

Ghanshyam Sarda vs Sashikant Jha, Director M/S Jk Jute ... on 18 November, 2016

Author: Uday Umesh Lalit

Bench: Uday Umesh Lalit, Anil R. Dave

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CONTEMPT PETITION (CIVIL) NO.338 OF 2014

IN

CIVIL APPEAL NO.10221 OF 2014

Ghanshyam Sarda

.....Petitioner

Versus

Sashikant Jha, Director,
Respondents

.....

M/s JK Jute Mills Co. Ltd. & Ors.

with

Contempt Petition (C) Nos.24-25/2015 in
Civil Appeal Nos.10224-10225/2014

with

Contempt Petition (C) No.375/2014 in
Civil Appeal No.10223/2014

with

Contempt Petition (C) No.307/2015 in
Civil Appeal No.10221/2014

JUDGMENT

Uday Umesh Lalit, J.

1. Contempt Petition (Civil) Nos.338 of 2014 and 375 of 2014 at the instance of Ghanshyam Sarda, appellant in Civil Appeal No.10221 of 2014 and J.K. Jute Mills Mazdoor Ekta Union, appellant in Civil Appeal No.10223 of 2014 ('applicants', for short) seek to highlight disobedience and violation of the Order dated 08.05.2014 ("Order of 08.05.2014", for short) passed by this Court in said Civil Appeals and other connected matters. The text of the Order of 08.05.2014 was to the following effect:-

"Since it is not possible for us to take up the matter today, learned senior counsel appearing for the parties seek leave to mention before the Vacation Bench for seeking urgent hearing of the matter.

Permission is granted.

It would be open to the parties to mention before the Vacation Bench for urgent hearing of the matter.

However, it is directed that till further orders, capital assets of the Company shall not be disposed of without taking permission of this Court."

2. The aforesaid Civil Appeals had challenged the judgment and order dated 06.01.2014 passed by the High Court of Gauhati in FAO No.10 of 2013, Writ Petition No.4303 of 2013 and Writ Petition No.6286 of 2013 and were disposed of by this Court vide its Judgment dated 13.11.2014[1]. The facts leading to the filing of those appeals and connected matters are dealt with in said Judgment dated 13.11.2014. It is alleged in the present contempt petitions that in violation of the Order of 08.05.2014, which was passed during the pendency of the aforesaid Appeals, the assets owned by the Company, namely, J.K. Jute Mills Company Ltd. (hereinafter referred to as the Company) at Saifganj, Katihar, Bihar spread across 1.6 acres of land ("Katihar property", for short) were sold vide Conveyance Deed dated 02.07.2014 and consequently the persons arrayed as contemnors interfered with due administration of justice. It is prayed that the contemnors be punished for disobeying the Order of 08.05.2014 and at the same time the Conveyance Deed dated 02.07.2014 alienating Katihar property be declared null and void.

3. The Company had filed Reference No.149 of 1994 before the Board for Industrial and Financial Reconstruction ("the BIFR" for short) under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 ("Act" for short), pursuant to which, various steps for revival of the Company were being considered. By order dated 17.12.2008 the BIFR had directed "...The Company would not encumber/alienate/lease/sale any property without specific prior approval of the Board." In the proceedings dated 26.08.2009, the BIFR had constituted Assets Sale Committee ("ASC" for short) in respect of properties of the Company including

Katihar property. The proceedings of ASC dated 08.11.2012 of which Shri R.N. Lahoti, CEO of the Company was also a member show that the sale of Katihar property was engaging the attention of ASC.

4. The proceedings of the BIFR dated 07.02.2013 show that in compliance of the earlier directions, the Operating Agency was in the process of finalizing a Draft Rehabilitation Scheme (“DRS” for short) and in furtherance of the directions of sale of certain assets, notices were already sent to the Company, secured creditors and State of Bihar to nominate their representatives in ASC. The proceedings further show that the Operating Agency by letter dated 29.01.2013 had requested the BIFR to grant permission to proceed further for sale of assets of the Company situated in Bihar. The next proceedings of the BIFR dated 18.02.2013 indicate that the Operating Agency had got the assets valued and had sent notices to all parties to nominate their representatives in the ASC.

5. While the matter stood thus, Auditors’ Report dated 15.02.2013 for the period ending 31.12.2012 stated that the Net Worth of the Company had become positive. It was also mentioned in the Directors’ Report dated 19.02.2013 that the Net Worth of the Company had now turned positive. Around this time, the BIFR vide its Order dated 26.02.2013 had formulated DRS for the revival of the Company. On 28.02.2013 four advertisements were issued in prominent newspapers by the Operating Agency inviting Bids for sale of properties of the Company including Katihar property. The Reserve Price for Katihar property was Rs.354.99 Lakhs. The advertisement stated that the Bid documents could be obtained, inter alia, from S.K. Jha of M/S J.K. Jute Mills Co. Ltd, 70 Golf Links, New Delhi 110003.

6. When the matter was thus being considered for finalization of DRS and for sale of assets of the Company, in the proceedings of the BIFR dated 04.04.2013 it was submitted on behalf of the Company that the Net Worth of the Company having turned positive, BIFR no longer retained jurisdiction over the Company. The BIFR observed that as per Annual Balance Sheet of the Company as on 31.03.2012 the Net worth of the Company was Rs.5.71 Crores and the accumulated losses were Rs.36.23 crores and it would like to satisfy itself about the Balance Sheet as at 31.12.2012. The BIFR passed following directions:-

“4.13. Having considered the submissions made in the hearing, materials on record, the Bench issued the following directions:

i) The Company to submit certified copy of its ABS as on 31-12-2012 along with all relevant papers and documents in support of its net worth within one week from today with copy to IDBI (OA) and all parties concerned along with documentary evidence;

ii) ASC would go ahead as per its schedule and confirmation of sale, if any, will take place upon the approval of DRS on 20-5-2013, with the consent of the Bench.

(iii) The Bench fixed the next date of hearing on 26-4-2013 at 11.30 a.m. for considering the submission of the Company that its net worth has turned positive as on 31-12-2012 and also hear MA No.162/BC of 2012 on the said date.”

7. On 16.04.2013 meeting of ASC was held but Shri. R.N. Lahoti CEO of the Company did not attend. The meeting took note of the letter dated 16.04.20013 from the Company signed by Shri S.K. Jha, Director that their representative would not take part in the ASC meeting as the Net worth of the Company having turned positive, it was no more covered under the Act. The proceedings of the BIFR dated 16.04.2013 disclose that the BIFR had observed that manipulation of accounts had been alleged against the Company and the BIFR would examine the same and enquire whether the Net Worth of the Company had turned positive or not.

8. At this stage, various proceedings including those at Gauhati were instituted, as detailed in the Judgment of this Court dated 13.11.2014. In Title Suit No.166 of 2013, Civil Court at Kamroop, Gauhati by an interim order dated 13.05.2013 restrained the defendants therein including the BIFR from proceeding with Reference No.149 of 1994. This Order and subsequent proceedings taken up in Gauhati High Court led to the filing of Special Leave Petitions giving rise to aforementioned Civil Appeal Nos.10221 of 2014 and 10223 of 2014 and other connected matters in which this Court passed the Order of 08.05.2014.

9. During the pendency of the aforesaid Civil Appeals in this Court, aforementioned Contempt Petition Nos.338 of 2014 and 375 of 2014 were filed alleging alienation of Katihar property vide Conveyance Deed dated 02.07.2014 in violation of the Order of 08.05.2014. Contempt Petition (C) No.338 of 2014 was taken as the lead petition and the basic allegations about the involvement of various contemnors as detailed in paragraphs 4 and 7 to 14 in the contempt petition are to the following effect:-

“4. That the Contemnor Nos.1 to 3 in conspiracy and collusion with other Contemnors, the particulars of which are given hereinafter have after 08.05.2014 sold away by executing a Registered Conveyance Deed dated 02.07.2014 capital assets of the Contemnor No.1 Company being the land, factory buildings etc. to one M/S. Thapar Herbs & Spices Pvt. Ltd. (Contemnor No.14 herein) through its Director Mr. Mrityunjay Kumar Singh, Contemnor No.17 herein (who is also the stooge and the employee of the Contemnor Nos.2 and 3); hence the present Petition.

7. The Contemnor Nos.4 to 8, Mr. Sashi Kant Jha, Mr. Sudhir Kumar Singh, Mr. Rakesh Kumar Singhania and Mr. Sobhanand Jha alias Mr. Ravishankar Prabhakar and Mr. Damodar Prasad Bhattar are the stooges and employees of Mr. Govind Sarda and Mr. Aditya Sarda and were/are the Directors and persons who with the

Contemnor Nos.2 and 3 are in day to day management and control of the Contemnor No.1 Company being Directors and key employees of the Contemnor No.1 Company during the relevant period when the acts of contempt have been perpetrated and these Contemnor Nos.4 to 8 were/are actively involved in consciously defying the orders dated 08.05.2014 passed by this Hon'ble Court.

8. The Contemnor No.9, Mr. Prakash Kumar, IAS is the District Magistrate and Collector of Katihar, Bihar who despite the orders dated 08.05.2014 passed by this Hon'ble Court took no steps in order to restrain the sale and registration of the Katihar capital assets of the Contemnor No.1 Company. The Contemnor No.10 (whose name could not be ascertained) is the Dy. Collector, District Legal Branch, Katihar who on 31.05.2014 sent the orders dated 21.03.2014 of the Collector, Katihar to the District Sub-Registrar, Katihar for information and necessary action. The Contemnor No.11, Mr. Sanjay Kumar Gwalia is the District Sub-Registrar (Sub-Registry Office), Katihar, Bihar who has registered the Conveyance Deed of the Katihar capital asset of the Contemnor No.1 company on 02.07.2014 despite being in full and complete knowledge of the orders dated 08.05.2014 passed by this Hon'ble Court. The Contemnor No.12, Mr. Rajender Singh is the Circle Officer, Katihar who is taking steps to mutate the Katihar capital assets of the Contemnor No.1 Company in favour of Contemnor No.14 which is transferred by the illegal registered Conveyance Deed dated 02.07.2014. The Contemnor No.13 is Mr. Pankaj Kumar, IAS who was occupying the post of Divisional Commissioner, Purnia Division at the relevant point of time and to whom letter was sent on 10.06.2014 (and duly served on 11.06.2014) informing of the orders dated 08.05.2014 passed by this Hon'ble Court and did not take any steps or issue any directions to the Contemnor Nos.9 to 12 to restrain the sale and registration of the Katihar capital assets of the Contemnor No.1 Company.

9. The counsel for the Petitioner by his letter dated 10.06.2014 was sent to Contemnor No.11 with a copy endorsed to Contemnor Nos.9,12,13 and to Registrar of Assurance, Katihar and to the Chief Minister and a letter dated 13.06.2014 was sent by the counsel for the petitioner to Contemnor Nos.9,11,12 and to the Finance Minister, Chief Secretary and Asstt. I.G. of Registration and all of them given full and complete knowledge of the orders dated 08.05.2014 passed by this Hon'ble Court but all of them and in particular Contemnor Nos.9, 11, 12 and 13 showed scant regard to the same and did not take any steps to restrain the sale and transfer and registration of the Katihar capital asset of the Contemnor No.1 Company. Rather, the Contemnor Nos.9 to 13 showed scant regards to the orders dated 08.05.2014 passed by this Hon'ble Court and facilitated the sale, transfer and registration of the Katihar capital asset of the Contemnor No.1 Company in conspiracy and collusion with Contemnor Nos.2 to 8 and Contemnor Nos.14 to 18 have become parties to the present Contempt Petition.

10. The Contemnor No.14 is M/s. Thapar Herbs and Spices Pvt.

Ltd., which is a company owned and controlled by the Contemnor No.2 and which has purchased the Katihar capital asset of the Contemnor No.1 Company in violation of the order dated 08.05.2014 passed by this Hon'ble Court. Contemnor No.15 is Mr. Krishan Kumar, Contemnor No.16 is Mr. Rakesh Kabra and Contemnor No.17 is Mr. Mritunjay Kumar Singh who are also the Directors of the Contemnor No.14 Company and are the employees/stooges of Mr. Govind Kumar Sarda (Contemnor No.2) who have acted in collusion and conspiracy with the Contemnor Nos.1 to 13 consciously and with full and complete knowledge of the facts defied/violated the orders dated 08.05.2014 passed by this Hon'ble Court.

11. That in willful disobedience to the orders dated 08.05.2014 passed by this Hon'ble Court, the Contemnor Nos.1 to 8 in collusion and conspiracy with the Contemnor Nos.9 to 13 and in willful disobedience of the orders dated 08.05.2014 sold away the Katihar capital assets of the Contemnor No.1 Company to the Contemnor No.14 Company (which is managed and controlled by Contemnor Nos.2 and 3) for a paltry sum of Rs.3.55 crores as against the Circle rate of Rs.15.37 crores whereas the market value is above Rs.20 crores. It is submitted that:-

i) Contemnor No.14 through one of its Directors i.e. Mr. Mrityunjay Kumar Singh, Contemnor No.17 (who is an employee of the Contemnor No.2 and works at 70, Golf Links, New Delhi office of the Contemnor Nos.1 to 3) filed application before the Contemnor No.11 (District Sub-Registrar, Katihar) for transfer of the Katihar capital asset of the Contemnor No.1 Company. This application was dismissed vide orders dated 28.10.2013.

ii) On an appeal filed by the Contemnor No.14 Company through Contemnor No.17 before the Contemnor No.9 (District Magistrate & Collector, Katihar) being Registration Appeal Case No.235/13-14 the Collector, Katihar, inter-alia, passed the following orders on 21.03.2014 (English translation):-

“From the aforesaid facts it is clear that the land under reference is Reyati Land (belonged to Juggi Lal Kamlapati Company, Katihar). Therein the Government has no vested interest. Accordingly, there appears to be no purpose for stay of its registration. Therefore the District Sub-Registrar, Katihar is free for conducting the proceedings under the Registration Act and the Rules framed under it. With this order the present case hereby disposed off.”

iii) As stated above, this Hon'ble Court by orders dated 08.05.2014 directed that till further orders, capital assets of the company shall not be disposed of without taking permission of this Hon'ble Court.

iv) On 31.05.2014, the Contemnor No.10, Deputy Collector, District Legal Branch, Katihar made the following endorsement (English translation) on the orders dated 21.03.2014 passed by the Contemnor No.9 to the Contemnor No.11:-

“Memo 1346/Law, dated 31.05.2014 Copy to District Sub-Registrar, Katihar for information and necessary action.”

v) On coming to know of the fact that the Contemnors are in the process of illegally selling away the Katihar capital asset of the Contemnor No.1 Company to the Contemnor No.14 Company (being the company controlled and managed by the Contemnor Nos.2 and 3), the petitioner through its counsel wrote a letter dated 10.06.2014 to the District Magistrate & Collector and brought to his notice the orders passed by the Allahabad High Court and this Hon'ble Court regarding restraint order on the sale of land and property of the Contemnor No.1 Company.....

vi) The counsel for the petitioner also wrote another letter dated 10.06.2014 to the Contemnor No.10, with copy endorsed to the Contemnor No.9, 12, 13 and to the Registrar of Assurance, Dist. Katihar and the Chief Minister and specifically pointed out the restraint orders passed by the Allahabad High Court and by this Hon'ble Court and enclosed the copy of the said orders alongwith the letter dated 10.06.2014.

.....

vii) Thereafter, the counsel for the Petitioner wrote a letter dated 13.06.2014 to Contemnor Nos.9, 11, 12 and to the Finance Minister, Chief Secretary and Asstt. I.G. of Registration specifically bringing to their notice the orders dated 8.05.2014 passed by this Hon'ble Court and requested that the Conveyance Deed in respect of the Katihar capital asset be not registered.

viii) Despite the letters dated 10.06.2014 and 13.06.2014 of the counsel for the Petitioner bringing to the notice of the Contemnor Nos.9 to 13 of the orders dated 08.05.2014 passed by this Hon'ble Court, the Contemnor Nos.1 to 17 in willful disobedience proceeded ahead with the process of the registering the Conveyance Deed in respect of Katihar capital asset of the Contemnor No.1 Company and by a Registered Conveyance Deed dated 02.07.2014 conveyed the Katihar capital asset of the Contemnor No.1 Company to the Contemnor No.14 Company (which is owned and controlled by Contemnor Nos.2 and 3) for a paltry sum of Rs.3.55 crores as against the Circle rate of Rs.15.37 crores whereas the market value is above Rs.20 crores.

.....

12. Another instance of fraud and back-dating of the Conveyance Deed is evident from the fact that the Conveyance Deed is signed by one Mr. Sobhanand Jha (Contemnor No.7) as Director of Contemnor No.1 Company but as on the date of the signing and/or execution of the Conveyance Deed, he had on 17.02.2014 resigned as a Director of the Contemnor No.1 Company. The said Mr. Sobhanand Jha long back changed his name to Mr. Ravishankar Prabhakar and got his name changed in the records with the Registrar of Companies but he still signed the Conveyance Deed on behalf of the Contemnor No.1 Company as a Director with his name written as Mr. Sobhanand Jha.

.....

13. That the Contemnor Nos.1 to 17 have thus willfully, consciously and contumaciously and with full and complete knowledge violated and disobeyed the orders dated 08.05.2014 passed by this Hon'ble Court in SLP(Civil) No.5249 of 2014 and as such each one of Contemnors have made themselves jointly and severally liable to be punished for the contempt of the orders passed by this Hon'ble Court.

14. That the subject matter of the Katihar capital asset is part of the scheme before the BIFR and in respect of the permissions granted for sale of the Katihar capital assets and other assets of the Contemnor No.1 Company on an appeal being Special Appeal No.539 of 2013 filed before the Allahabad High Court, the Allahabad High Court by orders dated 15.04.2013 and 16.04.2013 passed directing that the bid already received by the Asset Sale Committee (ASC) will not be opened till the next date.....

10. By its Judgment dated 13.11.2014, this Court allowed the aforesaid appeals and set aside the judgment of Gauhati High Court. It was observed:-

“...When all the financial affairs of such company were directly under the supervisory control of BIFR, the power to decide whether it has since then lost the jurisdiction or not, is also in the exclusive domain of BIFR. BIFR alone is empowered to determine whether net worth has become positive as a result of which it would cease to have such jurisdiction. Any inquiry into such issue regarding net worth by anyone outside the Act including civil court, would be against the express intent of the Act and would lead to incongruous and undesired results.” This Court relegated the matter to the BIFR to determine whether the Net Worth of the Company had turned positive. Since the alienation dated 02.07.2014 was effected without the express leave of the BIFR, that part of the matter was also left for BIFR to consider, as would be evident from paragraphs 37 and 38 of the judgment:-

“37. In the circumstances, we allow the present appeals and set aside the order dated 06-01-2014 passed by the High Court of Gauhati in Ghanshyam Sarda v. Shiv Shankar Trading Co. It is held that Title Suit No.166 of 2013 pending on the file of the learned Civil Court at Kamroop, Gauhati is not maintainable insofar as it seeks declaration that the Company was no longer a sick company within the meaning of the Act and that BIFR ceased to have jurisdiction over the Company and that all the proceedings in BIFR after filing of the positive balance sheet were without jurisdiction. Consequently the order of injunction passed by the civil court is set aside. Insofar as the said suit pertains to the claim for recovery of money from the Company, the suit could lie and be proceeded with only after express consent of BIFR is received by the plaintiff. We direct that the Company i.e. J.K. Jute Mills Co. Ltd. having its registered office at Kanpur, U.P. continues to be under the jurisdiction of BIFR. We leave it to BIFR to satisfy itself and determine the issues whether the net worth of the Company has turned positive or not. If BIFR is so satisfied, it shall deregister the Company and upon such declaration the Company will be out of the supervisory jurisdiction of BIFR under the Act. Needless to say that if BIFR is not

satisfied that the net worth of the Company has turned positive, it shall go ahead and consider the scheme for revival of the Company. We direct BIFR to complete this exercise within two months from the date of receipt of this order. We have refrained from dealing with the matter concerning the merits or demerits of the claim that the net worth has turned positive nor have we dealt with the report made by State Bank of India in its special investigative audit. We leave these issues to be considered by BIFR at an appropriate stage. We have also not dealt with the submissions alleging bias as the matters in that behalf are still pending consideration before the authorities and we leave these issues to be dealt with at an appropriate stage.

38. Since in our view the Company continues to be a sick company and it was not competent for anyone except BIFR to determine whether the net worth of the Company had turned positive, we hold the sale of Katihar property effected by the Company without express leave or permission of BIFR to be questionable.

However, since the transferee of that property is not before this Court we relegate this matter for appropriate assessment by BIFR after issuing due notice to the transferee. We also leave it to BIFR to consider and assess whether there was any necessity or expediency to sell the property in question. If in its opinion such expediency and necessity are established, BIFR may also consider whether the value that the property has fetched is adequate or not. If the value is adequate it may confirm the sale in favour of the transferee. However, if the value in its opinion is inadequate, it shall give offer and adequate time to the transferee to make good the deficit. In any case if the sale is held to be bad or if the transferee is not willing to make good the deficit, the entire consideration for the transaction be returned to the transferee. In such eventuality whatever the transferee has paid in excess of the consideration money towards stamp duty and registration shall be recovered from the Directors and persons responsible for effecting such sale on behalf of the Company.”

11. Thus, the infirmity in the transfer or alienation of assets of the Company found by this Court was on account of absence of express leave or permission of the BIFR. Further, the transferee not being party to the proceedings before this Court, the matter was directed to be considered after giving it hearing and opportunity. The present Contempt Petitions were not dealt with and notices were directed to be issued by a separate order passed on 13.11.2014.

12. Pursuant to such notices, the alleged contemnors filed their responses as under:-

A. In his reply which was also on behalf of the Company, Shri Shashikant Jha, Director submitted that Katihar property was sold and transferred to alleged Contemnor No.14 on 04.04.2013 for consideration of Rs.3.55 crores, long before the filing of the matter in this Court and passing of the Order of 08.05.2014. It was submitted that the entire consideration was received by the Company on 04.04.2013 by cheques and constructive possession was also handed over to the purchaser on 16.04.2013. The reply further stated:-

“The deed was presented for registration before the Registrar on 16.04.2014. As per the Revenue Department, the stamp duty payable was higher than affixed and accordingly, the matter was pending adjudication. It is only thereafter, that this Hon’ble Court had passed the interim Order dated 08.05.2014 restraining the Company from disposing off capital assets of the Company without taking permission from the Hon’ble Court. By this time, the property in question had for all practical purposes already been transferred. Only, the ministerial act of actual registration by the Authority concerned was remaining which also was being pursued by the purchaser, it is submitted that vide board resolution dated 06.02.2013 an authority had been given by the Company to the alleged Contemnor No.7 herein to sign and execute the sale deed. Subsequently, the alleged contemnor No.7 had resigned from the directorship of the Company. The alleged Contemnor No.7 was called upon by the purchaser for getting the sale deed registered. Therefore, there was no willful or deliberate violation of the interim Order dated 08.05.2014 passed by this Hon’ble Court.” B. In his reply, alleged Contemnor No.2 Govind Sarda submitted that he was not a party to the proceedings disposed of by this Court vide Judgment dated 13.11.2014. It was denied that the Company belonged to or was being managed by him or his son or that Katihar property was sold away by him in conspiracy with other contemnors. Similarly in his reply, alleged Contemnor No.3 Aditya Sarda submitted that he was neither a shareholder nor a director in the Company nor did he have any connection with the management of the Company. It was denied that he along with other contemnors, in conspiracy had sold away Katihar property.

C. In his reply alleged Contemnor No.6 Rakesh Kr. Singhania submitted that Katihar property was transferred well before the Order of 08.05.2014. Alleged Contemnor No.8, D.P. Bhattar another Director of the Company submitted on same lines. Alleged Contemnor No.7 Shobhanand Jha who had executed the Deed on behalf of the Company, submitted:-

“That the Respondent herein has not violated the Order dated 8.5.2014 passed by this Hon’ble Court. In fact, he had resigned as Director of JK Jute Mills Ltd. On 17.02.2014 because of personal reasons and was subsequently, not in touch with the Company. He was not aware of the Order dated 08.05.2014 passed by this Hon’ble Court. The Respondent had been authorized by the Board of Directors to execute the sale deed to be entered into between the company and M/s Thapar Herbs & Spices (P) Ltd. When he was a Director of the company. The sale deed was executed on 03.04.2013 under the answering respondents signature and the sale consideration was received by the company on 04.04.2013 itself. Symbolic possession of the property was also handed over on 16.04.2013. The deed was presented for registration by the buyer on 16.04.2013 but as the stamp duty as assessed by the revenue authorities was on the higher side, the registration of the deed did not take place. The buyer after certain correspondences with the revenue authorities was able to reduce the value of stamp duty payable on such registration. As a considerable time of more than one year had elapsed, the buyer had contacted the answering

respondent to get a fresh deed executed and to get the same registered. As the answering respondent had been given the authority which was not revoked till then the answering respondent on good faith executed the fresh sale deed which was presented for registration and was finally registered on 02.07.2014. As the answering respondent had resigned from the Directorship of the company he was unaware of any orders being passed in the meantime and was also not served by a copy of the said order. In any event the entire exercise of sale was completed in 2013 itself when the deed was executed, payment received and possession handed over.” In his supplementary affidavit Shobhanand Jha further submitted:-

“1. That on 02.07.2014 at the time of registration of the conveyance deed I had produced the authorization being board resolution of 06.02.2013 given in my favour by the Board of J K Jute Mills Co. Ltd.

2. That although the sale deed of 2014 mentions my designation as Director, it is a typographical error and which has been carried forward from the earlier sale deed of April 2013 and nothing more. It was not my intention to show myself as Director of JK Jute Mills Co. Ltd. at the time of registration as I had resigned from the Board of Directors in February, 2014.

The only authorization in my favour was the one mentioned in para 1 above. “ D. Alleged Contemnor No.10, Mohammad Istaba Husain, Senior Deputy Collector, Gaya submitted that soon after receipt of the letter dated 10.06.2014 sent by the Counsel for the appellant along with copy of the order dated 08.05.2014 passed by this Court, he had ensured that the same was sent to the concerned Sub-Registrar to take necessary action as per Rules vide letter dated 26.06.2014. However, despite such letter the Sale Deed was registered on 02.07.2014 whereafter charges were framed against District Sub-Registrar, Katihar and Circle Officer, Katihar for disobeying the order passed by this Court on 08.05.2014. In his reply alleged Contemnor No.11, Sanjay Kumar Gwalia, District Sub-Registrar, Katihar submitted that he was not a party to the proceedings before this Court, that he was bound to act under the provisions of the Registration Act in connection with registration of documents. He further submitted that in view of the prevalent opinion from the office of the Advocate General, Bihar that the Registering Authorities, if not parties to the proceedings, are bound to register documents submitted for registration, he had sought opinion of the Government Pleader on 30.06.2014. The opinion was thereafter given by the Government Pleader, Katihar on 01.07.2014 that the documents could be registered, whereafter the Sale Deed was registered on 02.07.2014. Alleged Contemnor No.12, Rajendra Singh, the then Circle Officer in his reply submitted that he had caused mutation to be effected in pursuance of the registration of document and mutation by itself did not confer any title upon the transferee. Alleged Contemnor No.13, Pankaj Kumar, Secretary Registration, Excise and Prohibition Department, Government of Bihar denied having any connection with the violation of the Order of 08.05.2014.

E. In their common reply, alleged Contemnor Nos.14 and 17 submitted that the transfer under the document dated 02.07.2014 was a bonafide purchase for consideration, that the property was already in the possession of the transferee under a long term lease and that the transferee had no

knowledge about the Order of 08.05.2014 nor was that order ever served upon the transferee. It was denied that the transferee had any connection with alleged Contemnor Nos.2 and 3. The replies filed by alleged Contemnor Nos.15 and 16 were to the similar effect denying knowledge about the Order of 08.05.2014.

13. The applicants filed their rejoinder affidavits to the replies filed by all the alleged contemnors. As regards the reply of alleged Contemnor No.17 Mrityunjay Kumar Singh, it was submitted that he was authorized representative of the Company as well as Director in the transferee company. Reliance was placed on the authority letter dated 17.06.2013 issued by the Company authorizing said alleged Contemnor No.17 to collect certified copies of the orders from the office of the BIFR. It was submitted that he being privy to the proceedings before the BIFR and being aware of the Order of 08.05.2014, ought not to have registered the document on 02.07.2014. In his subsequent affidavit dated 27.01.2016, alleged Contemnor No.17 submitted that he directly worked under alleged Contemnor Nos.2 and 3 and that he used to sign documents on their instructions. He submitted as under:

“I wish to further state that I, under instructions from Mr. Aditya Sarda, had visited Katihar twice. My first visit was in the month of May, 2014 for 15 days and second time in the last week of June 2014. The first time in May 2014 I was accompanied by Mr. Sashi Kant Jha and second time in June 2014 with Shobhanand Jha, both employees of Mr. Govind Sarda. In June 2014, on reaching Katihar I and Mr. Shobhanand Jha met by Shri. Damodar Prasad Bhattar another employee of Mr. Govind Sarda and Mr. Aditya Sarda. I stayed in Katihar for a week. During both my visits I was told that I had to sign some documents; details of which were not disclosed to me.

e. That on 02.07.2014, I and Mr. Sobhanand Jha signed certain documents before the Registrar's office on the instructions of Mr. Aditya Sarda. I did not have any occasion to read the said document nor was I aware of the contents of the said document and the particulars of the property in respect of the sale deed was signed by me. After putting the signature, photographs were taken. Thereafter, I returned to Delhi and informed Mr. Aditya Sarda that the papers had been signed.”

14. During the pendency of these contempt petitions, IA Nos.9 and 10 of 2016 were filed by the applicants inviting attention of the Court to proceedings in Calcutta High Court, namely, Writ Petition No.5670(W) of 2016 filed by one Dinesh Sarda. It was submitted that said Dinesh Sarda was a Chartered Accountant who used to work for alleged Contemnor Nos.2 and

3. Relying on certain documents filed in said writ petition, it was submitted that alleged Contemnor Nos.2 and 3 were exercising control and management over the transferee company and that the transaction in question registered on 02.07.2014 was a device employed by them. It was further submitted that these documents indicate the involvement of the said alleged Contemnor Nos.2 and 3 and established that they were the key conspirators on whose instructions the transaction was entered into and registered on 02.07.2014. Concerned parties including alleged Contemnor Nos.2

and 3 filed their responses to I.A. Nos.9 and 10 of 2016 and denied the allegations.

15. We heard M/s Krishnan Venugopal, Amit S. Chadha and Sanjiv Sen, learned Senior Advocates in support of these contempt petitions. We also heard M/s Ram Jhethmalani, Vikas Singh, V. Giri, Nidesh Gupta, Jayant Bhushan, learned Senior Advocates and Mr. Braj K. Mishra, learned Advocate who appeared on behalf of alleged contemnors. We have gone through the record and considered the rival submissions.

16. The first question that arises is whether any alienation or transfer was effected after the Order of 08.05.2014. The submission of the alleged contemnors is that the conveyance deed was executed on 04.04.2013 on which date the entire consideration stood paid by the transferee and was credited to the account of the Company and as such the title passed in favour of the transferee well before the Order of 08.05.2014 and what was done on 02.07.2014 was a mere ministerial act. According to the alleged contemnors, the documents presented for registration in April 2013 were not accepted for want of adequate stamp and registration fees. This infirmity was removed and the documents were then presented for registration. In such circumstances the order of 08.05.2014 was not in any way violated by them.

17. The Order of 08.05.2014 had directed “...capital assets of the company shall not be disposed of without taking permission of this Court”. The expression “shall not be disposed” in the context connotes action or process of sale of assets. Going by Section 54 of the Transfer of Property Act, 1882, transfer of any tangible immovable property of the value of Rupees hundred and upwards can be made only by a registered instrument. The expression ‘only’ in the Section is significant. The transfer comes into effect and becomes valid and effective only by a registered instrument. It is true that the document was sought to be registered in April, 2013 but the registration in question was duly effected only on 02.07.2014. In the eyes of law, it is this document registered on 02.07.2014 which alone effectuates transfer of interest in Katihar property in favour of the transferee. The transfer was thus effected on 02.07.2014 i.e. well after the Order of 08.05.2014. In *Suraj Lamp & Industries Pvt. Ltd. v State of Haryana and another*[2], this Court had observed as under:

“19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.”

18. The document dated 04.04.2013 did not by itself create any interest nor did the title pass upon execution of such document on 04.04.2013 but it was only after the registration on 02.07.2014 that the title in Katihar property passed from the Company in favour of the transferee. The submission of the contemnors however, is that by virtue of Section 47 of the Registration Act, the document in question would

operate from 04.04.2013. In our view, the principle embodied in Section 47 of the Registration Act is completely for different purposes. In so far as the issue of transfer is concerned, Section 54 of the Transfer of Property Act is the governing principle, which is quite clear. It is the date of registration of document which is crucial inasmuch as the transfer is effected and the title passes only upon registration. Viewed thus, it is clear that Katihar property was transferred in the teeth of the Order of 08.05.2014 and ex facie there has been violation of the Order passed by this Court. It is crucial to note that on 08.05.2014, the company had appeared on caveat before this Court and certainly had express knowledge about the Order of 08.05.2014. It was party to the proceedings and was bound by the order passed by this Court in every respect.

19. The submission on part of alleged Contemnor Nos.1,4,5,6,7 and 8 namely the Company and its directors/servants is that the document was executed by alleged Contemnor No.7 Sobhanand Jha in pursuance of the authority given to him by the Company way back on 06.02.2013. As on 06.02.2013, the company was definitely a sick company and the Reference was pending before the BIFR. Around that time the ASC was constituted which was considering sale of assets including Katihar property. It was only after the Auditors' report dated 15.02.2013 that the Company started projecting that its net worth had become positive on which account it ceased to be governed under the provisions of the Act and was outside the jurisdiction of the BIFR. Though this Court rejected such submission in its judgment dated 13.11.2014, at this stage we are considering the bonafides and tenability of the assertions made by the alleged contemnors.

There could not have been any occasion for the Company before 19.02.2013, even accepting the submission that it ceased to be a sick company as alleged, to enable the Company to execute an authority on 06.02.2013 in favour of alleged Contemnor No.7. That authorization is wholly defective and unsustainable. It is not the case of the alleged contemnors that after the adoption of the Auditors' Report and Directors' Report dated 19.02.2013 a decision was taken by the Company to sell or dispose of its Katihar property in pursuance of which due authorization was given to a competent person to execute the documents on behalf of the Company.

20. Further, the facts on record disclose that said Sobhanand Jha changed his name to R.S. Prabhakar on and with effect from 18.03.2013. However, the document mentioned his name as Sobhanand Jha which he signed as Sobhanand Jha on 04.04.2013. He tendered his resignation on 17.02.2014 as R.S. Prabhakar. Despite such resignation, he thereafter executed the document on 02.07.2014 in the name of Sobhanand Jha and signed as Sobhanand Jha. In any event of the matter as on 02.07.2014, the person was not a Director of the Company. He submitted that the Company had given him an authority way back on 06.02.2013 pursuant to which the document was executed on 04.04.2013 on which date the sale for all practical purposes stood completed and what remained was only a ministerial act which was done by him independently of the Company on 02.07.2014. It is on the basis of this submission that the Company as well as its Directors/servants namely alleged Contemnor Nos.4, 5, 6 and 8 seek to wriggle themselves out of any liability for violation of Order of

08.05.2014. If the order was passed on 08.05.2014 restraining any alienation of the capital assets of the Company, the Directors/servants of the company ought to have taken steps to inform alleged Contemnor No.7 to refrain from registering the document on 02.07.2014. Neither such steps were taken nor was the Court informed on 08.05.2014 about the document executed on 04.04.2013, in which event this Court could have passed appropriate Orders including restraint on registration. Similarly, if Sobhanand Jha, alleged Contemnor No.7 had resigned on 17.02.2014, he had no authority to register the document on behalf of the Company. In our view, the entire exercise was a clever device employed by the Company and its Directors, in that, first an authority in favour of a Director was created who then resigned as Director but continued to register the document on the basis of erstwhile authorization and at the same time the person having resigned could claim lack of knowledge of the Order of restraint passed by this Court. Their actions were deliberate and designed to flout the Order of 08.05.2014. The involvement of alleged Contemnor Nos.1,4,5,6,7 and 8 in the transfer the assets of the Company in the teeth of the Order of 08.05.2014 is thus apparent and clear.

21. We now turn to the involvement of those officials concerned with registration, who went ahead and registered the document on 02.07.2014 despite having been put to notice and served with a copy of the Order of 08.05.2014. Our attention has been invited to the opinion rendered by the office of the Advocate General, Bihar to the effect that even if there be any order passed by a civil court in connection with a private dispute between the parties, the registering authorities are bound to register a document presented for registration. This opinion was relied upon by the Government Advocate who then opined that the document in the present case could be registered. The request was allegedly made on 30.06.2014 and the opinion of the Government Advocate was promptly given on 01.07.2014. There is no register maintained diarizing the inward and outward letters and prima facie the entire theory appears to be suspicious and designed to confer a favour. However, since these are government servants, we grant them benefit of doubt and would only caution them. It is shocking that an order passed by this Court, in the face of the provisions of Article 142 of the Constitution, could be ignored or disregarded by the officials who went ahead and registered the document. However, we do not find sufficient grounds to invoke our Contempt Jurisdiction to punish them for violation of the Order of 08.05.2014.

22. We now turn to the involvement of alleged Contemnor Nos.14, 15 and 16 who are the transferee Company and its Directors/servants. These alleged contemnors were neither parties to the proceedings pending in this Court in which Order of 08.05.2014 was passed nor is there any material to indicate that such order was ever served on them or brought to the notice of these alleged contemnors. The role played by alleged Contemnor No.17, however, stands on a different footing. The documents on record do show that he used to represent the Company and was also given authority to collect documents on behalf of the Company from the office of the BIFR. Further, on his own showing, he had gone ahead and registered the document not on the asking of the transferee. He had gone along with the Directors of the Company and on the directions of alleged Contemnor No.3. The knowledge about the passing of Order of 08.05.2014 to the Company and its Directors having been established, there is room for suspecting the involvement of alleged Contemnor No.17. But mere suspicion may not be enough and we give him benefit of doubt. Thus, none of the alleged Contemnor Nos.14 to 17 have been proved to be guilty of violation of Order of

08.05.2014.

23. As regards the involvement of alleged Contemnor Nos.2 and 3, they were neither Directors nor Shareholders of the Company nor has it been shown that they have any stake or interest in the Transferee Company. It is undoubtedly true that alleged Contemnor No.17 in his affidavit stated that he used to work under the directions of alleged Contemnor Nos.2 and 3 and that the registration of the document on 02.07.2014 was done under the express directions and alleged Contemnor No.3. However, such a statement coming from a co-contemnor, in our view, is not sufficient to reach a conclusion about the involvement of alleged Contemnor No.3. Further, the documents pertaining to Writ Petition No.5670 (W) of 2016 pending in Calcutta High Court as well as the affidavit filed by Dinesh Sarda are also not conclusive enough. The criticism that such documents and the affidavit of Dinesh Sarda are conveniently brought on record, would also require assessment of facts. Thus, though there is room to suspect the involvement of said Contemnor Nos.2 and 3, the material on record is not conclusive enough to hold them guilty of violation of Order of 08.05.2015. We, therefore, close these proceedings as against them.

24. We now come to the crucial question as to the effect of transfer or alienation of Katihar property in violation of the Order of 08.05.2014. The law on the point is well settled in the decision of this Court in *D.D.A. v. Skipper Construction Co. (P) Ltd.*[3] that legal consequences of what has been done in breach of or in violation of the order of stay or injunction can be undone and the parties could be put back to the same position as they stood immediately prior to such order of stay or injunction. Paragraphs 18 to 21 of the decision in *D.D.A. v. Skipper Construction Co. (P) Ltd.* (supra) are quite instructive and are:-

“18. The above principle has been applied even in the case of violation of orders of injunction issued by civil courts. In *Clarke v. Chadbur* (1985)¹ All ER 211 Sir Robert Megarry V-C observed:

“I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some charge in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach of the law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them.”

19. To the same effect are the decisions of the Madras and Calcutta High Courts in *Century Flour Mills Ltd. v. S. Suppiah* (AIR 1975 Mad270) and *Sujit Pal v. Prabir Kumar Sun* (AIR 1986 Cal 220). In *Century Flour Mills Ltd.*(supra) it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the court, as a policy, to set the wrong right and not allow the perpetuation of the wrongdoing. The inherent power of the court, it was held, is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognise that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.

20. In *Sujit Pal*(supra) a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The Court directed the restoration of possession to the plaintiff with the aid of police. The Court observed that no technicality can prevent the court from doing justice in exercise of its inherent powers. It held that the object of Rule 2-A of Order 39 will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law.

21. There is no doubt that this salutary rule has to be applied and given effect to by this Court, if necessary, by overruling any procedural or other technical objections. Article 129 is a constitutional power and when exercised in tandem with Article 142, all such objections should give way. The court must ensure full justice between the parties before it.”

25. In the present case the Company and its Directors/servants were certainly guilty of transgressing or violating the Order of 08.05.2014 but as found hereinabove, the transferee and its Directors/servants have not violated the Order of 08.05.2014. The transferee and its Directors/servants were neither parties to the proceedings nor were they served with the Order of 08.05.2014. In para 38 of the judgment of this Court dated 13.11.2014, this Court had found the transfer in favour of the transferee to be questionable and had relegated the matter to the BIFR to consider the matter in the light of directions contained in said para 38. In the circumstances, no further orders are called for invalidating the registration dated 02.07.2014.

Further, according to the record the transferee had parted with full consideration way back on 04.04.2013. In the totality of these circumstances we do not think it appropriate to exercise our power to invalidate the effect of registration of the document on 02.07.2014.

26. We thus find the Company and its Directors/servants namely alleged Contemnor Nos.1, 4, 5, 6, 7 and 8 guilty of having violated the Order of 08.05.2014. In our view, ends of justice would be met if

fine is imposed on the Contemnors. We impose fine of Rs.2,000/- on the Company. Further, fine of Rs.2,000/- each is imposed on Contemnor Nos.4, 5, 6, 7 and 8. Fine shall be deposited with the Registry of this Court within four weeks from today. In case of failure by Contemnor Nos.4, 5, 6, 7 and 8 to deposit the amount of fine within the time stipulated, they shall undergo sentence of simple imprisonment for one month.

27. With these observations, we close Contempt Petition Nos.338 of 2014 and 375 of 2014 and the same stand disposed of.

28. In Contempt Petition Nos.24-25 of 2015 it is submitted that the contemnors have obstructed the implementation of the judgment dated 13.11.2014 passed by this Court. The acts alleged are in the nature of legal proceedings initiated by the contemnors and as such we do not find any reason to invoke our contempt jurisdiction. Said Contempt Petition Nos.24-25 of 2015 thus stand dismissed.

29. In Contempt Petition No.307 of 2015 it is alleged that the direction issued by this Court in paragraph No.33 of its Judgment dated 13.11.2014 has not been complied with by the contemnors. Since no notice as regards this Contempt Petition was issued to the contemnors we issue notice to the contemnors returnable in six weeks. The matter shall be placed before the appropriate Bench.

.....J. (Anil R. Dave)J. (Uday Umesh Lalit) New Delhi, November 18, 2016

[1] (2015) 1 SCC 298 [2] 2012 1 SCC 656 [3] (1996) 4 SCC 622