CASE NO.:
Contempt Petition (civil) 488 of 1998
Contempt Petition (civil) 281 of 1998
Appeal (civil) 1771 of 1990

PETITIONER:
BANK OF INDIA .

Vs.

RESPONDENT:
VIJAY TRANSPORT & ORS.

DATE OF JUDGMENT: 22/10/2000

BENCH:
S.P.Bharucha, Y.K.Sabhawal, Ruma Pal

JUDGMENT:

RUMA PAL, J
L.....I.....T.....T.....T.....T.....T.....T..J

This proceeding in contempt was initiated by this Court suo

motu, on a prima- facie finding that the respondents 2 and 3 were guilty of contempt not only by dealing with property which was custodia legis but also by disobeying orders of Court. At the conclusion of the arguments we are of the confirmed view that the prima facie conclusion arrived at by us was correct, and that the respondents 2 and 3 are liable to be punished for their contumacious conduct. The respondent No. 2 describes herself as the sole surviving partner of the respondent No.1. The respondent No. 3 is the husband and power of attorney holder of respondent No. 2. The litigation out of which this proceeding arises commenced in 1975 when the petitioner-bank filed a suit against respondent no. 1 interalia for recovery of a sum of Rs. 18,14,817.91. The suit was instituted in the Court of the Sub Judge, Eluru in the State of Andhra Pradesh. The respondent No.1 raised a counter claim against the petitioner for a sum of Rs. 34,48,799. On 6th July 1976, the petitioners claim was decreed only to the extent of a sum of Rs. 1,00,418.55. The counter claim of the respondent No.1 was however allowed in its entirety with costs. The petitioner-bank preferred an appeal before the High Court and prayed for stay of the execution of the decree as far as the counter claim was concerned. The High Court, by an order dated 28.12.1976, granted the stay subject to the petitioner-bank depositing Rs. 16 lakhs as well as a further sum of Rs. 48,890.95 towards costs in the Court of the Subordinate Judge, Eluru. The respondent No.1 was given the liberty to withdraw the sum of Rs. 16 lakhs upon furnishing a bank guarantee for the same amount. The respondent No.1 was also given the liberty to withdraw the amount deposited on account of costs unconditionally. The petitioner-bank deposited the amount of Rs. 16 lakhs and Rs. 48,890.95 in the Subordinate Judges Court at Eluru..

The respondent No.1 withdrew both sums after furnishing a bank guarantee in favour of the Subordinate Judge for Rs. 16 lakhs. The bank which guaranteed the amount was the Karnataka Bank. On 20th September, 1983 the petitioner-banks appeal was allowed by the High Court. The High Court held that the petitioner-bank was entitled to a decree for a sum of Rs. 18,49,209.70 together with Rs. 8,15,324.92 as interest @ 12% p.a. According to the High Court, the petitioners claim would have to be scaled down because of the provisions of the Andhra Pradesh (Andhra Areas) Agriculturists Relief Act, 1938. The counter claim of the respondent no.1 was dismissed in toto. From this decision both the petitioner-bank and the respondent No.1 preferred appeals by way of special leave to this Court. No stay was obtained of the High Courts decision in either of the appeals. During the pendency of the appeals before this Court, the petitioner-bank applied to the Subordinate Judge, Eluru for restitution of the amount which had been deposited by the petitioner pursuant to the order of High Court dated 28.12.1976. The Sub Judge, Eluru directed the Karnataka Bank to deposit the sum of Rs. 16 lakhs guaranteed by it together with the interest accumulated thereon within one month. The Karnataka Bank complied with the order and the amount so deposited was allowed by the Sub Judge to be invested with the Eluru Branch of the petitioner-bank in a Double Benefit Deposit Account for a period of 12 months. The facts as subsequently revealed show that it was at this point that the respondents conceived a plan to whisk away this amount of Rs.16 lakhs a plan which was cunningly and carefully forged, link-by-link. It started with an application filed by the respondent No.1 before the District Court for transferring the application for restitution from the Sub Judge, Eluru to the Sub Court, Tadepalligudem on the ground that there was an apprehension that the Sub Judge Eluru, would not do justice to the respondents. The petition was dismissed by the District Judge on 30th September, 1985. An appeal was preferred before the High Court on 7th October, 1985. By an ex-parte order the High Court of Andhra Pradesh allowed the transfer. The petitioner-bank unsuccessfully filed a review petition before the High Court against the exparte order of transfer. The review petition was rejected on 18th November 1985. On the very next day (that is, 19th November, 1985) the Sub Judge, Tadepalligudem as full Additional Charge of Subordinate Judge, Eluru, directed the Branch Manager of the petitioners Eluru Branch to prematurely encash the Double Benefit Deposit Certificate and to transfer the same to the Sub Judge, Tadepalligudem because the execution records had already been transferred there. On 28th November 1985, the same Judge passed an order on the application of the petitioner-bank stating that the bank deposit need not be encashed until the disposal of the pending applications for restitution. Yet, before the applications were disposed of, on 20th December, 1985 the Judge, on an application moved by the respondents, directed the petitioner-bank to encash the deposit receipt for Rs. 16 lakhs and to send the same with the accrued interest by way of Bankers cheque or Demand Draft in the name of the Subordinate Judge, Tadepalligudem. The order was communicated to the Branch Manager of the petitioner-bank at Eluru by the Sheristadar and Bench clerk of the Subordinate Judge who were accompanied by an advocate and an officer of the State Bank of India, Tadepalligudem. All of them insisted on the immediate encashment and payment of the proceeds of the fixed deposit. They refused to leave until

the Branch Manager agreed to send one of his officials to the Tadepalligudem Court. On 24th December 1985, the petitioners applications for restitution were taken up for hearing. At the conclusion of the hearing, at the instance of the respondents, a notice was issued by the Subordinate Judge, Tadepalligudem to the petitioners Branch Manager, Eluru directing him to appear in person on 26th December 1985 and explain why he had not complied with the order dated 20th December 1985. On 26th December 1985, the Branch Manager appeared before the Subordinate Judge, Tadepalligudem and deposited the amount of Rs. 16 lakhs in his Court in the form of a pay order. Significantly, on that very day, a current account in the name of the respondent No.1 was opened in the State Bank of India, Tadepalligudem Branch by the respondent No. 3 as the Power of Attorney holder of respondent No. 1. On 27th December 1985 at about 10.00 a.m., the Subordinate Judge, Tadepalligudem handed over the pay order issued in his favour by the petitioner-bank to the officer of the State Bank of India Tadepalligudem Branch. The pay order was cleared on the same day and the State Bank of India deposited the proceeds after encashment in the Civil Court Deposit Account of the Subordinate Court, Tadepalligudem. On the same day, the Subordinate Judge issued a cheque on the said current account for a sum of Rs. 16, 30,619.18p with the direction to the State Bank to keep the amount in term deposit receipt for a period of 15 days and the State Bank of India complied with the direction. As to what transpired after this is best stated in the language used by the Law Officer of the petitioner-bank in his affidavit affirmed on 1st January 1986 : On 30.12.1985 the Sub-Judge, came to the Bench at 10.30 A.M. and pronounced the orders in all Execution Applications at 10.45 A.M. No. allowed E.A.207/85 and thus reviewed the orders passed in E.A. 363/84 and dismissed E.A. 363/84 E.A.196/85 E.A. 197/85 but allowed E.A.199/85 granting interest only at 6% while rejecting E.A.198 and 200/85. Immediately our Advocate presented a cheque petition with an out of order petition after due notice to the Advocate of Vijay Transport at about 10.50 a.m. In the said petition, we stated that the bank is entitled for the amount of the orders on the E.As. The learned Subordinate Judge got down from the Bench after call work at about 11.25. Suspecting that the Judge is prepared to pay the amount to the Vijay Transport our Advocate prepared a stay petition at 1.30 p.m. and after notice to the respondents Advocate went to the court and sent a word to the Sub-Judge about the said petition which he intended to file. He was asked to wait in the Court hall. Till about 2.55 p.m. there was no word from the Judge and on the other hand the Advocate was informed that the Judge and bench clerk (were) discussing about the matter. At about 2.55 p.m our Advocate repeatedly enquired with the court staff the reason for the delay. At 3.p.m. on the instructions of the Sub-Judge Execution Bench clerk received the said petition from our advocate. Meanwhile our advocates clerk also happened to see the cheque petition filed by Vijay Transport lying on the table of the Bench clerk.

9. I submit that no cheque petition was presented with any out of order petition in the open court by any of the Advocates of the Vijay Transport or party person. I also submit that no notice was issued either to us or to the Karnataka Bank who has deposited Rs.16 lakhs on the cheque petition. The Advocate for the Vijay Transport was not

present in the court between 10.50 a.m. to 4.15 p.m. on 30.12.1985. Our Advocate Mr. Ch.S. Kameswararao waited in the hall till 4.10 p.m. and he was informed that our stay petitions and cheque petitions were dismissed since a cheque was ordered in favour of M/s Vijay Transport in E.A. 252/85.

While the petitioner-banks representative was kept waiting by the Sub Judge, it is seen from the affidavit affirmed on 7th February 1996 by the State Bank of India in the proceedings before us that: On 30.12.1985, the learned Subordinate Judge, through his letter dated 30.12.1985, enclosing the said deposit receipt requested this respondent to cancel the term deposit receipt No.209215 dated 27.12.1985 and adjust the same to the Civil Court deposit challan No. 157 dated 30.12.1985. Accordingly, it was done on the same date. On 30.12.1985 itself, the learned Sub Judge issued a Civil Court cheque favouring the 1st Respondent for a sum of Rs.16,30,619=18. It was presented on the same day. Hence accordingly, this respondent (i.e. the State Bank of India) debited Civil Court deposit account of Sub Judge, Tadepalligudem, and credited the same to the account of 1st respondent. On the same day, the 1st respondent presented a cheque bearing No. 248178 dated 30.12.1985 for Rs.16,00,000=00 requesting this respondent to issue a demand draft on its Guindy Branch, Madras in favour of 3rd respondent on debiting commission to this account. Towards the commission, he issued another cheque bearing No. 248180 dated 30.12.85 for Rs.800=00. Thereupon, this respondent (SBI) issued two demand drafts for Rs.8,00,000=00 each bearing No.168997 and 168998 dated 30.12.1985 favouring 3rd respondent. Another cheque was issued bearing No.248179 dated 30.12.1985 for Rs.25,000=00 demanding the respondent to pay cash. Accordingly, cash was paid.

The petitioner-bank challenged the order dated 30th December 1985 by way of a Civil Revision Petition. A stay application was moved at the residence of the Judge of the High Court and an interim order was passed at 9.35 a.m. on 2nd January 1996 restraining the State Bank of India, Tadepalligudem Branch from paying the sum of Rs.16,30,619.18 p to the respondents and also restraining the respondents from withdrawing the amount from the State Bank of India, Tadepalligudem or their order pending further orders on the petition. This order was communicated by a Telex message to the State Bank of India. But the respondents withdrew the amount on 30th December, 1985 itself and the interim order of injunction was successfully thwarted by the respondents. The High Court directed proceedings to be initiated for recovery of the amount from respondent No. 1 and thereafter payment of the money to the petitioner-bank. Despite this order, the respondents did not repay the amount. On 3rd March 1986, this Court in the petitioners pending appeal directed the sale of vehicles which had been hypothecated by respondent No. 1 to the petitioner-bank. No vehicles were handed over by the respondent No. 1 to the petitioner-bank. On 22nd September 1986, the following order was passed by this Court in the appeal filed by respondents: Shri U.R. Lalit, learned counsel for appellants M/s Vijay Transport & Ors. states that the amount of Rupees sixteen lakhs and odd will be deposited with Bank of India, respondent No. 1 on or before 30th November 1986. If the amount is not deposited within the aforesaid period this appeal will stand dismissed.

Needless to say, the amount was not deposited. This is recorded in this Courts order dated 9th December 1986 in the following words: Since the amount has not been deposited as ordered by this Court, the appeal stands dismissed in terms of the order dated the 22nd September 1986. The appeal is dismissed.

On 11th November 1987, the petitioner-banks appeal from the judgment and order of the High Court dated 20th September 1983 was allowed and the bank was given the right to recover the entire amount decreed without any scaling down under the Andhra Pradesh (Andhra Areas) Agriculturists Relief Act, IV of 1938. The petitioner-bank was, therefore, in a situation where the claim filed by them in 1975 was ultimately decreed in 1987. But in the process it had not only not recovered any amount from the judgment debtor, but on the other hand, because of the machinations of the respondents, it had been deprived of a further sum of over Rs.16 lakhs which had been deposited by it in the custody of the Court. The application filed by petitioner-bank before the High Court for direction to the respondents including the State Bank of India, Tadepalligudem Branch to deposit the amount within a week was rejected by the order dated 18th October 1998. The petitioner- bank impugned the order of refusal of the High Court before this Court on 18th October 1989. Affidavits were filed. It was during these proceedings that this Court issued the suo motu notice to the respondent No. 2 on 29th April 1998 as under: We have heard learned counsel for the appellant and learned counsel for 2nd respondent. Quite apart from whether or not the appellant succeeds in this civil appeal, the facts of the civil appeal reveal a prima facie case of contempt of court in that there appears to have been flagrant disobedience by the 2nd respondent of court orders and dealings by her in monies which were custodia legis. This court cannot turn a blind eye to such conduct.

Issue suo moto contempt notice to the 2nd respondent returnable in August 1998. The Civil Appeal is adjourned to be placed on board along with the contempt notice.

The respondent No. 2 appeared in Court on 12th August 1998 pursuant to the notice. As recorded in this Courts order: Mr. Ganguli, learned counsel for the second respondent states that the second respondent is present in Court and has instructed him to state that the sum of Rs.16 lacs shall be deposited by her in Court within eight weeks without prejudice to all other rights and contentions.

To enable the second respondent to make the deposit, the appeal is adjourned for eight weeks

Despite the express assurance given to and acted on by the Court, the amount was not deposited. When the matter came up after eight weeks the respondent No.2 asked for an opportunity to file an answer to the suo motu notice. In her answer to the notice, the respondent No. 2 for the first time made out, what has subsequently transpired to be, a wholly sham dispute with the respondent No. 3. She placed the blame for non-deposit of the money on her husband, respondent No. 3, from whom she said she had been living separately with her son since the last few years. She feigned ignorance of the position as far as assets and liabilities of respondent No. 1 were concerned. Without

going into the question of the actuality of the alleged dispute between the respondent No. 2 and 3, on 3rd December 1998 this Court issued a suo motu notice of contempt to respondent No. 3 for the same reasons. The respondent No. 2 was directed by this Court to hand over the draft of Rs.6 lakhs which she said was with her to the Registrar of the Supreme Court. The Court also recorded: Learned counsel, on instructions, undertakes to Court that the 2nd respondent shall deposit in Court a further sum of Rs.10 lakhs within six months, without prejudice to all her rights and contentions. The sum of Rs.10 lakhs shall be deposited in two instalments of Rs. 5 lakhs each, the first deposit to be made on or before 10.3.1999.. The undertaking was not complied with and on 24th March 1999, the time to deposit Rs. 5 lakhs was extended till 3rd June 1999. This order was also not complied with. On 10th June 1999, the respondent No. 2 came forward with two bank drafts totalling Rs.3,50,000/- only. This amount was directed to be deposited by 11th August 1999. Allowing the prayer of the counsel for respondent No. 2, the balance was directed to be paid within six weeks. This order was also not complied with within the time specified and ultimately the amount of Rs.16 lakhs was deposited by 22nd October 1999. On 27th October 1999, the second and third respondent submitted that the amount of Rs. 16 lakhs should be adjusted against the decretal claim of the petitioner-bank and that they should be given an opportunity to settle the dispute between the parties. The matter was accordingly adjourned. There was no settlement nor did the respondents appear on the adjourned date. Both of them sent fax messages stating that they were ill. By our order dated 24th November 1999 we directed non-bailable warrants to be issued. The respondents appeared before the Court on the returnable date, i.e., 14th December 1999, and again stated that they wished to settle the matter. On 15th February 2000, the respondents made an unconditional offer of settlement through their counsel. The respondents offered to pay the decretal amount and interest @ 12% p.a. in four equal instalments. The first instalment (approximately of Rs.19 lakhs) was to be paid on or before 15th March 2000 and the subsequent three instalments on or before 15th June 2000, 15th September 2000 and 15th December 2000. The Court recorded this as well as the further submission of the respondents: Learned counsel for the respondents 2 and 3 states that land outside Chennai belonging to respondents 2 and 3 has been mortgaged to the appellant as security in the transaction in appeal and that land shall be security for payment of the said amount in the manner aforestated."

It was made clear that the payment agreed to be made was exclusive of the sum already obtained by the petitioner-bank, namely Rs.16,92,977/- and that regardless of whether or not the appellant has communicated to the respondents its willingness to accept this offer, the respondent shall deposit in this court the sum of Rs.19 lakhs on or before 15th March 2000, which, if the offer is accepted, will be credited towards the first instalment payable to the appellant. Neither of the respondents have deposited the amount of Rs.19 lakhs nor any amount at all in blatant disregard of this Courts mandate and the respondents resiled from their unconditional offer wholly. From time to time, the matter appeared before this Court and it was adjourned to give the respondents every opportunity to comply with the orders of this Court.

Ultimately both the respondents filed two separate affidavits which were taken on file by this Court on 24th August 2000 in which they claimed that they had immovable properties situated at Chettiaragaram Village, Saidapet Taluk, Chengulpet District, bearing Survey Nos. 13, 14 & 15 which could be sold to meet the decretal claim. However, the offer was that the sale should be made to a buyer of the respondents choice. Having regard to the past conduct of the respondents, we were not prepared to allow the respondents to handle the private sale of properties admittedly mortgaged to the petitioner bank. Both the respondents then filed separate affidavits affirmed on 24th August 2000 stating that the land could be sold through the District Judge subject to the approval of this Court. When the matter was again taken up, it was submitted by the respondents that the property was the subject matter of litigation and was under the custody of a Receiver. It now appears that a suit was filed in 1990 against the respondents and their son by a third party alleging that the property admittedly mortgaged to the petitioner had been agreed to be sold to such third party and at the instance of these respondents, their son has been appointed receiver over the property. It does not appear at what stage the suit is. There is no explanation why the respondents did not state this fact in the several affidavits filed before this Court. As it was clear that the respondents were merely prevaricating, we concluded hearing of the appeal of the petitioner from the order of the High Court dated 18th October 1988 by which the High Court had refused to direct the respondents to pay the Rs.16 lakhs by a fixed date. The appeal was allowed by us and the amount of Rs. 16 lakhs deposited by the respondent was allowed to be withdrawn by the petitioner. It is in this background that the contempt proceeding is to be decided. We make it clear that the facts relating to the events which have taken place subsequent to the issuance of the notices are not material for the purpose of conviction but are certainly relevant to the question of sentence. As noted at the outset, the acts of contempt alleged are (i) unauthorisedly dealing with property custodia legis and (ii) violating orders of Court. There is and can be no doubt that either of these two acts if established would tantamount to contempt. Property in custodia legis means that the property is kept in the possession and under the protection of Court. Monies deposited in Court by way of security are held by the Court in custodia legis to the credit of the party who is ultimately successful. Any other person dealing with the account so deposited does so at his or her peril and .. any litigative disturbance of the Courts possession without its permission amounts to contempt of its authority.. (per V.R.Krishna Iyer, J. in Everest Coal Company Ltd. V. State of Bihar & Ors. 1978 (1) SCC 12.) The amount of Rs.16 lakhs had been kept according to the directive of the High Court dated 28th December 1976 in the custody of the Sub Judge, Eluru pending disposal of the appeal filed by the petitioner-bank. Therefore, when the appeal was allowed, the amount deposited by way of security should have been returned to the petitioner-bank as a matter of course. Restitution of the deposit in the event of success was implicit in the order. There could be no other interpretation of the order of the High Court of 28th December 1976. In fact, when the petitioners revision application against the Sub Judges order dated 30th December 1985 was ultimately allowed by the High Court on 27th April 1998, it was said, The lower Court having

allowed the revision petition and dismantling thereby the order of restitution, strangely allowed the amount, which was deposited by the Karnataka Bank to be withdrawn by respondents 1 to 3, which in my undoubted view resulted in an act of grave error. We need only add that the error was committed at the instance of the respondents, and the gravity was enhanced by the action of the respondents in appropriating the amount unconditionally. It is not sufficient for the respondent to set up the order of the Subordinate Judge, Tadepalligudem as a shield. A judicial proceeding which is otherwise permissible may become an engine of fraud. Thus in Advocate General, State of Bihar V. Madhya Pradesh Khair Industries Ltd. 1980 (2) SCR 1175, it was held that the filing of an application may amount to an abuse of process. In that case, the respondents obtained interim orders from a Single Judge which had the effect of circumventing and nullifying the effect of the orders of the Division Bench of that High Court. This Court said, The Court must take into account the whole course of the continuing contumacious conduct of the respondents from the beginning of the game. It was concluded that the conduct of the respondents clearly showed that they were intending to and had obstructed the due course of the administrative of justice by abusing the process of Court. In the case before us, the petitioner-bank anticipating that the respondents would get payment of the amount had, immediately after the order was passed by the Subordinate Judge, Tadepalligudem on 30th December 1985, filed a complaint with the Registrar, District Court, Eluru requesting immediate intervention. The complaint was not and indeed could not be acted upon by the Registry. On 7th January 1986 the petitioner-bank lodged a complaint about the Subordinate Judge, Tadepalligudem with the District Judge, Eluru. We have been informed that after an inquiry was held, the Subordinate Judge, Tadepalligudem was dismissed from service in 1986. But the damage had been done. With a cynical disregard for the administration of justice for which purpose alone Courts exist the respondents used the process of the law to defeat that very purpose. No doubt the jurisdiction that the Court exercises in cases of alleged contempt is quasi-criminal and the Court must be satisfied on the material before it that contempt of court was in fact committed. But that satisfaction may be derived from the circumstances of the case. [See: Ram Avtar Shukla V. Arvind Shukla 1995 Suppl (2) SCC 130] The circumstances obtaining in this case leave no manner of doubt that the respondents have wilfully dealt with property which was custodia legis. From the outcome of the inquiry against the Sub Judge, it is clear that the order was tainted and the dishonesty of the respondents patent. Furthermore, the rush with which the matters were concluded and the monies withdrawn by the respondents speak for itself. That this was done in furtherance of a plan to reap an illegal benefit is evidenced by the fact that even though the respondents had not filed any application for payment to them of Rs.16 lakhs, anticipating the order that they would obtain, the respondents opened the current account in the State Bank of India, Tadepalligudem four days prior to the passing of the order dated 30th December 1985. That the account was opened in the same Branch of the Bank in which the Subordinate Judge, Tadepalligudem had an account, that the petitioner- banks representative was not given any notice of the respondents cheque petition before the Sub Judge, and that the cheque was cleared and the money paid out to the respondents while the petitioners petition of

objection was filed, are all circumstances pointing to the careful pre-planning involved. Significantly, the respondents have not been able to show us on what basis they received the money. Their counter claims had been rejected by the High Court. In the appeal preferred from the High Courts decision, the respondents had not been successful in obtaining any stay. All these factors lead only to one inference and that is, that the Respondents wilfully dealt with monies in the possession of the Court without authority of law. We, therefore, have no hesitation in holding the respondents guilty of the first charge. As far as the question of disobedience to orders of Court is concerned, in his order dated 30th December 1985, rejecting the application of the petitioner-bank for payment of Rs.16 lakhs on the ground that it was not under the appropriate Section, the Subordinate Judge said: Money cannot lie in the Court without any specific order or contingency. Then, the question arose to whom the money should go? Since, the petitions are dismissed, the Bank of India is not entitled to the amount. Karnataka Bank (D-6) is a third party to the suit and the Court can not pay money to him. The Honble High Court in L.P.A. Nos. 178/76 and 185/76 held that the money should be paid only to defendant No. 1 i.e. Vijay Transport and no body else against proper bank guarantee furnished by Vijay Transport. Vijay Transport has already furnished bank joint guarantee of Karnataka Bank Ltd. which was accepted by the Court and it should be kept in force and valid. Therefore, the only way left to this Court is to pay money to Vijay Transport in accordance to the directions of the Hon'ble High Court in A.P. As. Therefore, the money of Rs.16,00,000/- with interest accrued there for which in the Courts deposit is to be ordered to pay to Vijay Transport (R-1) in this case.

The respondents were aware of the order of the High Court dated 28th December, 1976 which allowed the respondent No. 1 to withdraw the money only against a bank guarantee for the same amount. They knew that there was in fact no subsisting bank guarantee furnished by the respondent No. 1 yet the respondent No. 1 withdrew the amount. The withdrawal was in violation of the order dated 28th December 1976. Having got the amount of Rs.16 lakhs to which they were and could not, in any view of the law, have been entitled to, the respondents enjoyed the benefit of the amount for about 15 years despite orders passed by this Court on 22nd September 1986 and 12th August 1998 and it was not until this Court initiated proceedings in contempt against the respondents that the money was reimbursed in driblets by the respondents. The respondents are therefore guilty on this count also. We now come to the question of sentence. In Dhananjay Sharma V. State of Haryana and Others 1995 (3) SCC 757, it was said that: The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the Court and interfere with the due course of judicial proceedings or the administration of justice.

It is apparent from the facts already narrated that both the respondents have polluted the stream of justice. The respondents have continued with the contumacious conduct with impunity even after the issuance of the notices to them. In the narration of facts the phrase order not

complied with has recurred with disturbing regularity. In addition the unconditional offer made was resiled from; the undertaking given to the Court was breached; adjournments were obtained on the basis of assurances of payment and settlement which they had no intention to fulfil. The alleged dispute between the respondent Nos. 2 and 3 was a red herring and an attempt to wriggle out of the undertaking given to Court . In the respondent No.2s affidavit in answer to the notice of contempt, she said:

I was under a bonafide belief that I would be Supported by my husband (the third respondent in the above Civil Appeal) and expected to seek the assistance of my son in my endeavour. I was let down by my husband who repeatedly kept telling me that he was taking the necessary efforts without actually doing so. As for my son he expressed his inability to be of any assistance, particularly in view of the pending litigation between him and his father. It was only at the last moment that I realised that I was being let down and would not be in a position to fulfill my commitment to this Honble Court. I was also unable to convey this to my counsel sufficiently in advance, disabling me from filing an affidavit in this regard.

The statements are ex-facie contradictory. If there were a dispute for the last few years between the respondent No.2 and respondent No.3, the respondent no.2 could not have been under a bona-fide belief that she would be supported by the respondent No.3. Also no particulars of the alleged litigation between the respondent No.3 and the son have been given at any stage. The only litigation referred to before us was a suit for specific performance filed by a third party against both the respondents and their son. It is clear that the undertaking to this Court was lightly given by respondent No.2 and breached with impunity. In any event, on the respondents own showing there was no dispute between them either when the non compliance of orders of Court took place or when the property of the Court was wrongly dealt with by them. According to respondent No.3, he has acted all along as per the instructions of 2nd respondent and that the money which was withdrawn pursuant to the order dated 30th December, 1985 had been kept by the respondent No.2 in a fixed deposit account in the name of their son. In order to bolster this case, the respondent No.3 sought to rely upon the alleged public notices published by his son against him and ex-parte injunctions obtained by his son against his company. No particulars of the news papers or their dates nor of the injunction order have been given. Although, the documents are said to be annexed to the affidavit of respondent No.3, there are in fact no such annexures. The respondents have all along acted in concert. They had been filing joint affidavits before this Court till the notices to show cause were issued. Significantly the Power of Attorney executed by respondent No.2 in favour of respondent No.3 has admittedly not been revoked till today. It is clear from all these facts that the respondents have compounded the contumacious conduct with which they were charged with further acts of contumacy. Their alleged esteem for this Court and the sincerity of their apology are falsified by their unrepentant behaviour. Given the nature of the contempt, punishment in the nature of a fine is not enough. We have therefore no hesitation in sentencing both the

respondents to imprisonment in addition to payment of fine. Both of the respondents shall undergo simple imprisonment for two months in addition to making payment of a fine of Rs.2,000/- each. The fine is to be paid within a period of two weeks from the date of this judgment. In default the defaulting respondent will undergo a further period of simple imprisonment for a period of one month.