

Delhi High Court Satish Khosla vs M/S Eli Lilly Ranbaxy Ltd. & ... on 12 December, 1997 Equivalent citations: 1998 IAD Delhi 927, 1 (1998) CLT 1, 71 (1998) DLT 1, 1998 (44) DRJ 109, 1998 RLR 180 Author: S Mahajan Bench: M Narain, S Mahajan JUDGMENT S.K. Mahajan, J. 1. By this Order, we propose to dispose of both the appeals being FAO (OS) 50/97 as well as Criminal Contempt Petition No. 8/97. Before we deal with the merits of the matter, a few facts which are relevant for deciding these cases may briefly be stated as under: 2. That the appellant is the owner of the premises being Cottage No.6 situated within the complex of Shanti Sports Club, Vasant Kunj, New Delhi. The Sports Club is alleged to have membership of more than 1500 and is said to have the facilities like cricket ground, tennis courts, swimming pool, squash courts etc., and is allegedly visited by more than 200 members every day. Within the sports complex, there are a few residential cottages. One of such cottages being Cottage No. 6 is at the back of the complex. Between Cottage No. 6 and Cottage No. 7 there is a big lawn. The dispute between the parties is about the letting out and use and enjoyment of the said lawn by the occupants of Cottage No.6, namely, the respondent. 3. By a lease deed entered into between the parties on 2nd September, 1996, Cottage No. 6 at the Shanti Sports Club Complex, Vasant Kunj, New Delhi consisting of six bedrooms, one drawing-cum-dining room, one entrance lounge, kitchen, seven bathrooms and servant room was let to the respondent by the appellant for the residence of its Managing Director Mr. Christopher J. Shaw and his family members. Simultaneously with the execution of the lease deed, certain other documents, namely, the Hire Agreement for hiring of the furniture, fittings, carpets, rugs, geysers, air-conditioners, refrigerators, etc., Agreement for Security Services and Maintenance and Service Agreement for providing maintenance for the house, furniture, electrical equipments, lawn and plants etc. were also entered into between the parties. 4. It appears that the lawn between Cottage Nos. 6 and 7 was being given on hire for marriages and private parties by the appellant which allegedly caused disturbance to the Managing Director of the respondent and a suit being Suit No. 3064/96 was thereupon filed by the respondents on or about 11th December, 1996. It was alleged in the plaint in the said suit that the appellant had represented to the respondents that the lawn between Cottages 6 and 7 would always remain vacant and was meant to be used for the families of the occupants of the said cottages; and their guests. However, due to the said lawn being given on hire for marriages and other parties, there was hardly any moment when respondent No. 2 and his family had been able to have free and unobstructed access to the premises and enjoy its quiet and peaceful possession. 5. The said suit came up for hearing before the Hon'ble Single Judge on 17th December, 1996 when the Court directed summons of the suit as well as notice of the application to be issued to the appellant. Ex-parte stay was not granted in favour of the respondents 1 & 2. The matter came up for hearing on 20th December 1996 on which date it was adjourned to 13th January, 1997 and again no stay was granted in favour of the respondents. On 13th January, 1997, the case was adjourned to 20th January, 1997. The Hon'ble Single Judge was on leave on 20th January, 1997 and the case was, therefore, adjourned to 22nd May,

1997. In the said suit no stay had been granted in favour of the respondents. 6. The lease of the demised premises, entered into between the parties, was for a period of two years, however, it appears that by notice dated 10th January, 1997 the appellant terminated the lease and called upon the respondents to vacate the premises on or before 28th February, 1997. 7. On or about 4th February, 1997, respondents filed the suit being Suit No. 261/97 for specific performance of the agreement to register the lease deed and for a direction to get the lease agreement dated 2nd September, 1996 registered with the Sub-Registrar of Assurances, New Delhi. Alongwith the suit, the said respondent had also filed an application for the grant of an injunction restraining the appellant, his agents, employees and servants from in any manner disturbing or interfering with the quiet and peaceful possession, use and occupation of the demised premises being Cottage No. 6 and its appurtenant lawn and from in any manner hindering or obstructing free and unrestricted access and approach to the said cottage. 8. On 6th February, 1997, the Hon'ble Single Judge passed the order of injunction in favour of the respondent No. 1 and against the appellant, in the following terms: "IA.1124/97 Issue notice to the defendant for 13th May, 1997. I have perused the plaint, the application, the affidavit and the documents produced. Having regard to the contentions in the plaint and the averments in the application, and also in the light of the documents produced, I am satisfied that the plaintiff has made out a strong, prima facie, case for an ex-parte interim order. Delay in passing the order will defeat the object of granting the injunction. Hence, there will be an ex-parte interim order of injunction restraining the defendant, his agents, employees and servants, from in any manner disturbing or interfering with the quiet and peaceful possession, use and occupation of the demised premises, Cottage No.6, Shanti Sports Club, Vasant Kunj, New Delhi and the appurtenant lawn and also from in any manner hindering, or obstructing free and unrestricted access and approach to the said cottage. Provisions of Order 39, Rule 3 of the Code of Civil Procedure be complied with within three days. Copy of the order be given dasti." Aggrieved by the said order, the appellant has filed this appeal and has also filed a contempt petition for initiating criminal contempt proceedings against the respondents for their having intentionally and deliberately filed the proceedings and applications being Suit Nos. 261/97 and IA 1124/97 which amounted to abuse of the process of the Court and an attempt to circumvent the orders of the Court passed in Suit No. 3064/96. The action on the part of the respondents was also alleged to be a deliberate, intentional and calculated act to hamper and obstruct the due course of judicial proceedings and administration of justice and a fraud upon the Court. While issuing notice to the respondents in appeal, this Court on February 27, 1997 passed the following order: CM. 810/97 Notice for 1.4.97. Dasti We would not have entertained the appeal preferred against the order by which ex parte ad interim order of injunction has been issued by the learned Single Judge but for the circumstances which have been brought to our notice that the efforts of respondent in obtaining similar ad-interim order of injunction in the earlier Suit No. 3064/96 did not materialise and in the suit (No. 261/97) now filed ex parte ad-interim order for injunction has been obtained by the respondents

which is beyond the scope of the suit. We are satisfied that till the next date, the operation of the impugned order deserves to be suspended. Ordered accordingly. Dasti" We have heard the Counsel for the parties at length on both the ap- peals as well as the contempt application and we propose to dispose of the same at the stage of admission itself. 9. It is the contention of the respondent that it had in the second suit disclosed the filing of the first suit and there was, therefore, neither any attempt on its part to mislead the Court nor it had in any way tried to obstruct the administration of justice or play fraud upon the Court. It is also its contention that the respondent was entitled to bring the second suit for specific performance of the agreement to register the lease deed and the cause of action had accrued to it only on the receipt of notice dated 10th January, 1997 from the appellant when the tenancy was allegedly terminated. 10. To appreciate the contentions of the appellant whether filing of the second suit by the respondent is an abuse of the process of the Court, and an attempt has been made to obstruct the administration of justice, and whether in the facts and circumstances of the case the said respondent was at all entitled to the grant of injunction, it will be proper to compare the pleadings in both the suits and to also see whether the respondent had disclosed the pendency of the earlier suit while filing the second suit and whether it was also informed to the court that in the earlier suit the Court had not granted any stay in favour of the respondents. 11. The paragraphs 5 to 8 of the plaint in Suit No. 3064/96 and paragraphs 8 to 11 of the plaint in Suit No. 261/97 are almost identical. The follow- ing table will show the respective contentions. Paragraphs 5 to 8 of Paragraphs 8 to 11 of Suit No. 3064/96 Suit No. 261/97

5. "It is stated that appurtenant is a lawn and at the end of the to the Demised Premises, there is lawn there is another Cottage a garden and at the end of the identical to that of the garden there is another Cottage plaintiffs. At the time of identical to that the, plaintiffs. the lease, the defendant had At the time of the lease, the represented to the plaintiffs that defendant had represented to the the lawn would always remain vacant plaintiffs that the garden would and is meant to be used for the always remain vacant and is meant families and their guests of the to be used for the families and the said two cottages being guests of the said two cottages adjacent and appurtenant being adjacent being adjacent and to them and only in the appurtenant to them and only in the evening sometimes some children evening, sometimes some children may may come to play there. come to play in the garden. It may It may be noted that the other be noted that the cottage at the cottage at the end of the end of the garden is lying vacant lawn is lying not vacant and and is not occupied. A copy of the is not occupied. A copy of site plan of the Demised Premises, the vacant cottage is the garden and the vacant cottage the site plan of the Demised is annexed hereto and marked Premises, the lawn and as Annexure-A annexed hereto and marked as Annexure 'A'. In terms of the maintenance and service agreement, the defendant had represented, assured and agreed with the plaintiff to provide maintenance for the entire house as well as providing adequate staff for the maintenance of the lawns and plant and providing raw-materials for proper maintenance of plants and trees. 6. Despite the verbal 9. In total

disregard and assurances and the terms violation of the of the Lease Deed dated representations, assurances, September 2, 1996 to the understandings and agreements shock and surprise of the and the express and/or plaintiff immediately implied terms of the lease after plaintiff No. 2 the defendant started occupied the Demised permitting use of the Premises in terms of the appurtenant lawn to third said lease agreement parties for marriages and other dated September 2, 1996, functions. This also resulted the defendant started obstruction to the free and giving on hire the garden unrestricted access and approach for marriages and private to the Cottage as well as parties etc.” amounted to and interference with the quiet and peaceful enjoyment and privacy of the occupants, the Managing Director and the members of the family of the plaintiff. Besides the use of the lawn for such purposes as aforesaid constituted a nuisance and interfered with the rights assured to the plaintiff. 7. As a consequence of 10. As a consequence of this, there is hardly any this, there is hardly any moment when plaintiff moment when plaintiff’s No. 2 Mr. Christopher Managing Director Mr. J. Shaw and his family Christopher J. Shaw and his have been able to have family have been able to have free and unobstructed free and unobstructed access access to the leased to the leased premises or premises or enjoy quite enjoy quiet and peaceful and peaceful possession possession of the of the Demised Premises. Demised Premises.

8. It is stated that 30-40 people 11. It is stated that 30-40 come during the day either to install people come during the day either or remove temporary structures for to install or remove temporary the functions and in the evening structures for the functions and there are more than 400-500 people in the evening there are more attending the functions. All these than 400-500 people attending parties and functions go on until the functions. All these 5 O’Clock in the morning. Further, parties and functions go on it is stated that the band and loud until 5 O’clock in the morning. music on the loudspeakers is played Further, it is stated that the at these functions and despite the band and loud music on the loud requests of the plaintiff No. 2, speakers is played at these func- nothing has been done to stop tions and despite the requests of these functions top being held the plaintiff’s Managing Director adjoining the Demised Premises. nothing has been done to stop these As a result of this, the said functions being held adjoining Mr. Christopher J.Shaw is unable the Demised Premises. to use his study, room or watch As a result of this, the said TV or invite any guest since it is Mr. Christopher J.Shaw is unable not possible to converse in the to use his study room or watch loud blaring music played outside TV or invite any guest since the house. The plaintiff further it is not possible to converse states that the privacy of the in the loud blaring music plaintiff No. 2, Mr. Christopher J. played outside the house. The Shaw is, completely lost defeating plaintiff further states that the very purpose of renting the privacy of the plaintiff’s the premises. It, is further stated Managing Director Mr. Christopher that the said Mr. Christopher J.Shaw is completely lost." J. Shaw’s family has

to draw the curtains even in the day as someone or the other is always peeping inside the house. On two occasions, the said Mr. Christopher J. Shaw was not able to have access from his car to his house because of these functions. In paragraph 12 of the plaint in the second suit, the respondent did mention about its having filed a suit on about 11th December, 1996 against the appellant for injunction, however, no mention had been made therein as to what was the stage of the suit nor about the Court having not granted any stay in favour of the respondents. Paragraph 12 of the plaint in Suit No. 261/97 reads as under:

9. "Therefore, on or about 11.12.1996, the plaintiff and Mr. Christopher J. Shaw filed a suit for permanent injunction against the defendant for restraining the defendant, his servants, agents, successors and employees etc. from holding functions on the lawn as shown Red in the site plan and restraining them from causing unobstructed ingress and egress to the Demised Premises during the period of lease agreement dated 2.9.1996. The said suit is pending in this Hon'ble Court." In the application for ad-interim injunction filed alongwith the said suit the respondent, after making a grievance about the appellant having permitted use of the lawn to the outsiders for marriages and other functions which resulted in obstructions to the free and unrestricted access and approach to the cottage, did not mention anything about the Court having not granted any stay in favour of the respondent.
10. At this stage, we may also compare the reliefs claimed by the plaintiff/respondents in the respective applications for injunction in Suit No.3064/96 as well as in Suit No. 261/97: Relief claimed in Relief claimed in Suit No. 3064/96 Suit No. 261/97 Restrain the defendant, his employees, In the circumstances, the plain- servants, agents, successors, assigns tiff submits that this Hon'ble etc. from holding functions on the Court may be pleased to order gardens as shown in the site plan and direct and restrain the (Annexure-A hereto)during the period Defendant, his agents, employees of the said lease agreement dated disturbing or, interfering with September 2, 1996 and further the quiet and peaceful possession, restrain the defendant, his use and occupation of the employees etc., from causing demised premises, Cottage No.6 any obstruction in the ingress and Shanti Sports Club, Vasant egress of the plaintiffs to the Kunj, New Delhi and the demised premises Cottage No.6, appurtenant Lawn and also Shanti Sports Club, Vasant Kunj, restrain the defendant his New Delhi. employees, servants and agents from in any manner hindering or obstructing free and unrestricted access and approach to the said cottage.
11. It is apparent that in the application in Suit No. 261/97, the respondent is seeking the same relief of temporary injunction as had been sought for in Suit No. 3064/96.
12. Was it not obligatory on the part of the respondent to disclose to the Court that in an earlier suit filed by it, the Court had not granted any stay in its favour and if on such a disclosure having been made the Court

still granted stay in favour of the respondent, it could be said that the respondent had not concealed any material fact from the Court? But not mentioning anything about the Court having not granted any stay in similar circumstances in favour of the respondent in the earlier suit, it appears to us that the respondent had not only concealed material facts from the Court but had also tried to over reach the Court. Being unsuccessful in obtaining stay in Suit No. 3064/96, it was not permissible to the respondent to file the subsequent suit and seek the same relief which had not been granted to it in the earlier suit.

13. In S.P.Chengalvaraya Naidu Vs. Jagannath and Others, it was held that the Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. "It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."
14. We are informed that in Suit No. 261/97 the plaintiff had not even filed the plaint of the earlier suit being Suit No. 3604/96 nor the Court had an opportunity to go through the allegations made in the said plaint. We are, therefore, of the opinion that by withholding the plaint and the application in the earlier suit from the court and by not disclosing to the Court about the proceedings in the earlier suit and the stay having not been granted to it, the plaintiff/respondent had tried to get an advantage from the Court and was, therefore, guilty of playing fraud on the Court as well as on the respondent. The following observations of the Supreme Court in the aforesaid case are relevant for purposes of present case : The High Court in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the Court. The High Court however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank- loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the Court, is

bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party." It is contended by Mr. Oberoi, appearing on behalf of the respondent, that the respondent had no intention or motive to suppress the pendency of the earlier application in which the stay was not granted and having disclosed in the plaint that a suit between the parties was pending, it was not relevant or necessary to mention that in the said suit the Court had not granted any stay in its favour. In our view, the arguments are wholly fallacious. A party must come to the Court with clean hands and must disclose all the relevant facts which may result in appreciating the rival contentions of the parties. In our view, a litigant, who approaches the Court, must produce all the documents which are relevant to the litigation and he must also disclose to the court about the pendency of any earlier litigation between the parties and the result thereof. In the present case after Suit No. 3064/96 had been first listed before the Court on 17th December, 1996 no stay had been granted to it till 20th January, 1997 inspite of three hearings having taken place before the Court. It was only after 20th January, 1997 when the case was adjourned to May, 1997 that the respondent filed the second suit and though in one of the paragraphs it is mentioned that it had filed an earlier suit for injunction, however, it did not disclose to the Court either in the plaint or in the application as to what had transpired in the Court on the dates when the said suit was fixed nor it was disclosed to the Court that injunction has not been granted in its favour by the Court and the relief claimed in the application in the earlier suit was almost similar to the relief which had been claimed in the subsequent suit. In our opinion, it was obligatory upon the respondent to disclose to the Court that in the application filed in the earlier suit a similar relief had been claimed, however, the Court had not granted the said relief. In our view, if these facts were before the Court on February 6, 1997 when the second suit came up for hearing before it, may be Hon'ble the Single Judge was persuaded not to grant any *ex parte* stay in favour of the respondent. Moreover, in a suit for specific performance of an agreement to register the agreement of lease, it appears to us that the plaintiff could not claim an injunction which had already been claimed in Suit No. 3064/96. We are, therefore, of the opinion that the respondent has not come to the Court with clean hands and has also suppressed material facts from the Court with a view to gain advantage in the second suit. This in our view is clearly over-reaching the Court.

15. As held by the Supreme Court in *Advocate-General, State of Bihar Vs. M/s. Madhya Pradesh Khair Industries and another*, every abuse of the process of the Court may not necessarily amount to Contempt of Court, Abuse of the process of the Court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice is a Contempt of Court. It may be that certain minor abuses of the process of

the Court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of Order 6, Rule 16 or in some other manner. But it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice.

16. In our view, by withholding the plaint of the earlier suit from the Court and by not disclosing that in the earlier suit the respondent has not been able to get the injunction, the respondent is guilty of playing fraud on the Court as well as on the opposite party and such acts had been done only in order to gain advantage on the other side and to get a stay in the second suit.
17. As held by the Supreme Court in *T. Arivandandam Vs. T.V. Satyapat and Another*, AIR 1977 SC 2421, the pathology of litigative andiron ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases. "It may be a valuable contribution to the cause of justice if Counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an Advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the bench for spending judicial time on worth while disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex-parte orders tempts gamblers in litigation into easy Courts. A Judge who succumbs to ex-parte pressure in unmerited cases helps devalue the judicial process."
18. We are of the opinion that the above noted passage of the aforesaid judgment in *T. Arivandandam Vs. T.V. Satyapal's* case is fully applicable to the facts and circumstances of the present case. Having not succeeded in getting stay in Suit No. 3064/96, in our view, the Lawyer should have refused to move an application for stay in the second suit.
19. We are of the view that an attempt has been made by the respondent to over-reach the court and the respondents have played fraud upon the Court as well as upon the opposite party and is thus clearly guilty of contempt. Respondents cannot be heard in the case unless it purges itself of the contempt so committed and in our view it can only be if we non-suit the respondents in Suit No. 261/97. While, therefore, we do not propose to take action against the respondent for contempt except to issue a warning to respondent No. 2 to be more careful in future, we direct the dismissal of the suit (being Suit No. 261/97) itself. While, therefore, allowing this appeal, we dismiss Suit No. 261/97 and dispose of the contempt petition in the above terms.