

PETITIONER:
FIRM GANPAT RAM RAJKUMAR

Vs.

RESPONDENT:
KALU RAM & ORS.

DATE OF JUDGMENT 22/09/1989

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RAY, B.C. (J)

CITATION:
1989 AIR 2285 1989 SCR Supl. (1) 223
1989 SCC Supl. (2) 418 JT 1989 Supl. 258
1989 SCALE (2) 692
CITATOR INFO :
F 1992 SC1537 (6)

ACT:

Contempt of Court Act 1971--Section 2(b), Order of this Court--Not complied with by the petitioner--Whether provisions of sections 2(b) & 20 of the Contempt of Courts Act 1971--Attracted.

HEADNOTE:

The Respondent filed proceedings for eviction against the Petitioner firm in respect of a property situated at Narnaul under the Haryana Urban (Control of Rent and Eviction) Act, 1973 and obtained a decree of eviction. Petitioner's appeal against that decree failed in the High Court and the Special Leave Petition filed by it in this Court was also dismissed on 24.8.87. While dismissing the Special Leave Petition this Court inter alia directed that the order of eviction shall not be executed for a period of six months on the Petitioner's filing usual undertaking in this Court within four weeks. Usual under-taking implied that the Petitioner was in possession of the property and that it would deliver vacant possession of the property by the time granted to it by the Court. The Petitioner did not file any undertaking in this Court. Instead three of Sanjay Kumar and Lala Ram sons of Rajkumar and Ved Prakash who are sons of Ganpat Ram (a partner in the petitioner's firm) filed a suit in the Court of senior Sub Judge, Narnaul for permanent injunction restraining the decree holders from ejecting Sanjay Kumar & Lala Ram. In the said suit the said plaintiffs obtained an order of temporary injunction dated 3.11.1988. The said suit was filed against Kalu Ram and Puran Chand son of Roshan Lal and also against Ganpat Rai.

The learned Senior Subordinate Judge in his order dated 12.2.88 granting injunction to the plaintiffs took the view that the plaintiffs had claimed a right of tenancy to the premises in question independently and as such the decree of eviction passed by this Court in Special Leave Petition No. 5597 of 1987 would not bind the plaintiffs. On this reasoning he issued the injunction.

Being unable to obtain possession of the property in question, Kalu Ram and Ant. who were respondents in Special

Leave Petition (decree holders) have filed this Petition praying for initiation of Contempt of Court proceedings against the Petitioner-firm.

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Disposing of the Petition with some directions this Court, HELD: On the date of the order of this Court dated 21st August 1987, in the Special Leave Petition, the Petitioner therein had obtained time on the implied assurance and representation that they were in possession of the premises in question and were capable of delivering the vacant possession to the applicants. The effect of the said order of this Court, is that the applicants would have vacant possession from the firm, Ganpat Ram Rajkumar. [227C-D]

Having regard to the relationship between the parties and having regard to the undertaking promised to be filed in this Court, upon which time was obtained from this Court, it appears, there is a clear non-compliance of the order. [227E]

The said order must be implemented and cannot be allowed to be defeated by the dubious methods adopted by the partners of the said firm of Ganpat Ram Raj Kumar. The whole conduct betrays a calculated attempt to defeat the order of this Court and to mislead the Court. Sons and grandsons of the partners or erstwhile partners of the firm cannot be allowed to frustrate the order of this Court. [227G-H; 228A]

The Respondents, all of them, were guilty of acts which had to the situation and thereby frustrate the order of this Court. Though perhaps the respondents could not be found guilty of violating any undertaking as there was none, in the facts and circumstances of the case, this Court should ensure compliance with its order dated 24th August 1987 and see that vacant and peaceful possession is given to the applicant in the interest of Justice. [229D-E]

Failure to give possession, if it amounts to contempt in a situation of this nature is a continuing wrong. There was no scope for application of section 20 of the Act. [230B]

The Court accordingly directed the learned Senior Sub-Judge. Narnaul (Haryana) to cause, deliver up the vacant possession of the shop situated at Sabji Mandi Narnaul Distt. Mohinderghar (Haryana), if necessary with the help of police forthwith. The learned Senior Sub Judge is also directed to report compliance immediately. Save as aforesaid, the Court passed no order on this application. Respondents viz., firm Ganpat Ram, Rajkumar, Ganpat Ram, Rajkumar, Sanjay Kumar, Lalu Ram and Ved Prakash are directed to pay to the applicants the costs of this Application, quantified at Rs.2,500. This order will

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not prevent or prejudice the applicants from taking any step for recovery of arrears of rent and mesne profits as they are entitled to in accordance with law. [230C-E]

Babu Ram Gupta v. Sudhir Bhasin & Anr., [1979] 3 SCR 685 and Thacker Hiram Motiram v. Balkrishan Chatrathu Thacker JUDGMENT:

&

CIVIL APPELLATE JURISDICTION: Civil Miscellaneous Petition No. 1103 of 1989.

IN

Special Leave Petition No. 5597 of 1987.

From the Judgment and Order dated 2.4.87 of the Punjab & Haryana High Court in C.R. No. 1095 of 1987.

A.K. Sanghi for the Petitioner.

C.M. Ashri and S.M. Ashri for the Respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This application is by Kalu Ram and another, who were the respondents in special leave petition No. 5597/87. The petitioner in the special leave petition was the firm, namely, Ganpat Ram Rajkumar. It appears that the applicants had filed proceedings for eviction against the firm in respect of the property in Narnaul in the State of Haryana under s. 13(3)(c) of the Haryana Urban (Control of Rent & Eviction) Act, 1973. An order of eviction was passed against the said firm. Ultimately the High Court upheld the said order of eviction. The said firm came in special leave petition to this Court. This Court found that there was nothing to interfere with the order of eviction and on August 24, 1987 passed the following order:

In view of the finding that the landlord has made out a case for eviction under Section 13(3)(c) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 the Special Leave Petition is dismissed. The order of eviction shall not be executed for a period of six months on the petitioners filing usual undertaking in this Court within four weeks from

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today. The dismissal of the Special Leave Petition should also not prevent the petitioner to the benefit of putting back into possession in the equivalent accommodation in the reconstructed building provided the Court lays down such condition while interpreting the provisions of the Act. We are informed that the question is pending consideration before this Court in some other cases i.e.W.P. Nos. 13385, 9921-24 of 1983 etc."

From the aforesaid, it is apparent that the said firm wanted time to vacate the premises within six months from the date of the order and representation must have been made on behalf of the said firm that the 'usual undertaking' will be filed in this Court. Upon that, this Court restrained eviction for a period of six months from the date of the said order. This Court, further preserved the right of the said petitioner to the benefit of being put back in possession in the equivalent accommodation in the re-constructed building provided the Court laid down such condition while interpreting the provisions of the Act.

This Court recorded that the aforesaid question was pending consideration in this Court. However, it appears that the said firm did not file any undertaking, usual or otherwise. The usual undertaking to this Court means, inter alia, a statement that the party giving the undertaking is in possession of the premises and that it will further deliver vacant and peaceful possession to the landlord or the respondent. As mentioned hereinbefore, the petitioner did not file the undertaking though it had obtained time from this Court on that plea. Furthermore, the petitioner did not vacate the premises in question. It appears that Sanjay Kumar and Lala Ram sons of Rajkumar and Ved Prakash who as sons of Ganpat Ram filed a suit in the court of Senior Sub-Judge, Narnaul for permanent injunction, restraining the present applicants from ejecting Sanjay Kumar and Lala Ram. It may be mentioned that Ganpat Ram and Rajkumar are the partners of the petitioner-firm M/s Ganpat Ram Rajkumar. The said firm and the partners thereof were bound in law to comply with the Order dated 24th August, 1987. In the said suit Sanjay Kumar and Lala Ram obtained an order of

temporary injunction dated 3rd November, 1988. The learned Sr. Sub-Judge, Narnaul, by an order in an application under Order 39 Rules 1 & 2 read with s. 151 of the Code of Civil Procedure in civil suit No. 121/88 filed in the Court of Sr. Sub-Judge, Narnaul, by Sanjay Kumar, Lala Ram--minor sons of Rajkumar and Ved Prakash, son of Ganpat Ram as partners in the said firm, made the order of injunction.

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The said suit was instituted against Kalu Ram and Puran Chand sons of Roshan Lal and also against Ganpat Ram. In the order passed on the 12th February, 1988 in the said suit, the learned Senior Sub Judge, Narnaul had stated that the present plaintiffs had claimed right of tenancy to the premises in question independently and as such the decree of eviction passed by this Court in Special Leave Petition No. 5597 would not bind the plaintiffs therein. He, therefore, issued an injunction restraining the parties who were Kalu Ram, Puran Chand and Ganpat Ram, partners of the petitioner-firm. As mentioned hereinbefore, both Sanjay Kumar and Lala Ram are sons of Rajkumar and Ved prakash respectively, who is a partner of the firm, Ganpat Ram Rajkumar. Rajkumar was a partner, Ganpat Ram was a partner and their sons and grandsons were claiming in the suit in Narnaul. On the date of the order of this Court dated 21st August, 1987 in the said Special Leave Petition, the petitioner therein had obtained time on the implied assurance and representation that they were in possession of the premises in question and were capable of delivering the vacant possession to the applicants herein. The effect of the said order of this Court, as we have set out hereinbefore, is that the applicants would have vacant possession from the firm, Ganpat Ram Rajkumar. It is not clear from the order of the learned Sr. Sub-Judge, Narnaul dated 3rd November, 1988, how since the order of this Court 'dated 24th August, 1987, the plaintiffs in the suit in Narnaul Court could have in possession of the premises in question. Having regard to the relationship between the parties and having regard to the undertaking promised to be filed in this Court upon which time was obtained from this Court, it appears to us that there is a clear non-compliance of the order. The order stated that vacant possession was to be given.

In the aforesaid view of the matter, the question that requires consideration is how will this order of eviction passed by the High Court and confirmed by this Court by dismissing the Special Leave Petition on the terms mentioned hereinbefore on 24th August, 1987 is to be enforced or implemented? In our opinion, the said order must be implemented and cannot be allowed to be defeated by the dubious methods adopted by the partners of the said firm of Ganpat Ram Rajkumar. The whole conduct betrays a calculated attempt to defeat the order of this Court and to mislead this Court. If that is the position, in our opinion, parties cannot be allowed to do so and get away by misleading this Court. This application was made for contempt. It may or may not be appropriate to pass any order punishing the wrongdoers. But there is no doubt that the order of this Court dated 24th August, 1987 is being sought to be defeated and frustrated. Sons and grandsons

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of the partners or erstwhile partners of the firm cannot be allowed to frustrate the order of this Court.

Mr Ashri, learned counsel for the respondents submitted that the respondents could not be held guilty of contempt of court. It was further submitted by him that no undertaking had, in fact, been given, as such there is no question of

breach of any undertaking by anybody. Mr. Ashri was right. In fact, no undertaking was given. It is also true that the parties who instituted suit in Narnaul and obtained the order of injunction dated 3rd November, 1988 were not parties before this Court when this Court passed the order on the 24th August, 1987 nor are those parties successors-in-interest, according to law, of those who were bound by the order dated 24th August, 1987, as such. As we look at it, the order of this Court is an order of the High Court with a sanction of this Court and the applicants were entitled to have it executed. It has been interfered, by the firm along with the plaintiffs in the said suit at Narnaul. Mr. Ashri referred to certain observations of this Court in *Babu Ram Gupta v. Sudhir Bhasin & Anr.*, [1979] 3 SCR 685, wherein pending decision of a dispute between the parties referred to an arbitrator, the High Court passed with the agreement of the parties a consent order appointing a receiver. The Court directed that the receiver should take charge of the property forthwith from the appellant therein and submit periodical reports to the Court regarding the running of the business. Without making an express direction to the appellant, that the properties in its 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 and that the appellant should give the receiver all cooperation that the receiver might require. In the petition filed before the High Court in that case, 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 hereby committed an offence punishable under s. 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act'). The High Court held the appellant to be guilty of contempt of court and sentenced him to undergo civil imprisonment. This Court held that 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) of the Act, however improper or reprehensible his conduct might be. It was further held that 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 229

the undertaking would amount to an offence punishable under the Act. An undertaking given by one of the parties should be carefully construed by the Court to find out the nature and extent of the undertaking given by the person concerned. It is not open to the court to assume an implied undertaking when there was none of the record, this Court said. As mentioned hereinbefore, the facts of that decision are significantly different from the facts in this case. The parties by no conduct, overt or otherwise, herein misled this Court. Indubitably, in the instant case, the decree of eviction was passed by the learned St. Sub-Judge, Narnaul and upheld by the High Court of Punjab & Haryana. This Court dismissed the Special Leave Petition and granted time of six months on the plea that the petitioner firm would file an undertaking. All this could not have happened if the present plaintiffs in the Narnaul suit had not consented or allowed it to be passed or stood by. It is difficult to accept the position that they did not know. In the facts of this case, we are of the opinion that they deliberately did not object to this Court passing the order and thereby allowed the firm to mislead this Court. They are, therefore, bound to see

that the order of this Court is complied with. Though, contempt is a serious matter and it interferes with the right of those who are found guilty of contempt, no court should allow any party to mislead the court and thereby frustrate its order. In the aforesaid view of the matter, we are of the opinion that though perhaps the petitioner firm could not be found guilty of violating any undertaking as there was none, in the facts and circumstances of the case, this Court should ensure compliance with its order dated 24th August, 1987 and see that vacant and peaceful possession is given to the applicant in the interest of justice. Mr. Sanghi, learned counsel for the applicant drew our attention to an order of this Court in Thacker Harirarn Motirarn v. Balkrishan Chatrathu Thacker & Ors., [1988] 3 JT SC 18. That decision was, however, on the question of entertaining a Special Leave Petition or not. Special leave was not entertained in that case because the petitioner therein had obtained time from the High Court in respect of decree of eviction. In this case, also the Special Leave Petition was dismissed but out of consideration for the difficulties of the petitioner-firm in the said petition, this Court was induced to grant some time on certain considerations. It appears that this Court was misled. It further appears that the respondents, all of them, were guilty of acts which led to the situation and thereby frustrate the order of this Court.

Another point was taken about limitation of this application under section 20 of the Act. S. 20 states that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after

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the expiry of a period of one year from the date on which the contempt is alleged to have been committed. In this case, the present application was filed on or about 3rd November, 1988 as appears from the affidavit in support of the application. The contempt considered, inter alia, of the act of not giving the possession by force of the order of the learned Sr. Sub-Judge, Narnaul dated 12th February, 1988. Therefore, the application was well within the period of one year. Failure to give possession, if it amounts to a contempt in a situation of this nature is a continuing wrong. There was no scope for application of s: 20 of the Act.

In the aforesaid view of the matter, we direct the learned St. Sub-Judge, Narnaul (Haryana) to cause deliver up the vacant possession of the shop situated at Sabji Mandi, Narnaul. Distt. Mohindergarb (Haryana), if necessary with the help of police forthwith. The learned Sr. Sub-Judge, Narnaul is also directed to report compliance immediately. Save as aforesaid, there will be no order on this application, but we direct that the respondents, namely, firm Ganpat Ram Rajkumar, Ganpat Ram Rajkumar, Sanjay Kumar, lala Ram and Ved Prakash should pay and bear the costs of this application to the applicant, which is quantified and assessed at Rs.2,500 (Rupees two thousand five hundred only). Save as aforesaid, there will be no further orders on this application. This order will not prevent or prejudice the applicants from taking any step for recovery of arrears of rent and mesne profit as they are entitled to in accordance with law.

Y. Lal
posed of.

Petition dis-

JUDIS