

CASE NO.:
Contempt Petition (civil) 6 of 2006

PETITIONER:
SUSHILA RAJE HOLKAR

RESPONDENT:
ANIL KAK (RETD.)

DATE OF JUDGMENT: 30/04/2008

BENCH:
S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
REPORTABLE

CONTEMPT PETITION (C) NO. 6 OF 2006
IN
CIVIL APPEAL NO. 5807 OF 2005

[With Contempt Petition (C) No. 36 of 2006 and Contempt Petition (C)
No. 79 of 2006 in Civil Appeal No. 5807/2005]

S.B. Sinha, J.

1. These three contempt petitions at the instance of the parties hereto have been filed for alleged violation of this Court's judgment and order dated 19.9.2005 passed in Civil Appeal No. 5807 of 2005.
2. The basic fact of the matter is not in dispute. The parties are related. Sushila Raje Holkar, the applicant in Contempt Petition Nos. 6 of 2006 and 36 of 2006 allegedly executed an agreement of lease in favour of Col. Anil Kak (Retired), the alleged contemnor and applicant in Contempt Petition No. 27 of 2007 on or about 11.8.1998 in respect of 4.8 acres of land appertaining to Khasra No. 60. A registered deed of lease was executed by her in favour of the respondent for 16,000 square feet out of the aforementioned 4.8 acres of land.
3. Disputes and differences arose between the parties. No registered deed of lease was executed for the remaining land admeasuring 1,21,721.6 square feet which is in possession of the respondent. Inter alia, for enforcing the said purported agreement of lease dated 11.8.1998, a suit for specific performance was filed by the respondent which is said to be pending in the Court of XXI, Additional District Judge, Indore. Applicant also filed a suit which was marked as Civil Original Suit No. 45/01A for eviction and arrears of rent against the respondent in respect of said 1,21,721.6 square feet of land. Allegedly, the agreed rent in respect of the said land was Rs.50,000/- per month. In addition to the said agreed rent, the respondent was required to pay a sum of Rs. 25,000/- for the land measuring 16,000 square feet in terms of the said registered deed of lease. A suit for injunction was also filed by the respondent against the petitioner for a decree for injunction restraining her from interfering with the possession of the land held by the applicant and not to demolish or take any steps for the removal of the construction. Another suit appears to have been filed by the petitioner against the respondent being Civil Original Suit No. MJC/201/2001. In the suit filed by the applicant for eviction of the respondent, viz., Civil Original Suit No.45/01A, upon failure on the part of the respondent to deposit the stipulated monthly rent, his defence has been directed to be struck off. A decree has been passed therein. The appeal preferred by the respondent thereagainst has also been dismissed. It is stated at the Bar that a second appeal is pending before the High Court.
4. The learned IX Civil Judge, Class I, Indore in the said Civil Original Suit No. 171A/2001 by an order dated 17.10.2001 granted an order of

injunction with respect to the construction raised, but the said order of injunction was confined to 16,000 square feet of land alone. By the said order, the respondent was also restrained from raising any construction on the land except those which had been raised on the 16,000 square feet land. However, on an appeal preferred thereagainst by the respondent, the learned Additional District Judge by his order dated 21.3.2002 modified the said order of injunction dated 17.10.2001 directing that the said order should be made operative in respect of the entire suit land and structures standing thereupon.

5. The High Court, however, by reason of its judgment and order dated 3.7.2003 set aside the order of the First Appellate Court and restored the one passed by the trial court. A Special Leave Petition was filed thereagainst by the respondent. Leave was granted. This Court by a judgment and order dated 19.9.2005 upon consideration of the entire matter and in particular the fact that the respondent had been running a school directed as under:

"\005We feel that it would be appropriate to continue the order of this Court dated 12.7.2003 and to keep it operative till the disposal of the suit, with a direction to the trial court to try and dispose of the suit as expeditiously as possible, preferably within a period of six months from the production before it of a copy of this order by either of the parties. We have thought it fit not to go into the merits of the controversy vehemently projected before us by counsel on either side, only in our view, that the status quo should be maintained in view of the fact that an educational institution is said to be functioning in the property."

It was furthermore observed:

"6. Learned counsel for Res. No. 3 submitted that under the cover of this order, the appellant is attempting to put up constructions in the disputed property and it is just and necessary to prevent him from doing so. We think that this prayer deserves to be granted, especially, in the context of the fact that we are trying to maintain the status quo until the suit is finally disposed of. We, therefore, restrain the appellant \026 the plaintiff in the suit, from putting up any further construction and from altering or modifying any existing construction until the disposal of the suit. In other words, there will not only be an injunction against the defendants for demolishing the constructions in the entire plaint schedule property including the disputed portion, but there would also be an injunction restraining the appellant from making any further construction and from altering or modifying any existing construction in the plaint property including the disputed property. We also make it clear that the fact that we are permitting the structures in the disputed portion of the property to continue to exist, will not confer any right on the plaintiff, if he is not able to establish his case for relief in the suit."

6. A contention that the respondent had not been paid the entire amount of rent for the premises which was leased out to him and in respect thereof it was directed:

"There is a further submission on behalf of Respondent No.3 that the appellant has not paid the rent for the premises which was admittedly leased out to him. Counsel for the appellant submits that there is no arrears, as claimed. We do not think it necessary to decide this controversy. But we grant the appellant a time of one month from the date of this order to clear all the rent in arrears (if any), either by tendering the same to Respondent No. 3 or depositing the same in the trial

court."

7. Contempt Petition No. 6 of 2006 was filed by the petitioner on the premise that the amount of rent had not been paid to her in terms of the said judgment and order dated 19.9.2005. Yet another Contempt Petition was filed which was marked as Contempt Petition No. 36 of 2006 alleging that even after passing of the said order the respondent had been raising constructions.

8. The petitioner through his Advocate by a notice dated 28.3.2006 addressed to the Education Officer, Council for the Indian School Certificate Examinations contended that as the respondent did not hold any registered lease in his favour except for 16,000 square feet, no sanction/permission or affiliation should be granted in favour of the Friend's of Children Society or to the respondent or to M/s Progressive Education School as the same would amount to grant of sanction/permission/affiliation to an institution which had not been fulfilling the norms. The Council for the Indian School Certificate Examinations by a letter dated 14.4.2006 addressed to the Principal of Progressive Education-II School stated as under:

"Dear Madam,

We draw your kind attention to this office letter dated December 16, 2005 regarding notice received from Mr. A.K. Sethi, Advocate.

Till date we have not received any comments from your end.

Again we have received notice dated 28th March 2006 from the Advocate, Mr. A.K. Sethi, addressed to 3 officers of the Council. Copy of the same is enclosed herewith.

You are once again requested to send your comments immediately."

9. Respondent filed a Contempt Petition which was marked as Contempt Petition No. 79 of 2007 alleging that the petitioner committed contempt of the court as she interfered with the management of the school despite the order dated 19.9.2005 passed by this Court.

10. Before we enter into the merit of the aforementioned contempt petitions, we may place on record two orders passed by this Court in these proceedings.

This Court in order dated 13.12.2006 recorded as under:

"While deciding Civil Appeal No. 5807/2005 (Col. Anil Kak (Retd) Vs. Municipal Corporation, Indore & ors.), a direction was issued to the appellant in paragraph 7 of the Judgment to clear all the rent in arrears (if any), either by tendering the same to respondent No. 3 or depositing the same in the trial court. This Contempt Petition has been filed on the ground that the said direction issued by this Court on 19.9.2005 has not been obeyed by the appellant namely Col. Anil Kak. Learned Counsel for the petitioner in the present Contempt Petition which has been filed by Sushila Raje Holkar (respondent No. 3 in the appeal) has submitted that as the direction regarding payment of rent has not been complied with by the appellant Anil Kak, he is liable to be punished for having committed contempt of court. Learned counsel has further submitted that though the suit for arrears of rent and eviction was filed in the year 2001 and the defence of the tenant was also struck off in the same year but the suit has not been decided so far due

to delaying tactics adopted by the defendant.

In the facts and circumstances of the case, we consider it proper that the suit itself should be decided at an early date. The trial court hearing O.S. No. 31/2005A is accordingly directed to hear and decide the said suit as expeditiously as possible preferably within three months from the date a certified copy of this order is produced before it."

This Court in order dated 1.5.2007 recorded as under:
"By way of last opportunity, the appellant \026 Col. Anil Kak (Retd.) is given 15 days' time from today to deposit all arrears of rent @ Rs.50,000/- per month, including the rent for the month of April, 2007. The rent is to be deposited in O.S. No. 31-A/2003."

We may also place on record that no notice had been issued by this Court in the said Contempt Petition No. 79 of 2007.

11. Mr. Chetan Sharma, learned senior counsel appearing on behalf of the petitioner would submit that the agreement for grant of lease created a monthly tenancy having regard to the fact that the possession had been delivered in favour of the respondents, wherefor the rent of Rs.50,000/- per month is payable by the respondent.

It was urged that in view of this Court's order dated 1.5.2007, which was passed upon hearing the parties, there cannot be any doubt whatsoever that the admitted rent payable was Rs.50,000/- per month and in fact a sum of Rs. 21 lakhs is owing and due to the petitioner.

It was brought to our notice that the suit giving rise to the Special Leave Petition has been dismissed. Our attention was further drawn to the fact that the defence of the respondent in the eviction suit has been struck off and, thus, the respondent is bound to continue to pay the admitted rent. Furthermore, the respondent appears to have carried out or intended to carry out constructions despite the order of injunction passed against him.

12. Mr. M.L. Verma, learned Senior Counsel appearing on behalf of the respondent, on the other hand, would urge that on a proper construction of this Court's order dated 19.9.2005, it would be evident that the premises which was admittedly leased out in favour of the respondent, admeasured 16,000 square feet, wherefor rent at the rate of Rs. 25,000/- per month has been agreed to be paid by and between the parties and in this connection another suit bearing No. Civil Original Suit No. 1/05A is still pending before the competent Court of law. It was submitted that this area of 16,000 square feet of land did not form the subject matter of the order dated 19.9.2005. It would appear that the rent in respect of 16,000 square feet of land being Rs.25,000/- per month, the appellant in fact has paid more amount than he was required to pay. In this connection, our attention has been drawn to a statement showing the receipts of the amount of lease rent by the petitioner from the said 'Progressive Education' which upto 11.8.2006 amounting to Rs. 27,75,900/-.

Our attention, furthermore, has been drawn to the following averments:

"It is very evident from a perusal of the Annexure A-1 that the Respondent/Contemnor is obligated and is liable to pay to the Applicant the sum of Rs. 50,000/- per month as rent to her. As stated in Annexure A-1 hereto, "this court by its order dated 11th October 2001, has determined Rs.50,000/- as provisional lease rent while disposing of an application under Section 13(2) of the Madhya Pradesh Accommodation Control Act. But even in spite of this, no rent has been deposited by the Defendant." It is submitted that Annexure R-5 that has been annexed to the Counter Affidavit is completely irrelevant to the present Contempt Petition as the payments concerning the rents of Rs. 25,000/- per month

have been annexed in Annexure R-5. It is submitted that the Applicant has filed Civil Suit No. 59 of 2001 [now re-numbered as 1/05A] in the Court of the XXI Additional Judge, Indore against the Respondent/Contemnor, being a suit for eviction and rent. In this suit the Respondent is liable to pay Rs. 25,000/- per month to the Applicant. It is submitted that up till July 2002, the Respondent/Contemnor is/has been paying rent of Rs. 75,000/-, i.e, Rs. 25,000/- being the rent for the land and building used as a school on 16,000 square feet arising out of Civil Suit No. 59 of 2001 [now re-numbered as 1/05A], while Rs. 50,000/- being the rent ordered to be paid under Section 13(2) of the Madhya Pradesh Accommodation Control Act, by the court and in pursuance of the statutory mandate thereof arising out of Civil Suit 45A of 2001. As such, the rent of Rs.50,000/- has been called in to be deposited "IN COURT" and has, in fact, been deposited "IN COURT", not inter partes. The same is also clear by a perusal of the order dated 19th September 2005. As such, there is not only willful contempt and disobedience of the order dated 19th September 2005 of this Hon'ble Court, but the mischief and willful obstruction of and deviation from the course of justice is exemplified by his making a palpably false statement on oath that there is an over-payment of Rs.13,53,144/-."

Our attention has furthermore drawn to the additional affidavit filed on behalf of the respondent which is in the following terms:

"That in compliance of the orders passed by the Hon'ble Court the appellant deposited a sum of Rs. 7,00,000/- bearing cheque No. 009956, dated 15.5.2007 and another cheque of Rs. 4,31,975/- bearing No. 009957 dated 25.5.2005 drawn in favour of the XXIst, Additional District Judge, Indore along with an application for deposit of the "Lease amount" in the Court of the XXIst, Additional District Judge, Indore being alleged arrears of Lease Rent from August, 2002 onwards."

It was stated that a sum of Rs. 27,175/- was deducted in excess of the amount of TDS which has been also deposited.

13. This Court passed an order in equity. It, however, appears that it was specifically noticed that the subject matter of the admitted lease is 16,000 square feet, although a contention has been raised before us that in view of the agreement of lease the area of 1,27,721.6 was also subject matter of the lease.

14. A proceeding under the Contempt of Courts Act has a serious consequence. Whether the alleged contemnor has willfully committed breach of the order passed by a competent court of law or not having regard to the civil/civil consequences ensuing therefor require strict scrutiny. For the said purpose, it may be permissible to read the order of the court in its entirety. The effect and purport of the order should be taken into consideration.

Whereas the court shall always zealously enforce its order but a mere technicality should not be a ground to punish the contemnor.

A proceeding for contempt should be initiated with utmost reservation. It should be exercised with due care and caution. The power of the court in imposing punishment for contempt of the court is not an uncontrolled or unlimited power. It is a controlled power and restrictive in nature (See Re: P.C. Sen [(1969) 2 SCR 649] and Jhareswar Prasad Paul and Another v. Tarak Nath Ganguly & Ors. [(2002) 5 SCC 352]).

A contemnor, thus, may be punished only when a clear case for contumacious conduct has been made out.

15. The order of this Court dated 19.9.2005 read in its entirety clearly shows that this Court proceeded on the basis that the area of 16,000 square

feet of land was the subject matter of the admitted lease. It was, however, noticed by this Court that the Schedule Property included the portion where an educational institution was functioning. This Court furthermore noticed that a suit for specific performance of contract was also pending. It was keeping in view the fact that an educational institution was being run, on the land in question, an order of injunction was passed. The trial court was directed to dispose of the suit as expeditiously as possible. However, now it appears that the said suit has in fact been disposed of.

16. This court with a view to direct maintenance of status quo by the parties on the one hand restrained the respondent from putting up any further construction but also passed an order of injunction restraining him from making any other or further constructions or from altering or modifying the existing construction including the disputed property, but it was made clear that an order, permitting the structure in the disputed portion of the property to continue to exist, shall not confer any right on the plaintiff.

17. In paragraph 7 of the judgment, this Court dealt with the contention of the petitioner that the respondent had not been paying the rent for the premises which were admittedly leased out to him. This Court placed on records the contention of the respondent that there were no arrears. This Court did not determine the controversy. However, one month's time was granted to the respondent to clear all the rent in arrears, if any.

18. This Court, therefore, directed payment of rent for the premises which was admittedly leased out to him. No rent could be directed to be paid in respect of the property wherefor a suit for specific performance was pending; the subject matter whereof being 1,21,721.6 square feet.

19. It may be true that this Court upon hearing the parties, by the order dated 1.5.2007 granted the respondent 15 days' time to deposit all arrears of rent at the rate of Rs.50,000/- per month including the rent for the month of April 2007. We are not concerned with the implementation of the said order as violation thereof is not the subject matter of the contempt proceedings pending before us.

The order of this Court properly construed, therefore, would mean that the admitted lease would cover only 16,000 square feet of land. Different phraseologies like "entire" and "admitted" have been used by this Court. Construction of the said order, therefore, must be resorted to upon reading the same in its entirety. It is a well settled principle of law that if two interpretations are possible of the order which is ambiguous, a contempt proceeding would not be maintainable. In *The State of Bihar v. Rani Sonabati Kumari* [AIR 1961 SC 221], it was stated: "The second contention urged was that even if on a proper construction of the order, read in the light of the relevant pleadings, the State Government was directed to abstain from publishing a notification under S.3(1) of the Act, still, if the order was ambiguous and equivocal and reasonably capable of two interpretations, a party who acted on the basis of one of such interpretations could not be held to have willfully disobeyed the order. Stated in these terms, the contention appears unexceptionable. For its being accepted in any particular case, however, two conditions have to be satisfied: (1) that the order was ambiguous and was reasonably capable of more than one interpretation, (2) that the party being proceeded against in fact did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order."

This aspect of the matter has been considered by this Court in *Purnendu Mukhopadhyay & Ors. v. V.K. Kapoor & Anr.* [(2007) 12 SCALE 549] {See also *Maruti Udyog Limited v. Mahinder C. Mehta & ors.* [2007 (11) SCALE 750]}

20. So far as the contention of Mr. Sharma that a monthly lease has come into being is concerned, we do not find sufficient materials to arrive at the said finding. Whether the agreement dated 11.8.1998 can be construed to be a lease from month to month or whether possession has been delivered on to the respondent in part performance of the contract are matters which require

determination of the appropriate court. We are neither called upon to decide the said question nor it is possible for us to do so in these proceedings. Reliance has been placed by Mr. Sharma on Anthony v. K.C. Ittoop & Sons & Ors. [(2000) 6 SCC 394]. Therein deed of lease was executed for a period of five years. It was an unregistered instrument. The question which fell for consideration therein was the effect of non-registration of the said document having regard to Section 107 of the Transfer of Property Act and in that context, it was held that the appellant therein occupied the building as a tenant opining:

"When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed."

Thus, whether a lease was created by reason of the said agreement dated 11.8.1998 is a question which is not free from doubt. A decision in that behalf is required to be rendered by the court.

In *Sobhagyalal & Anr. v. Gopal Das Nikhra* [2008 (3) SCALE page 245], this Court (wherein one of us; Pantia, J. was a member), analyzing the provisions of Section 13 of the Madhya Pradesh Accommodation Control Act, this Court held:

"11. The High Court has committed an error in applying the provisions of sub-section (6) of Section 13 to the second suit initiated by the landlord under Section 12(1)(a) on the ground of arrears of rent. That provision is only for the purpose of striking out of the defence of a tenant if the rent is not deposited as required under Section 13 which has nothing to do with the provisions of sub-section (3) of Section 12 or sub-section (5) of Section 13.

12. In the present case, the trial court gave benefit to the tenant of Section 12(3) of the Act in the previous proceedings. The tenant by not depositing the rent either in the court or paying it to the landlord, has committed a default and there being three consecutive defaults in the payment of rent as referred in proviso to sub-section (3) of Section 12 of the Act and on non-payment of arrears of rent within two months of the service of notice of demand, the landlord would be entitled to file a second suit for ejectment on the ground of arrears of rent and the court has to pass a decree for ejectment under Section 12(1)(a) of the Act."

But such a question does not arise for our consideration herein.

21. So far as the allegation that the respondent had raised structures after the order of this Court dated 19.9.2005 is concerned, we do not find that the said allegations have been established. Our attention has merely been drawn to some photographs of the building which were taken on 26.12.2003 and 4.12.2005 to show that some materials have been collected. It was alleged:

"It is submitted that despite the clear orders of this Hon'ble Court restraining the Contemnor from constructing and further restraining him from carrying out any alteration or modification to the existing structures i.e. to maintain the status quo in the disputed property, the Contemnor has willfully flouted and disobeyed the above Order dated 19th September 2005 passed by this Hon'ble Court, and has continued to raise a further construction on the disputed property after the date of the said order, and has also altered and modified the existing construction on the disputed property."

The contents of para 2.8 of the application had not been properly verified in

the affidavit of the petitioner in support of the said allegations, it is merely stated:

"I have gone through the contents of the accompanying Application for Contempt. The contents thereof are true and correct."

We, therefore, do not find that any case has been made out for punishing the respondent, for raising construction in violation of this Court's order dated 19.9.2005.

22. The mere apprehension that the materials collected at the site may be used for further constructions is hypothetical. No action can be taken pursuant thereto or in furtherance thereof. It is not for this Court to even proceed in the matter any further, having regard to the nature of allegations made in the application for contempt.

23. Coming now to the contempt petition filed by the respondent, we are of the opinion that even no case for issuance of any notice has been made out. The order of injunction relate to existence of the structure, the validity thereof and/or the effect of such structure vis-à-vis recognition/affiliation of the institution was not the subject matter of the Civil Appeal. So long the structures are allowed to stand, the order of this Court cannot be said to have violated.

24. For the reasons aforementioned we do not find any merit in any of these petitions. They are dismissed accordingly leaving the parties to pursue their remedies which are available to them in law. In the facts and circumstances of the case, there shall be no order as to costs.