused, the indulgence of this Court firstly by gaining 4 weeks' time to file an undertaking and thereafter refusing to file the said undertaking and simultaneously contesting the execution application dated 29.5.1995 filed by the petitioner in return filing an objection petition on 17.7.1995. This conduct of the contemnor/tenant firstly gaining 4 weeks time from this Court F for filing an undertaking and thereafter refusing to file an undertaking is palpable act and omission on the part of the Contemnor which amounts to willful disobedience of the order dated 5th October, 1994 passed by this Court."

G

On the basis of the above averments the petitioner has contended that the respondent has committed contempt by wilful disobedience of the order of this Court dated October 5, 1994. The other ground, canvassed by the petitioner in support of her contention that the respondent is liable to be punished for contempt, finds place in paragraph 12 of the petition which reads as under: H

"That..... in the objection petition filed by the Contemnor-respondent he has stated therein that he is in occupation of three rooms, one garage, one store, one kitchen and a bathroom in addition to one toilet on the ground floor of the disputed house. This new plea of the petitioner is contrary to his pleadings before the Rent Controller right upto this Hon'ble Court in Appeal. This is a specific example of usurping of the property of peaceful and law abiding citizen by a contriving and a scheming property dealer. This specific plea of the petitioner that he is in occupation of the above said three rooms and kitchen and toilets etc. as mentioned in his objection petition is contrary to his affidavit filed before this Hon'ble Court on 10th March, 1989 in the Special Leave Petition (Civil) No. 1117/89 the grant of which gave rise to Civil appeal No. 3056 of 1989. (The copy of the Supplementary Affidavit filed on 10.3.1989 filed before this Hon'ble Court is annexed hereto and marked as *ANNEXURE R-4*. In the para 3 thereof the appellant/tenant has specifically stated that 'nor I have any other residential premises for my residence except one room and garage in the suit premises owned by the respondent herein.'

Therefore in these circumstances the respondent has belatedly taken possession of other portion of the suit premises forcibly during the pendency of Appeal in the Supreme Court and has grossly misused the concession of stay orders given by this Hon'ble Court during the course of litigation and subsequently now put up a new case at the time of objection petition".

According to the petitioner the respondent took such forcible possession to circumvent the implementation of the order of this Court dated October 5, 1994 and therefore it also amounts to contempt of Court.

After perusing the petition this Court issued a notice to the respondent asking him to show cause why he should not be committed for contempt of Court and in response thereto he filed an affidavit pleading that the garage in question was vacated long back and possession of the same was delivered to the deceased landlord (Prakash Lal Sharma). His other plea is that as he had not filed any undertaking in terms of the order of this Court he could not be held liable for contempt for not vacating the suit premises and that in absence of any such undertaking he was entitled

to raise all legally permissible objections against the application for execution. A

Since the petitioner's Counsel strongly refuted the contention of the respondent that possession of the garage had been given long back and since the respondent did not disclose as to whether the room of the suit premises was vacated or not, this Court passed an order on October 11, 1995 directing the learned counsel for the respondent to report by October 16, 1995 as to whether the respondent had handed over vacant possession of the suit premises to the petitioner. When the matter was taken up for hearing on October 16, 1995, the respondent, who was present along with his Counsel, stated that he had vacated the suit premises and possession was delivered on October 14, 1995 to Shri Darshan Lal Wadhera, the power of attorney holder of the petitioner, in presence of Shri. G.S. Arshi, Advocate, who had been appointed as the local Commissioner by the Rent Controller (Sub Judge First Class, Chandigarh). Mr. Darshan Lal Wadhera, who was also present in Court, on the other hand asserted, through his learned counsel, that the possession had not been handed over to him and that though he was asked to put his lock on the garage - which he did - he was later made to open the lock again on the asking of the respondent on October 14, 1995 and that the possession of the room and the garage had not been delivered to him till date. B C D

E

In view of their contradictory stands, this Court directed both of them to file their respective affidavits by October 17, 1995 giving factual position and the sequence of events of October 14, 1995. The Rent Controller, Chandigarh was also asked to forward to this Court the copy of the report of the Commissioner appointed by him along with his comments regarding the handing over of the vacant possession of the suit premises. In compliance with the said direction both the parties filed their respective affidavits and the Rent Controller also submitted his report, along with a copy of the report of the Commissioner appointed by him. From the report of the Rent Controller it was found that the respondent did not hand over the possession of the suit premises to the petitioner till October 14, 1995 and that even before the local Commissioner he had tried to give possession of the garage only and not the room in question. The report further disclosed that the possession of the garage was also not delivered to the decree holder and the garage was again locked up by the respondent at 5.30 P.M. on October 14, 1995. In other words, the report fully supported F G H

A the assertions of the constituted attorney of the petitioner. As from the report of the local Commissioner and the comments of the Rent Controller this Court was of the opinion, *prima facie,* that the respondent had not only made an incorrect statement in this Court but also filed an affidavit falsely stating that he had handed over the vacant possession of the suit premises
B in compliance with the order of this Court dated October 5, 1994, a Rule was issued asking him to show cause why he should not be punished for contempt of Court and further why proceeding should not be initiated against him for committing perjury. The respondent, who was personally present in the Court along with his counsel, took notice of the Rule and prayed for two weeks' time to file his reply thereto. The prayer was allowed
C and the matter was listed on November 10, 1995 for further proceedings on which date the respondent was directed to be personally present. On the date so fixed the respondent however did not appear personally as directed but Mr. Devender Verma, a learned Advocate appeared on his behalf. He submitted that the respondent had met with an accident and as
D such was not in a position to attend the Court. In support of this contention he filed some outdoor tickets of a hospital. As, from the outdoor tickets it was not possible to ascertain whether they referred to the respondent and as no application was filed on his behalf seeking adjournment or exemption from personal appearance and his Advocate on Record was also not
E present and Shri Verma had not filed any vakalatnama on his behalf, this Court issued a bailable warrant in the sum of Rs. 5,000 with one surety of the like amount to ensure the presence/production of the respondent before this Court on November 24, 1995. Pursuant to the said order the respondent was arrested on November 17, 1995 and released on bail after he had furnished personal bond and one Sandeep Bhardwaj furnished bail
F bonds on his behalf. The matter however could not be taken up for hearing on November 24, 1995 and was adjourned to February 6, 1996.

In the meantime - On January 8, 1996 to be precise - the respondent filed an additional affidavit before this Court wherein he admitted that he
G committed a mistake in not handing over the possession of the suit premises to the landlord in terms of the order of this Court. He further submitted that he had no intention whatsoever to disobey the order of this Court and his mistake was attributable to wrong advice given to him. As regards the question as to whether he had delivered vacant possession of
H the suit premises he had this to say:-

"It is respectfully submitted that on 14.10.95, itself the local Commissioner visited the Contemner and that from the report of the Commissioner, it is quite clear that the contemner was absolutely willing to handover the vacant possession of the disputed premises and that it was the Attorney holder of the landlord, who did not produce the order of this Hon'ble Court before the Commissioner. It is further respectfully submitted at this stage the Attorney holder of the landlord even put his own lock on the garage, which is admitted by him in their affidavit. It is further respectfully submitted that when the Commissioner left without resolving the problem of delivery, the contemner thereafter, immediately disassociated itself from the premises. It is further respectfully submitted that the disputed premises is very much in possession of the Attorney of Landlord."

In terms of the earlier order of this Court when the matter was taken up for hearing on February 6, 1996 the respondent again absented himself and his learned counsel was also not present. In such circumstances the Court cancelled the bonds earlier furnished by the respondent and his surety and issued non-bailable warrant of arrest against the former. Both the respondent and Shri Sandeep Bhardwaj, who stood surety for him, were also asked to show cause why the amount of bonds furnished by them should not be forfeited. The Rent Controller was also asked to inform this Court on or before March 12, 1996 whether the respondent had handed over the vacant possession of the suit premises and he was directed that in case possession had not been delivered he should ensure that the possession was delivered to the petitioner, through police help, if necessary. In compliance with the said direction the Rent Controller submitted a report stating that the possession of the suit premises had been given to the decree-holder through her attorney Shri Darshan Wadhera on March 7, 1996 as per the order of this Court dated February 6, 1996. On the date fixed (March 12, 1996) the respondent, who was brought under arrest, submitted through his learned counsel that he would file an affidavit in compliance with order dated February 6, 1996 within two days and an additional affidavit explaining the circumstances for his absence on February 6, 1996. A further prayer was made on his behalf for releasing him on bail. Prayer of the respondent for filing of the affidavit was allowed and he was directed to be released on bail on his furnishing personal bond in the sum of Rs. 10,000 to the satisfaction of the Chief Judicial Magistrate,

A Chandigarh. A fresh notice was also directed to be served upon surety Shri Sandeep Bhardwaj as the earlier notice could not be served. The affidavits were thereafter filed. On the next date fixed, that is on March 26, 1996, a prayer was made on behalf of the respondent seeking further time to file his affidavit and the prayer was allowed and the matter was.fixed for April
B 17, 1996. Shri Bhardwaj also filed an affidavit explaining the circumstances for which the respondent could not be present personally on February 6, 1996. In his affidavit the respondent submitted that he could not appear on February 6, 1996 as he did not get timely information from his counsel. He further submitted that his absence on that date was *bona fide* and unintentional and he may be pardoned. The respondent also expressed
C sincere regrets, offered unconditional apology and prayed that a lenient view may be taken of his failings.

From the above narration of facts it is evident that the respondent did not comply with the order of this Court dated October 5, 1994 and that
D his assertion in both his affidavits filed on September 28, 1995 and January 8, 1996 that he had handed over vacant possession of the suit premises to the petitioner on October 14, 1995 was false for, as the report of the Rent Controller discloses, such possession was given only on March 7, 1996. The question, therefore, that now falls for our determination is whether the respondent is liable to be punished for contempt of this Court for his above
E commissions and omissions.

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
F 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
G 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. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order dated October 5, 1995 extending the time for vacation of the suit premises, he may be held
H guilty of contempt of Court, notwithstanding non-furnishing of the under-

taking, if it is found that the representation was false and the respondent never intended to act upon it. However, the respondent herein cannot be held liable for contempt on this score also for the order in question clearly indicates that it was passed on the basis of the agreement between the parties and not on the representation of the respondent made before the Court. It was the petitioner who agreed to the unconditional extension of time by four weeks for the respondent to vacate and subsequent extension of time on his giving an undertaking and this Court only embodied the terms of the agreement so arrived at, in the order. We are, therefore, of the opinion that the respondent cannot in any way be held liable for contempt for alleged breach of the above order. As regards the contention of the petitioner that by trespassing into some other portion of the house in question during the pendency of the appeal the respondent has committed contempt of Court, we are unable to accept the same; firstly because, the respondent's claim is that he has been in occupation thereof since long and this contentious issue cannot be decided solely on the basis of affidavits and secondly because the above issue does not fall within the limited scope of our enquiry in this proceeding which centres round the order dated October 5, 1994.

To seek an answer to the other question as to whether by making false statements before this Court in the affidavits filed, the respondent has committed criminal contempt, we may profitably refer to the judgment of this Court in *Dhananjay Sharma* v. *State of Haryana,* [1995] 3 SCC 757, in which one of us (Justice Dr. A.S. Anand) observed:

> "Section 2(c) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as "the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any Court; (2) prejudice or interfere or tend to interfere with the due course of Judicial proceedings or (3) interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing

A obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act."

The above observations dovetail into the facts of the instant case, for there cannot be any manner of doubt that by filing false affidavits the respondent had not only made deliberate attempts to impede the administration of justice but succeeded in his attempts in delaying the delivery of possession. We, therefore, hold the respondent guilty of criminal contempt of Court.

That brings us to the question whether the respondent should be discharged in view of the unconditional apology he has offered in the affidavit he lastly filed in this Court or punished. We do not find the apology tendered by the respondent to be genuine and bona fide for in his earlier affidavit filed on January 8, 1996 he had also offered a similar unconditional apology but falsely reiterated that he had vacated the suit premises on November 14, 1995. The record however shows that following his arrest pursuant to the non-bailable warrant issued by this Court, the respondent was in custody for some days till he was released on bail under orders of this Court. Considering this aspect of the matter and the fact that he has now handed over vacant possession of the suit premises, we do not wish to send him behind the bars again by imposing substantive sentence. At the same time we feel that he should be punished with fine not only for the wrong done by him but also to deter others from filing such false affidavits. We, therefore, sentence him to pay a fine of Rs. 2,000/-, in default of payment of which he will suffer simple imprisonment for one month. The fine, if realised, shall be paid to the petitioner as compensation. The Rule is thus made absolute.

As regards the notices issued for the forfeiture of the bonds executed by the respondent and his surety for the failure of the former to appear on a date fixed we do not wish to pursue the matter further for we find that the respondent has given a satisfactory explanation for his such absence. We also drop the case for proceeding against the respondent for perjury in view of the punishment imposed upon him in the contempt case. A B

K.H.N.S. Petition disposed of.