

ORDER SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3162/2019
Nisar Muhammad
Versus
Liaqat Hussain and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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26.12.2019.	Nemo for the petitioner. Mr. Tariq Mehmood Mirza, advocate for respondent No.1.	
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Neither the petitioner nor the learned counsel for the petitioner have bothered to tender appearance. On 25.09.2019, an undertaking was given on behalf of the petitioner that the rented premises would be vacated positively by 25.12.2019. It was on the basis of the said undertaking that interim relief was granted to the petitioner.

2. Learned counsel for the contesting respondent has tendered appearance and has submitted that the petitioner has neither vacated the rented premises nor has paid the rent.

3. The petitioner has breached his undertaking given before this Court. It is well settled that an undertaking given to the Court by a party or his counsel has exactly the same force as an order made or an injunction granted by the Court. A party that gives an undertaking to the Court is bound to fulfill the same. If a party breaches his undertaking given to the Court, he places himself in a perilous situation, and exposes himself to an action for contempt of Court. In the case of Kishwar Sultan Jehan Begum Vs. Aslam Awais (PLD 1976 Lahore 580), it has been held as follows:-

"2. An undertaking given to the Court by a party or his counsel has exactly the same force as an order made or an injunction granted by a Court; once an undertaking is

given in the Court by a party or on his behalf by his counsel he becomes bound to fulfil the same. After the Court has sanctioned a particular course of action or inaction according to the statement of a party, the party places himself in a perilous situation if later he commits a breach of his undertaking, and such a conduct on his part amounts to contempt of Court. In Chaturbhujdas Parmanandas v. Natvarlal Tribhovandas (134 1 C 1165) it was held that if an undertaking is given and is duly recorded in the order of the Court, its breach is punishable as contempt of Court. If a lawyer is acting in his capacity as counsel for a party and gives an undertaking, it is open to the Court to enforce the same even if it was given gratuitously. An undertaking can be enforced even though the lawyer's conduct involves no misconduct. Hamilton, J., observed in United Mining & Finance Corporation Ltd. v. Becher (1902) 2 K B 296) that the jurisdiction may be invoked not only to secure honesty, in its moral sense, in Court officers, but also to secure the "proper and professional observation of undertakings professionally given". He added: "The conduct which is required of solicitors is to this extent perhaps raised to a higher standard than the conduct required of ordinary men, in that it is subject to the special control which a Court exercises over officers so that in certain cases they may be called upon summarily to perform their undertakings, even where the contention that they are not liable to perform them is entirely free from any taint of moral misconduct." It is also no justification that such an officer was not bound by the undertaking because he was not served with the order containing the undertaking. In re: Galwanded Tank Manufacturers' Association's Agreement (1965) 2 All E R 1003) Megaw, P., said: "We would, however, emphasise that a company which has given an undertaking to the Court must be treated as having failed lamentably and inexcusably in its elementary duty if it fails to take adequate and continuing steps to ensure, through its responsible officers, that those officers themselves, and anyone to whom they may delegate the handling of matters which fall within the scope of the undertaking, do not forget or misunderstand or overlook the obligations imposed by such undertakings." If a person, bound by an undertaking, acts in violation of the same, though on the pretext that his action was backed by some legal advice, he renders himself liable for action. In re: Agreement of Mileage Conference Group of the Tyre

Manufacturers' Conference Ltd. ((1966) 2 All E R 849) certain tyre manufacturers had given an undertaking inter alia not to operate a certain scheme which the Restrictive Practices Court had declared contrary to public interest. A new scheme was devised and operated which was held to be a breach of the undertaking. The companies argued, however, that since they had relied upon legal advice that the new scheme would not amount to a breach of their undertaking, they could not be said to have committed contempt because the breach had not been contumacious. The Court held that although reliance on legal advice might be a mitigating factor provided that it was reasonable to rely on such advice, nevertheless a contempt will still have been committed. Megaw, P., observed: "We conclude that the breaches of undertaking here were contempt of Court even though it were to be shown that they were things done, reasonably and despite all due care and attention, in the belief, based on legal advice, that they were not breaches." Accordingly, we would hold that breach of a party of an undertaking given to a Court by him or his counsel amounts to contempt of Court and is punishable brevi manu, and the party in contempt must wash the stain that is sticking to him by obeying the order of the Court which it may choose to make. However, before exercising such a wide jurisdiction, the Court must ensure that the undertaking was unambiguous and the breach was also clear beyond all reasonable doubt."

4. Law to the same effect has also been laid down in the cases of Cool Industries (Pvt.) Ltd. Vs. Shafique Ahmed (2010 MLD 435), Ghulam Sarwar Vs. Allah Wasaya (2005 MLD 1552), Muhammad Gulzar Vs. Muhammad Habib (2004 PCr.LJ 1890), Ali Nawaz Chohan Vs. Mushtaq Hussain Shah (1986 P.Cr.L.J 2222), The State Vs. Rafique Ahmed Bhatti (1984 P.Cr.L.J 583), Major Riaz Ahmed Vs. Hamid Aziz Sheikh (PLD 1976 Lahore 871), and Raj Rajeswari Jiu Vs. Gati Krishna Chakrabarti (AIR 1924 Calcutta 953).

5. The absence of the petitioner and his counsel from the Court bespeaks of a sorry state of affairs at their end. Both these

individuals have not showed any respect to the Court by not even informing the Court as to why the said undertaking was breached. The petitioner's conduct renders him unworthy of relief in the constitutional jurisdiction of this Court. On account of this contumacious act on the part of the petitioner, this writ petition is dismissed.

(MIANGUL HASSAN AURANGZEB)
JUDGE

****Sanaullah****