Hukum Chand Deswal vs Satish Raj Deswal on 6 May, 2020

Equivalent citations: AIR 2020 SUPREME COURT 2100, AIRONLINE 2020 SC 492

Author: A.M. Khanwilkar

Bench: A.M. Khanwilkar, S. Ravindra Bhat

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REPORTABLE

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

CONTEMPT PETITION (CIVIL) NO. 591/2019
IN
SPECIAL LEAVE PETITION (CIVIL) NO. 5350/2019

Hukum Chand Deswal …Petitioner(s)

Versus

Satish Raj Deswal ...Respondent(s)

JUDGMENT

A.M. Khanwilkar, J.

1. This contempt petition has been filed by the original plaintiff (in CS(OS) No. 2041/2013 filed in High Court of Delhi at New Delhi1), under Article 129 of the Constitution of India read with Sections 12 and 14 of the Contempt of Courts Act, 1971 2 and read with Rule 3 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 3 in reference to the order dated 22.2.2019 passed by this Court in SLP(C) Nos. 5147/2019 and 5350/2019, which reads thus: □1 For short, "the High Court" 2 For short, "the 1971 Act" 3 For short, "the 1975 Rules" "We are not inclined to interfere with the Special Leave Petition.

However, we accede to the request made by the petitioner to grant four weeks' time to vacate the suit premises. That shall be subject to payment of all the outstanding dues/arrears and filing undertaking before this Court within two weeks' from today.

It is made clear that if the premises are not vacated as per the undertaking, it will be viewed sternly. The Special Leave Petition is disposed of accordingly. All IAs are also disposed of."

2. The gravamen of the grievance of the petitioner/original plaintiff is that the respondent [defendant in CS(OS) No. 2041/2013] failed to file undertaking, as also, to pay the outstanding dues before vacating the suit premises and further, caused damage to the property before handing over possession thereof to the petitioner on 22.3.2019. Thus, the respondent committed wilful disobedience of and violated the directions given by this Court vide order dated 22.2.2019.

3. Shorn of unnecessary factual details, suffice it to observe that the petitioner – M/s. Jingle Bell Amusement Park Pvt. Ltd. (represented by its Director – Mr. Hukum Chand Deswal) had filed the aforementioned suit for permanent injunction, possession and for recovery of rent and damages/mesne profits till the recovery of possession in respect of the property bearing No. 41/24, 25, 42/20, 50/1, 51/4 min at Village Alipur, Tehsil□Delhi, Delhi against the respondent – Sagu Dreamland Pvt. Ltd. (represented by its Managing Director – Mr. Satish Raj Deswal).

4. The respondent/defendant, on the other hand, filed a suit being CS(OS) No. 1592/2014 in the High Court against Splash Island Pvt. Ltd. and its two Directors – Hukum Chand Deswal [present petitioner/original plaintiff in CS(OS) No. 2041/2013] and Karandeep Singh Deswal, seeking permanent injunction restraining them from infringing the trademark acquired by the respondent.

5. CS(OS) No. 2041/2014 was eventually disposed of on 30.6.2015 on the basis of settlement arrived at between the parties on 28.5.2015. As per the said settlement, the respondent had agreed to vacate the suit property on or before 31.12.2017 and handover peaceful and vacant possession thereof to the petitioner herein. The respondent was permitted to take away civil structures and movable fixtures installed by it in the suit property. It could also offer the same to the petitioner for consideration on or before September, 2017. The petitioner would have sole discretion to purchase the same or not. The agreement also records that an amount of Rs.25,00,000/□(Rupees twenty□ five lakhs only) deposited by the respondent with the petitioner as security amount without interest, shall be returned to the respondent after handing over the vacant peaceful possession of the suit property. The parties also agreed for revised monthly rent and the respondent paid the outstanding dues in terms of the said agreement by way of cheque(s) and future rent by way of post□dated cheque(s). The agreement also records that the petitioner herein or any of the Directors of the petitioner shall not use the trademark □"SPLASH" in any manner and the cases filed by either of the parties in this regard shall be withdrawn by the concerned party in Delhi or elsewhere. It is also noted in the agreement that breach of terms and conditions of the settlement/agreement/compromise deed by either party, shall entitle the other party to take legal recourse before the competent Court/authority for legal remedy. Another crucial condition stipulated in the agreement is that if the respondent failed to vacate and handover peaceful vacant possession of the suit premises on or before 31.12.2017 or after the termination of tenancy, the petitioner herein would be entitled to recovery of double the amount of last paid rent as unauthorised occupation charges from the respondent. The monthly rent payable as on December, 2017 in terms of the agreement was fixed at Rs.9,25,000/□(Rupees nine lakhs twenty□five thousand only) per month. Resultantly, in case of default, the petitioner would become entitled for

recovery of double the amount of Rs.9,25,000/-(Rupees nine lakhs twenty-five thousand only) every month as unauthorised occupation charges. This agreement was reached as final settlement of all the past, present and future claims between the parties and to be effective only after appropriate order was passed in CS(OS) No. 2041/2013 filed by the petitioner herein.

6. Even the suit filed by the respondent being CS(OS) No. 1592/2014 came to be disposed of as withdrawn on 31.8.2015 in terms of the settlement arrived at between the parties.

7. Before the time to vacate the suit premises specified in the settlement had expired, the respondent filed Contempt Case (Civil) No. 225/2017 before the High Court against the petitioner, alleging wilful violation and disobedience of the settlement terms dated 28.5.2015 by illegally using the word "SPLASH" and continued infringement of the trademark of the respondent. The High Court disposed of the said petition on 20.3.2017 giving liberty to the respondent to take recourse to execution proceedings.

8. The respondent then filed an application bearing I.A. No. 14331/2017 in CS(OS) No. 1592/2014 seeking recall of the order dated 30.6.2015 and to restore the said suit to its original number on the assertion that the Settlement Agreement arrived at between the parties on 28.5.2015 has been frustrated by the petitioner by continuing to infringe the trademark of the respondent. That application came to be disposed of on 12.7.2018 after recording the second agreement arrived at between the parties, whereunder the petitioner herein undertook to abstain from using the word "SPLASH" or any deceptively similar word, either as a part of the trademark, trade name/corporate name or with a prefix or suffix in any manner whatsoever. It was also agreed by the petitioner that the company – Splash Island Pvt. Ltd. will apply to the Registrar of Companies within a period of ten days for change of name wherein it could adopt any name without the word "SPLASH" or a deceptively similar word. That was to be done on or before 31.10.2018 and that use of the word "SPLASH" by the petitioner would be completely stopped on or from 31.10.2018. The Court also recorded the assurance given by the respondent herein that it would handover vacant and peaceful possession of the suit property on or before 30.11.2018 to the representatives of M/s. Jingle Bell Amusement Park Pvt. Ltd. and shall not cause any damage to the constructed area while vacating the property and abide by clause 6(b) of the Settlement Agreement.

9. The respondent then filed another application(s) in October, 2018, being I.A. Nos. 13958/2018 and 13957/2018 in CS(OS) Nos. 2041/2013 and 1592/2014 respectively before the High Court seeking intervention of the Court in implementing the Settlement Agreement dated 28.5.2015 in an equitable manner, as the respondent was suffering losses because of the wilful disobedience and violation of the Settlement Agreement by the petitioner herein, by continuing to use the trademark "SPLASH", which belonged to the respondent and also because the respondent was required to pay enhanced monthly rent as per the revised agreement, of Rs.9,25,000/-(Rupees nine lakhs twenty-five thousand only) per month. The respondent, therefore, prayed for modification of the order dated 12.7.2018 to the extent that the time given to it to vacate the suit premises be extended for a period of two years in terms of the Settlement Agreement between the parties. These applications were rejected by the learned single Judge of the High Court on 8.10.2018 after noting that no ground was made out for extending time to handover possession as prayed for. The essence of the

grievance made in the applications filed by the respondent was to compensate the respondent for the damage suffered due to continued violation of the obligation by the petitioner by not abstaining from using the trademark "SPLASH" belonging to the respondent.

10. Feeling aggrieved, the respondent carried the matter in appeal before the Division Bench of the High Court, reiterating the grievance made in the stated applications. In the appeals, it was expressly stated that the respondent was suffering losses not only because of the continued violation of the conditions/terms specified in the Settlement Agreement in the form of infringement of the trademark of the respondent, but also because the respondent is required to pay enhanced rent to the petitioner as per the agreement/settlement dated 28.5.2015. The Division Bench, however, rejected the appeals vide order dated 28.1.2019 by observing as follows: □"5. We are not impressed by the said submission of Mr. Kaul for the simple reason that the Suits were disposed of in terms of the settlement entered between the parties. If there is a violation of the settlement/decree, it is for the appellant to seek execution of the decree or any other relief as permissible in law rather than seeking a benefit of further time on the premise that the respondent has violated the terms of agreement. This is clearly impermissible as any direction by us, shall also be at variance with the order disposing of the suits. We find that the learned Single Judge has rightly dismissed the applications seeking modification of the order dated 12 th July, 2018.

We do not find any merit in the appeals. The same are dismissed.

(emphasis supplied)

11. Against this decision, the respondent had approached this Court by way of special leave petitions being SLP(C) Nos. 5147/2019 and 5350/2019, which came to be dismissed vide common order dated 22.2.2019, as reproduced in paragraph 1 above.

12. It is not in dispute that the respondent vacated the suit premises before the date prescribed in the order of this Court, dated 22.2.2019. However, the grievance of the petitioner in the present contempt petition is three□fold. First, the respondent failed to file undertaking despite direction to do so within two weeks. Second, the respondent failed to pay the outstanding dues to the petitioner in the sum of Rs.1,32,48,794/□(Rupees one crore thirty□two lakhs forty□eight thousand seven hundred ninety□four only) as on 22.3.2019. Third, while vacating the suit premises, the respondent caused damage to the suit property. Each of these acts of commission and omission of the respondent was intentional and in wilful disobedience of the order passed by this Court dated 22.2.2019.

13. The respondent besides tendering unconditional apology has offered explanation pointing out that he was not in arrears and no amount was outstanding or payable to the petitioner who had continued to infringe the trademark "SPLASH" belonging to the respondent, even after 31.10.2018. The revised settlement arrived at between the parties on 12.7.2018, as recorded by the High Court, clearly obligated the petitioner to stop using the trademark "SPLASH" belonging to the respondent on and from 31.10.2018 whilst extending the time to vacate the suit premises upto 30.11.2018 without altering the stipulation regarding monthly rent set out in the Settlement Agreement dated

28.5.2015. In other words, the respondent was liable to pay only Rs.9,25,000/□(Rupees nine lakhs twenty□five thousand only) per month even after December, 2017 until 30.11.2018 and thereafter, because of the indulgence shown by the High Court in the first place and later by this Court vide order dated 22.2.2019 giving time to the respondent to vacate the suit premises upto 22.3.2019. According to the understanding of the respondent, the revised agreement dated 12.7.2018 was a comprehensive arrangement worked out in the backdrop of the grievance of the respondent that he had suffered huge losses due to the continued infringement of trademark "SPLASH" by the petitioner, despite the stipulation in the Settlement Agreement dated 28.5.2015 in that regard, and also due to the enhancement in the monthly rent in respect of the suit premises. It is also pointed out that the petitioner had moved the executing Court to direct the respondent to pay double the amount of rent as compensation for unauthorised occupation of the suit premises beyond 30.11.2018. The said prayer was considered in execution proceedings by the learned single Judge of the High Court and was disposed of vide order dated 29.5.2019 passed in CM(M) No. 109/2019 and CM Appl. Nos. 3331/2019 and 3876/2019. The said order reads thus:□"O R D E R 29.05.2019

1. This petition under Article 227 of the Constitution of India is directed against an order dated 21.12.2018 in execution proceedings.

2. The suit between the parties was initially disposed of, by a mediated settlement dated 28.05.2015. The respondent herein has filed for execution of that settlement agreement. However, the parties had approached this Court by way of certain interim applications in the suit after the settlement. Those applications were decided by an order of the learned Single Judge dated 12.07.2018. It appears that the petitioner had, then, sought modification of the order dated 12.07.2018, which was declined by an order dated 08.10.2018. Against this order, the petitioner filed FAO (OS) 172/2018 which was dismissed by the Division Bench vide the judgment dated 28.01.2019. The judgment dated 28.01.2019 was carried to the Supreme Court in SLP (Civil) No. 5147/2019, which was disposed of with the following order: □"We are not inclined to interfere with the Special Leave Petition. However, we accede to the request made by the petitioner to grant four weeks' time to vacate the suit premises.

That shall be subject to payment of all the outstanding dues/arrears and filing undertaking before this Court within two weeks' from today.

It is made clear that if the premises are not vacated as per the undertaking, it will be viewed sternly.

The Special Leave Petition is disposed of accordingly. All IAs are also disposed of."

3. It is not disputed that the possession of the premises in question has been handed over by the petitioner to the respondent, pursuant to the order of the Supreme Court. The present dispute relates to the amount payable by the petitioner to the respondent, if any. Under the settlement agreement, the petitioner was liable to pay twice the amount of the last rent fixed, in the event it did not vacate the premises in question by the agreed date, i.e. 31.12.2017. According to the petitioner, by the order dated 12.07.2018, the time originally fixed for vacation of the suit premises was extended until 30.11.2018, and the petitioner was, therefore, not liable to pay twice the amount of

the last paid rent as unauthorized occupation charges until 30.11.2018. This contention is disputed by the learned counsel for the respondent, who submits that the order dated 12.07.2018 merely extended the time for vacating the premises, and did not alter the liability of the petitioner to pay twice the amount of the last rent paid for the period after 31.12.2017.

4. Be that as it may, I have also been informed that pursuant to the order of the Supreme Court, the petitioner has made a further payment to the respondent and given a statement of accounts by a letter dated 07.03.2019. In these facts and circumstances, counsel for the parties submit that they will file their respective statements of account before the executing Court, which would then determine whether any amount remains payable from the petitioner to the respondent.

5. All the rights and contentions of the parties in this regard are left open and the petition is disposed of in terms of the above." (emphasis supplied) According to the respondent, neither the learned single Judge nor the Division Bench in the earlier proceedings had dealt with the question of liability of the respondent to pay monthly rent over and above mentioned in the Settlement Agreement dated 28.5.2015 at the rate of Rs.9,25,000/□(Rupees nine lakhs twenty□five thousand only) per month, which position was reinforced vide order dated 12.7.2018. In that, double the amount of last paid rent towards unauthorised occupation charges would have become payable after 30.11.2018 but for the protection extended to the respondent by the High Court and this Court. As a matter of fact, the Division Bench in the judgment dated 28.1.2019 (which was impugned in special leave petitions before this Court), had left the parties to pursue their remedy before the executing Court. Moreover, even this Court did not adjudicate the question regarding the liability of the respondent to pay further rent or so to say, outstanding dues payable to the petitioner. That is a matter which ought to be considered by the executing Court in view of the liberty granted by the learned single Judge, as well as, the Division Bench of the High Court, in the backdrop of the grievance made by the respondent about the continued infringement of its trademark by the petitioner, for which the petitioner must compensate the respondent appropriately including to provide due adjustments. It is the case of the respondent that the order dated 12.7.2018 extended the time to vacate the suit premises until 30.11.2018 and thereafter, considering the protection given by the High Court and also by this Court in terms of order dated 22.2.2019, it must follow that the possession of the respondent was lawful and not unauthorised as such. It is urged that the order of this Court could be understood to mean that "if" the respondent was in arrears, it ought to pay such amount to the petitioner before the specified date. A priori, the respondent would not be liable to pay double the amount of rent in terms of the Settlement Agreement dated 28.5.2015. To buttress this submission, reliance is placed on the decision of this Court in Union of India vs. Banwari lal & Sons (P) Ltd.4, wherein this Court opined that right to mesne profits pre□supposes a wrong whereas a right to rent proceeds on the basis that there is a contract. Further, there is an intermediate class of cases in which the possession though not wrongful in the beginning assumes a wrongful character when it is unauthorizedly retained and in such cases, owner is not entitled to claim mesne profits but only the fair rent.

14. In substance, the respondent besides offering unconditional apology, has offered explanation to persuade this Court to take a view that the respondent had not committed any act, much less intentional, amounting to wilful disobedience. As regards the allegation regarding the damage

caused to the suit property, while handing over possession to the petitioner, it is stated on affidavit supported by contemporaneous record and photographs to indicate that the respondent has taken away only those 4 (2004) 5 SCC 304 fixtures which he was permitted to do under clause 24 of the first agreement dated 21.3.2003, which reads thus: □"Clause 24: "That the second party shall hand over the premises of the water sports in full and with all infrastructure in running conditions at the end of the period of 8 years. That any additional equipments/sports facility installed by the 2nd party shall be the property of the 2nd party, which he has been to take away after expiry of lease period." This clause has been referred to in the Settlement Agreement dated 28.5.2015. Further, it is manifest from the record that the allegation regarding damage was based on misleading photographs produced alongwith contempt petition, whereas the photographs of the same site taken by the respondent at the time of vacating the suit property would reveal that what was left behind was only debris without causing any permanent damage to the structure or the suit property. As a matter of fact, the petitioner immediately (in less than 2□3 months) after taking possession of the suit property, started operating the water park in the suit premises. The case made out by the petitioner about defacement of the suit property is entirely misleading and mischievous. It is urged that no case for initiating contempt action has been made out by the petitioner and the amount deposited by the respondent in this Court in the sum of Rs.1,50,00,000/□(Rupees one crore fifty lakhs only) pursuant to direction given by this Court in the present contempt petition on 25.9.2019, be refunded to the respondent alongwith interest accrued thereon, forthwith. The respondent has also invited appropriate direction in I.A. No. 152785/2019 filed by it to modify the amount deposited in this Court to Rs.87,37,677/□(Rupees eighty□seven lakhs thirty□seven thousand six hundred seventy□seven only), based on calculations given in the said application.

15. We have heard Mr. Nakul Diwan, learned senior counsel for the petitioner and Mr. Parag Tripathi, learned senior counsel for the respondent.

16. At the outset, we must advert to the contours delineated by this court for initiating civil contempt action in Ram Kishan vs. Tarun Bajaj & Ors.5. In paragraphs 11, 12 and 15 of the reported decision, this Court noted thus: □"11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society 5 (2014) 16 SCC 204 will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi□criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697, Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530, Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21, Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360, Sahdeo v. State of U.P., (2010) 3 SCC 705 and National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600.

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct." (Vide S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591, Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255, Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332, Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282, Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1, State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 and Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753.

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15. It is well□settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See Sushila Raje Holkar v. Anil Kak, (2008) 14 SCC 392 and Three Cheers Entertainment (P) Ltd. v. CESC Ltd., (2008) 16 SCC 592." Similarly, in R.N. Dey & Ors. vs. Bhagyabati Pramanik & Ors.6, this Court expounded in paragraph 7 as follows: □"7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the 6 (2000) 4 SCC 400 said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified." Keeping the settled legal principle

expounded in the aforesaid decisions, in mind, we may now proceed to consider the three stated violations of the order dated 22.2.2019 by the respondent to ascertain whether the same is intentional and wilful disobedience of the order/direction passed by this Court.

17. Reverting to the first violation of not filing undertaking within two weeks, as directed, that per se cannot be the basis to initiate contempt action against the respondent. Indeed, the undertaking was required to be filed "if" the respondent wanted to avail of the time granted by this Court in terms of the order dated 22.2.2019. In this case, admittedly, the respondent vacated the suit property before the time specified in the order of which contempt has been alleged. Hence, non-filing of undertaking does not take the matter any further nor do we find any reason to precipitate the matter on that count alone.

18. We now turn to the grievance about non-payment of outstanding dues in terms of the direction in the order dated 22.2.2019. It is not in dispute that in the application filed by the respondent before the High Court, specific grievance was made that it was suffering huge losses on two counts, namely, on account of petitioner continuing to use the trademark "SPLASH" even after 31.10.2018 unabated and second, on account of liability of the respondent to pay enhanced rent in terms of the Settlement Agreement dated 28.5.2015 of Rs.9,25,000/-(Rupees nine lakhs twenty-five thousand only) per month. The respondent requested the High Court to pass an equitable order in implementing the Settlement Agreement dated 28.5.2015. The fact remains that neither the learned single Judge nor the Division Bench clearly ruled on the factum of outstanding dues/arrears payable by the respondent. On the other hand, the Division Bench in its order dated 28.1.2019, left the parties to pursue execution of the decree or any other relief, as may be permissible in law, whilst rejecting the prayer of the respondent to grant time to vacate the suit premises beyond the time prescribed in the order dated 12.7.2018. The relevant observation has been extracted in paragraph 10 above, which reinforces this position. Similarly, while disposing of the grievance of the respondent made in Contempt Petition No. 225/2017, the High Court noted that the respondent was free to pursue the same in execution proceedings. And again, the learned single Judge of the High Court vide order dated 29.5.2019, left the parties to pursue their claim on relevant aspects before the execution Court by filing respective statements of account for determination of liability of the respondent, if any, as can be discerned from the observations in the said order reproduced in paragraph 13 above.

19. Pertinently, the special leave petitions were filed by the respondent against the order dated 28.1.2019, which as aforesaid, did not deal with the question regarding the monthly rent payable by the respondent but explicitly left the parties to pursue the same before the executing Court. The plaintiff/petitioner having acquiesced of that observation of the High Court, cannot be allowed to contend to the contrary. This Court in Jhareswar Prasad Paul & Anr. vs. Tarak Nath Ganguly & Ors.7, in paragraph 11, opined thus: -"11. ... The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, 7 (2002) 5 SCC 352 be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct

of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts."

20. Thus understood, we find force in the explanation offered by the respondent that as per its bona fide understanding, there was no outstanding dues payable to the petitioner. Moreover, as observed by the High Court, these aspects could be answered by the executing Court if the parties pursue their claim(s) before it in that regard. Suffice it to observe that it is not a case of intentional violation or wilful disobedience of the order passed by this Court to initiate contempt action against the respondent. Instead, we hold that it would be open to the parties to pursue their claim(s) in execution proceedings or any other proceedings, as may be permissible in law in respect of the issue(s) under consideration. In such proceedings, all aspects can be considered by the concerned forum/Court on merits in accordance with law. We say no more.

21. Reverting to the allegation about damage caused to the suit property by the respondent at the time of vacating the same, in our opinion, the respondent has made out a formidable case that it did not cause any damage, much less permanent damage to the structure in the suit property. Whereas, the petitioner was relying on photographs concerning the debris on the site left behind at the time of vacating the suit property. The debris cannot cause damage and it is certainly not a case of defacement of the suit property. That position is reinforced from the fact that the water park in the suit premises was started and became fully functional within 2□3 months. Viewed thus, it is rightly urged that it can be safely assumed that no damage was caused by the respondent to the structure in question. Minor repairs required to be carried out by the petitioner for making the water park functional cannot be painted as intentional disobedience of the order of this Court. In any case, that being a complex question of fact, need not be adjudicated in the contempt proceedings. We leave it open to the petitioner to pursue even that claim in execution proceedings or such other proceedings as may be permissible in law. We may not be understood to have expressed any final opinion in respect of condition of the suit premises, whilst handing over possession to the petitioner. We hold that even this issue under consideration does not warrant initiation of contempt action against the respondent.

22. Taking overall view of the matter, therefore, we decline to precipitate the matter any further against the respondent. Instead, we deem it appropriate to discharge the show cause notice(s) and relegate the parties to such remedies as may be permissible in law to espouse their cause(s)/claim(s)

including mentioned in the present contempt petition. All questions in that regard are left open to be decided by the concerned forum/Court appropriately as per law.

23. The next aspect is about the prayer of the respondent to refund the amount of Rs.1,50,00,000/□ (Rupees one crore fifty lakhs only) alongwith interest accrued thereon. In I.A. No. 152785/2019 filed by the respondent, it is prayed that the deposit amount be reduced to Rs.87,37,677/□(Rupees eighty□seven lakhs thirty□seven thousand six hundred seventy□seven only), in terms of the calculations given therein. Considering the fact that we have relegated the parties before the executing Court to pursue their claim(s) in respect of and arising from the agreement/settlement, in particular the Settlement Agreement dated 28.5.2015 and order of the High Court dated 12.7.2018 recording the revised agreement, we accede to the request of the respondent to retain sum of Rs.87,37,677/□(Rupees eighty□seven lakhs thirty□seven thousand six hundred seventy□seven only) and interest accrued thereon out of the total amount deposited in this Court in the sum of Rs.1,50,00,000/□(Rupees one crore fifty lakhs only) alongwith interest accrued thereon.

24. Accordingly, the amount of Rs.87,37,677/□(Rupees eighty□seven lakhs thirty□seven thousand six hundred seventy□seven only) and interest accrued thereon be transferred to the executing Court, who in turn, after considering the rival claim(s), may pass appropriate orders in that regard in accordance with law. The respondent, however, is permitted to withdraw the excess amount [in excess of Rs.87,37,677/□(Rupees eighty□seven lakhs thirty□seven thousand six hundred seventy□ seven only) and interest accrued thereon], subject to filing an undertaking in this Court to the effect that if the executing Court so directs, the sum so withdrawn or portion thereof would be deposited in the executing Court as and when required and not later than four weeks from the date of such direction. In addition, the respondent shall furnish a solvent security commensurate with the amount to be withdrawn by the respondent, but not less than Rs.75,00,000/□(Rupees seventy□five lakhs only) as pre□condition. The solvent security should be to the satisfaction of the executing Court. This arrangement would meet the ends of justice and also secure the interests of both sides.

25. Accordingly, the contempt petition and I.A. No. 152785/2019 are disposed of in the above terms. The show cause notice(s) issued to the respondent stand(s) discharged. Pending interlocutory applications, if any, shall stand disposed of.

.....J. (A.M. Khanwilkar) .....J. (Dinesh Maheshwari) New Delhi;

May 6, 2020.