

CASE NO.:
Contempt Petition (civil) 148 of 2003

PETITIONER:
Rama Narang

RESPONDENT:
Ramesh Narang & Anr

DATE OF JUDGMENT: 12/04/2006

BENCH:
Ruma Pal, B.N. Srikrishna & Dalveer Bhandari

JUDGMENT:
J U D G E M E N T

CONTEMPT PETITION NO.148 OF 2003
IN
CP NOS. 265-267 OF 1999 IN CP NO.209 OF 1998
IN
CIVIL APPEAL NO. 366 OF 1998

RUMA PAL, J.

In this contempt petition the petitioner alleged that the respondents 1 and 2 have violated this Court's orders dated 12th December, 2001 and 8th January, 2002 disposing of Contempt Petition (Civil) Nos. 265-267/1999 in Contempt Petition (Civil) No.209 of 1998 in Civil Appeal Nos. 366/1998, 603/1998 and 605/1998. The petitioner and the respondents represent two groups of members of one family. The petitioner, Rama Narang is the father of Ramesh and Rajesh the two respondents herein. They are the children of his first wife, whom he divorced in 1963. The petitioner also has children by the second wife. Disputes have been raging between the parties for over a decade. Several suits and counter suits have been filed. In contempt proceedings filed by the respondent No.1 against the petitioner an order was passed by this Court on 12th December, 2001 to the following effect:-

"The following cases are pending between the parties who are parties in the present proceedings before us one way or the other. We are told that all the parties have settled their disputes in respect of all the litigations specified below.

1. O.S. No.3535 of 1994 before the Bombay High Court.
2. O.S. No.3578 of 1994 before the Bombay High Court
3. O.S. No.1105 of 1998 before the Bombay High Court
4. O.S. No.3469 of 1996 before the Bombay High Court
5. O.S. No.1792 of 1998 before the Bombay High Court
6. O.S. No.320 of 1991 before the

Bombay High Court

7. Company Petition No.28 1992 before the Bombay High Court

Before the Principal Bench, Company Law Board, New Delhi.

8. Arbitration Suit No.5110 of 1994 before the Bombay High Court.

Today they filed a document styled it as "MINUTES OF CONSENT ORDER" signed by all the parties. Learned counsel appearing on both sides submitted that all the parties have signed this document. Today except Mona Narang and Ramona Narang (two ladies), all the rest of the parties are present before us when these proceedings are dictated. As for Mona Narang and Ramona Narang learned counsel submitted that Mona Narang had affixed the signatures and the power of attorney holder of Ramona Narang has signed the above document in his presence. This is recorded.

Both sides agreed that all the suits can be disposed of in terms of the settlement evidenced by "MINUTES OF CONSENT ORDER" produced before us. For disposal of those cases and/or for passing decrees in them we have to pronounce the final formal order in terms of the settlement now produced before us.

We, therefore, withdraw all the aforesaid suits to this Court under Article 139-A of the Constitution of India.

Prothonotary and Senior Master of the Bombay High Court is directed to transmit the records in the above mentioned suits by special messenger to this Court so as to reach the Registry here within ten days from today. The Bench Officer of the Principal Bench of the Company Law Board, New Delhi is directed to forward the records relating to company petition No.28 of 1992 to the Registry of this Court so as to reach the Registry within ten days from today.

All the parties have undertaken before us that they will implement the terms of the "MINUTES OF CONSENT ORDER" on or before 1.1.2002 and that no further time will be sought for in the matter.

Clause (f) of the compromise relates to the operation of the bank accounts. That clause will come into force from today onwards.

All the afore-mentioned suits and the

company petition will be posted for final formal orders on 8.1.2002 at 10.30 a.m. along with these contempt proceedings."

The Minutes of the Consent Order referred to in the order dated 12th December, 2001 was as an agreement between the parties, which was duly executed by them.

The bone of contention between the parties is primarily the control of a company known as NIHL. The consent minutes provided inter alia:-

(a) With effect from 4th May, 1999 Rama, Ramesh and Rajesh are the only Directors of NIHL (and its subsidiaries). Any increase in the Board of Directors shall be with the mutual consent of Rama and Ramesh/Rajesh.

(b) None of the Directors (Rama, Ramesh and Rajesh) can be removed from directorship.

(c) Rama and Ramesh shall continue to be in joint management and control of NIHL and Rajesh shall continue to be the Permanent Whole Time Director thereof in charge of day to day operations/management.

(d) No decision shall be adopted concerning or affecting the said Company (and its subsidiaries) without the consent of Rama and Ramesh (or Rajesh) in writing. It is further clarified and agreed that save and except as provided herein no prevailing decisions including appointment of Directors/ Executives or any other persons shall continue unless Rama and Ramesh (or Rajesh) consent to the same in writing.

(e) All the collections coming in cash shall continue to be remitted in the bank accounts of the Company and all transactions will only be made in the form of cheques and/or as may hereafter be agreed to between Rama and Ramesh (or Rajesh).

(f) All bank accounts of the Company shall continue to be operated jointly by any two out of the three Directors namely Rama, Ramesh and Rajesh and/or as may hereafter be agreed to between Rama and Ramesh(or Rajesh). If the amount of any transaction exceeds Rs. 10 (ten) lacs the same shall be undertaken through a cheque signed jointly by Rama and Ramesh/Rajesh."

The consent terms also provide for the performance of various actions by the parties which are not necessary to be

recorded. It is sufficient to note that all the agreed actions were to be performed by the petitioners group before 1.1.2002. When the matter appeared in the list on 8.1.2002 the Court recorded that all the eight suits and proceedings withdrawn from other courts had been transmitted. The appellant's suits were disposed of in terms of the minutes of the consent order incorporated in the proceedings passed by the Court on 12.12.2001. The order dated 8th January, 2001 further provided:-

"All the above are now being disposed of in terms of the Minutes of Consent Order incorporated in the proceedings passed by us on 12.12.2001.

The decree will be drawn up in terms of the Minutes of the Consent Order."

On the allegation that the two respondents had violated the terms of the orders specially the clauses 3(c), (d) and (f) of the consent minutes, this contempt petition has been filed. It is also the case of the petitioner that the violations of the orders had been admitted by the respondents. According to the petitioner the violations amounted to a willful disobedience of the orders dated 12.12.2001 and 8.1.2002 and were punishable under this Court's power of contempt. Initially a notice was issued by this Court on the petitioners' application on 9th May, 2003 to the respondents for ascertaining the facts and to enable them to respond to the averments in the petition. After the filing of the responses, on 15th September, 2003, a notice in contempt proceedings was issued to the respondents.

In an attempt to bring the disputes between the parties to amicable end, the Court appointed a retired Chief Justice of Orissa High Court as a mediator. The mediation was however, unsuccessful. Since the settlement of disputes was not possible, the proceedings before the mediator were terminated and the contempt petition was directed to be listed for hearing. Before taking up the question whether the respondents are guilty of contempt as alleged by the petitioner, the preliminary objection raised by the respondents as to the maintainability of the contempt petition are addressed. According to the respondents, the consent order did not contain an undertaking or an injunction of the Court and could not be the basis of any proceedings for contempt.

Reliance has been placed on the decision of this Court in Babu Ram Gupta Vs. Sudhir Bhasin And Anr. 1980(3) SCC 47; Bank of Baroda Vs. Sadruddin Hasan Daya And Anr. 2004 (1) SCC 360; R.N. Dey And Ors. Vs. Bhagyabati Pramanik & Ors. 2000(4) SCC 400; Rita Markandey Vs. Surjit Singh Arora 1996 (6) SCC (14); Nisha Kanto Roy Chowdhury Vs. Smt. Saroj Bashini Goho AIR 1948 (Cal.) 294; Bajranglal Gangadhar Khemka & Anr. Vs. Kapurchand Ltd. AIR 1950 (Bombay), 336. According to the respondents in the absence of an undertaking given to the Court and an allegation that such undertaking had been violated, this Court could not exercise jurisdiction over a mere violation of the terms of consent order which may have been incorporated in the consent order. It was also argued that the order dated 12.12.2001 has in fact been carried out and implemented within the time specified. According to the respondents the order dated 12.12.2001 had merged in the final order dated 8.1.2002. Reference has been made to the language of the order dated 8.1.2002 which the respondents submitted, was the only operative order and which did not in fact contain any undertaking of the respondents at all. The respondent's case

is that the mere imprimatur of the Court to a consent arrangement was not sufficient to attract the contempt jurisdiction. Only such consent orders which are coupled with undertakings or injunctions by the Court could be the subject matter of contempt proceedings. The respondents have argued that in the facts of this case the final order does not reflect any undertaking except the petitioner's undertaking to Rakesh, who was the brother of the respondents 1 and 2. They have also submitted that the contempt power must be strictly construed. Finally, it was submitted that if this Court holds that the earlier decisions relied upon by the respondents had been wrongly decided, the same should not serve to proceed against the respondents, because when the actions complained were done the law did not treat those actions as contumacious.

Learned counsel appearing on behalf of the petitioners has submitted that a decree for injunction whether directory or prohibitory can only be enforced by way of contempt proceedings. It was argued that there was nothing in principle to draw a rational distinction between the orders passed on merits and orders passed by consent. Our attention was also drawn to the language of the order dated 12.12.2001 which directed clause (f) of the minutes to be enforced from that date onwards. In fact the various suits referred to in the order dated 8th January, 2002 had been decreed in terms of the mutual consent order. It has also been submitted that all the relevant clauses in the consent minutes could be read both as prohibitory and directory. The petitioner has submitted that in a civil contempt, the issue is not so much the punishment of the alleged contemnor, but the execution of the decree. According to the petitioner, all the decisions cited by the respondents were distinguishable. Reliance has been placed on the definition of civil contempt in the Contempt of Courts Act, 1971 as well as on the decisions in *Rosnan Sam Boyce Vs. B.R. Cotton Mills Ltd. & Ors.* 1990 (2) SCC 636; *C.H. Giles V. Morris & Ors.* 1972 (1) All ER 1960; and *Salkia Businessmen's Association & Ors. Vs. Howrah Municipal Corporation & Ors.* 2001 (6) SCC 688. Prior to the enactment of the Contempt of Courts Act, 1971 (referred to hereafter as the Act), the field was governed by the Contempt of Courts Act, 1952 which did not contain many of the provisions which have been introduced for the first time by the 1971 Act. Till the 1971 Act, the policy of the legislature was to leave the formulation of the law of contempt to the Courts. The provisions of the Contempt of Courts Act 1952 were, therefore, broadly framed. Consequently, there was often a conflict between the practice in a Court and the judicial decisions and sometimes conflict between the views of the different High Courts on the law applicable.

An instance of such conflict is the case of *Nisha Kanto Roy Chowdhury V. Smt. Saroj Bashini Goho* AIR 1948 Cal 294. In that case, a suit had been filed for ejectment by the respondent of the appellant. The suit was not contested. Terms of compromise were drafted and a decree passed in terms of the compromise. One of the clauses of the compromise contained an undertaking of the appellant to remove the image of the deity which had been installed by the appellant together with the structures around the deity on demand by the respondent-landlord. However, when the respondent called upon the appellant to remove the image, the appellant refused. The respondent then filed an application before the High Court to commit the appellant for contempt of Court on the ground that he had broken an undertaking which had been given to the Court that he would remove the image when called upon to do so by the respondent. The

Single Judge allowed the application and committed the appellant holding that he had violated the order of the Court. On appeal, however, the Division Bench differed with the views expressed by the learned Single Judge. It was held that the clause which recorded the appellant's undertaking to remove the image did not state that the defendant undertook "to the Court" to remove the image. The word "undertakes" was construed to mean "formal promise or pledge". It was held that the appellant had thus merely promised or pledged the respondent to remove the image. The Court was no party to that promise at that stage. It was also said that:

"It must be remembered that a compromise decree is nothing more than an agreement of the parties with the sanction of the Court super-added. It has really no greater sanctity than the agreement itself. It certainly cannot mean anything more than the agreement itself."

When it was pointed out that the practice on the original side of the High Court was to record an undertaking to the Court in that manner and that this practice had been endorsed in several earlier decisions, the Division Bench opined that if that was so then "sooner the practice is stopped is better". It was affirmed that if it was the intention of the parties that an undertaking should be given to the Court then the compromise should have made it clear that such was the case.

A different view was taken by the Division Bench of the Bombay High Court in *Bajranglal Gangadhar Khemka and Anr. V. Kapurchand Ltd.* AIR 1950 (Bom.) 336. In that case, a suit for specific performance by execution of a lease was compromised and consent terms were filed in Court and an order passed thereon. One of the terms in the compromise recorded an undertaking by the defendants to have a third party joined as a confirming party to the lease which the defendant had agreed to execute in favour of the plaintiff. The defendant failed to execute the lease. The plaintiff took out proceedings for execution and the lease was executed by an officer of Court. The defendant then refused to get the third party to confirm the lease in terms of his undertaking. The plaintiff took out an application for contempt of Court. The Single Judge allowed the application holding that the defendant was guilty of willful default and asked the defendant to carry out the undertaking within one month failing which a warrant of arrest would issue. In the appeal preferred by the defendant, it was contended by him that no undertaking was given by the defendant to Court. Reliance was placed on the decision of the Calcutta High Court in *Nisha Kanto's case*. The Division Bench rejected the submission and dismissed the appeal saying:

"We are not prepared to accept a position which seems to us contrary to the long practice that has been established in this Court."

The Court opined that:

"\005\005\005\005\005\005 the expression
"undertake" has come to acquire

through long practice, a technical meaning. In all orders and decrees of the Court, whenever the expression "a party undertakes" has been used, it has always borne the meaning that the undertaking has been to the Court.

What is more, it has been held by Bhagwati J.--- an opinion with which I entirely agree\027that it has been the long standing practice on the original side that, whenever counsel wishes to give an undertaking to the Court, he never expressly uses the words " to the Court" but merely states that he undertakes on behalf of his client\005."

Accordingly it was concluded:

"\005.\005.we can only construe the undertaking given by the defendants as an undertaking given to the Court and not given to the other side\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005The very fact that the Court passed a decree after an undertaking was embodied in the consent terms clearly shows that the Court did sanction a particular course; and that course was the putting of its imprimatur upon the consent terms. The Court was led to pass an order upon the defendants to execute a lease in view of the fact that an undertaking was given by the defendants to get the Paradise Cinema, Limited, to join the lease."

The view expressed by the Bombay High Court has, in our opinion, been approved by this Court in *Bank of Baroda V. Sadruddin Hasan Daya* 2004 (1) SCC 360. The Calcutta High Court's judgment to the contrary in *Nisha Kanto Roy Chowdhury* (supra) does not therefore correctly reflect the law.

In the face of such apparent divergence, the Sanyal Committee was set up and asked to examine the law of contempt with a view to its clarification and reforming it wherever necessary. The present statute is the outcome of those suggestions.

The Sanyal Committee Report which preceded the framing the enactment of the Act had opined:

"The 1952 Act is sound as far as it goes. While its provisions may be retained, its scope requires to be widened considerably."

The Act has been duly widened. It provides inter-alia for definitions of the terms and lays down firmer bases for exercise of the Court's jurisdiction in contempt. Section 2(b) of the Contempt of Courts Act, 1971 defines civil contempt as

meaning "willful disobedience to any judgment decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to Court". Analysed, the definition provides for two categories of cases, namely, (1) willful disobedience to a process of Court and (2) willful breach of an undertaking given to Court. As far as the first category is concerned, the word "any" further indicates the wide nature of the power. No distinction is statutorily drawn between an order passed after an adjudication and an order passed by consent. This first category is separate from the second and cannot be treated as forming part of or taking colour from the second category. The legislative intention clearly was to distinguish between the two and create distinct classes of contumacious behaviour. Interestingly, the Courts in England have held that the breach of a consent decree of specific performance by refusal to execute the agreement is punishable by way of proceedings in contempt (see C.H. Giles and Company Ltd. Vs. Morris and Ors. 1972 (1) All ER 960). The two decisions of the Calcutta and Bombay High Court are limited to the second category of cases mentioned against Section 2(b) of the 1971 Act. Incidentally, neither of the decisions held that a violation of breach of any other terms of a consent order would not amount to contempt if it were willful.

We proceed on the basis that no undertaking was given to Court by the respondents in the consent minutes and that therefore there was no question of their violating such undertaking. The only question is, whether the respondents could be called upon to answer proceedings in contempt for willful disobedience to this Court's orders dated 12th December 2001 and 8th January 2002.

After the Act came into force, in 1980 this Court was called upon to dispose of an appeal filed under Section 19 of the Act against a decision of the Division Bench of the Delhi High Court convicting the appellant under Section 2(b) of the 1971 Act and sentencing him to prison. The case Babu Ram Gupta V. Sudhir Bhasin 1980 (3) SCC 47, arose out of a dispute between the partners. The partnership deed contained an arbitration clause. An application was filed by one of the parties under Section 20 of the Arbitration Act. Pending the application, a receiver was appointed. An appeal was preferred from this order. A consent order was passed appointing 'X' as the receiver. The appellant was then in possession of the property. He did not hand over possession of the property to the receiver. An application was filed alleging that the appellant had committed a serious breach of the undertaking given to the Court to hand over possession to the receiver. The High Court had so found. This Court construed the consent order and came to the conclusion that it did not contain any express direction to the appellant to hand over possession of the property to the receiver. It was held that no undertaking had been given by the appellant at all. The High Court had proceeded, according to this Court, erroneously by implying an undertaking from the consent order itself. In that context, this Court said:

"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."

The Court then considered various consent orders which could not base proceedings for contempt if the consent order were violated. Thus for example, a decree for payment of money if not complied with could not found an action for contempt. Similarly the allocation of certain property to a party by consent would not give rise to proceedings of contempt if possession of property was not given to that party. The Court was of the view that:

[illegible]

The appeal was accordingly allowed and the order passed under Section 2(b) Act set aside.

The question which was before the Court in Babu Ram Gupta's case was limited to the issue whether the appellant had given any undertaking to the Court, either expressly or impliedly, which he had violated. In other words it was limited to the second category of cases mentioned under Section 2(b) of the Act. The Court was not called upon to decide whether there was any contumacious conduct as envisaged by the first category of cases under that Section. The observations made

in that regard, are strictly speaking, obiter. The Court was not called upon to consider nor did it construe the language of Section 2(b) of the Act. If we were to accept the observations of the Court as an enunciation of the law, it would run contrary to the express language of the statute. As we have earlier noted, the section itself provides that willful violation of any order or decree etc. would tantamount to contempt. A compromise decree is as much a decree as a decree passed on adjudication. It is not as has been wrongly held by the Calcutta High Court in Nisha Kanto Roy Chowdhury (supra) merely an agreement between the parties. In passing the decree by consent, the Court adds its mandate to the consent. A consent decree is composed of both a command and a contract. The Bombay High Court's view in Bajranglal Gangadhar Khemka (supra) correctly represents the law that a consent decree is a contract with the imprimatur of the Court. 'Imprimatur' means 'authorized' or 'approved'. In other words by passing a decree in terms of a consent order the Court authorizes and approves the course of action consented to. Moreover, the provisions of Order 23 Rule 3 of the Code of Civil Procedure requires the Court to pass a decree in accordance with the consent terms only when it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement.

All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of course also executable. But merely because an order or decree is executable, would not take away the Courts jurisdiction to deal with a matter under the Act provided the Court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice. The decisions relied upon by the respondents themselves hold so as we shall subsequently see.

In such circumstances it would neither be in consonance with the statute, judicial authority, principle or logic to draw any distinction between the willful violation of the terms of a consent decree and willful violation of a decree which is passed on adjudication. The decision in Baburam Gupta's case must, therefore, be limited to its own peculiar facts.

Rita Markandeya Vs. Surjit Singh Arora (1996) 6 SCC 14, which was also been relied upon by the respondents to urge that the present application for contempt was not maintainable, related to proceedings for eviction. The respondent, who was the tenant had been directed to vacate the tenanted premises. His appeal before this Court was dismissed. While dismissing the appeal the Court recorded:-
"However, as agreed to by both the learned counsel, time to hand over vacant possession to Smt. Rita Markandey is granted till 31.3.1995. This shall be subject to the usual undertaking to be filed by the appellant-tenant within four weeks from today."

The respondent did not file the undertaking. He also did not vacate the tenanted premises by the agreed date. The landlord-appellant then filed a petition alleging that the respondent had committed contempt of court by gaining time from the Court to vacate the premises only to file an undertaking and thereafter refusing to file the undertaking. The Court found, on an interpretation of its order, that the court had not itself passed any order fixing the time. In terms

of the agreement between the parties the time had been fixed and the Court had only "embodied the terms of the agreement so arrived at." Therefore, it was held that the respondent could not be held liable for contempt of that order.

The respondents herein have however, relied upon the following passage in the judgment claiming that the same supported their contention:-

"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 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 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."

This passage is an exposition of the law relating to the second category of cases covered by Section 2(b) of the Act. It does not seek to be an exposition of the law relating to the first category of cases at all.

The next decision relied upon by the respondents is the decision of this Court in Bank of Baroda Vs. Sadruddin Hasan Daya & Anr. 2004(1) SCC 360. The petitioner in that case had filed a suit against the respondents for recovery of money. The suit was disposed of by consent and a decree was passed incorporating the consent terms. The consent terms inter alia, provided for payment of the decretal amount in instalments. Pending the clearance of the decretal amount the respondents undertook not to sell, mortgage, alienate, encumber or charge some of its properties. Another creditor also filed the suit against the respondent for recovery of a certain amount. This second suit was also disposed of by consent and a decree passed in terms of the consent order. Like the first decree the decreed amount was to be satisfied in instalments and pending satisfaction of the decree, the respondents undertook to the Court not to alienate, encumber, or create third party rights or part with possession of the same properties which had already formed part of the undertaking in the first decree. The respondents defaulted in making payment of the instalments under the first decree. The petitioner put the decree into execution. It also filed a contempt petition alleging that the second consent decree violated the undertaking given in the first decree. The Court found that by placing the same property under attachment in the second decree the respondent had intentionally and deliberately acted in breach of the undertaking given to the Court in the first consent decree. The Court approved the statement of the law by the Bombay High Court in Bajranglal Gangadhar Khemka & Anr. Vs. Kapurchand Ltd.(supra). Significantly, the Court also said:

"The violation or breach of the undertaking which become part of the decree of the court certainly amounts to contempt of court, irrespective of the fact that it is open to the decree-holder to execute the decree." (Emphasis added)

This decision reinforces our view of the law. It does not in any way run contrary to our opinion as expressed earlier on the interpretation to be put on Section 2(b) of the Act. On the other hand the Court repelled the submission of the respondents that the petitioners remedy lay in executing the decree in the following words:-

" The fact that the petitioner can execute the decree can have no bearing on the contempt committed by the respondents."

The decision in R.N. Dey and Anr Vs. Bhagyabati Pramanik & Ors 2000(4) SCC 400, also relied upon by the respondents, disposed of an appeal filed from an order directing the appellants to deposit certain amounts of money towards compensation money payable in respect of land acquisition proceedings. The directions were given while disposing of contempt proceedings initiated by the respondent after the Court had accepted the unqualified apology tendered by the appellants. The appellants urged that instead of filing a contempt application, the respondent should have proceeded with the execution of the decree or award made in the land acquisition proceedings. The Court said that:-

"\005 the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law."

Furthermore, it has also said that:-

"\005 the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree."

Having regard to the facts of the case the Court felt that the contempt proceedings should not have been resorted to and that in any case since the unconditional apology has been tendered and accepted by the appellant further proceedings should have been dropped.

As we read the decision, its ratio runs counter to the submission of the respondents, namely, that the contempt would not lie if the decree or order is executable. Ultimately, the matter is one of the Court's discretion having regard to the facts of the case. As we have said the fact that a decree is executable does not take away the Court's jurisdiction in contempt.

In the present case, the consent terms arrived at between

the parties was incorporated in the orders passed by the Court on 12th December 2001 and 8th January 2002. The decree as drawn up shows that order dated 8th January, 2002 was to be "punctually observed and carried into execution by all concerned". A violation of the terms of the consent order would amount to a violation of the Court's orders dated 12th December 2001 and 8th January 2002 and, therefore be punishable under the first limb of Section 2(b) of the Contempt of Courts Act, 1971. The question whether the respondents should not be held guilty of contempt because of any earlier confusion in the law reflected in the case of Babu Ram Gupta (supra), is a question which must be left for decision while disposing of the contempt petition on merits. It may be argued as an extenuating or mitigating factor once the respondents are held guilty of contempt. The submission does not pertain to the maintainability of the petition for contempt. The preliminary objection raised by the respondents regarding the non-maintainability of the petition for contempt is, for the reasons stated, dismissed. The issue as to whether the respondents have in fact acted in violation of the terms of the consent order will now have to be decided on merits. Let the matter be listed for this purpose. Costs of this petition will be costs in the contempt petition.